



Committee:

# **GENERAL GOVERNMENT APPROPRIATIONS**

Senator Baker, Chair  
Senator Lawson, Vice Chair

## **Meeting Packet**

Monday, April 19, 2010

10:30—11:30 a.m.

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

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**  
**GENERAL GOVERNMENT APPROPRIATIONS**  
**Senator Baker, Chair**  
**Senator Lawson, Vice Chair**

**MEETING DATE:** Monday, April 19, 2010  
**TIME:** 10:30—11:30 a.m.  
**PLACE:** James E. "Jim" King, Jr., Committee Room, 401 Senate Office Building

**MEMBERS:** Senator Baker, Chair; Senator Lawson, Vice Chair; Senators Aronberg, Dean, and Oelrich

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 170</b> Altman (Similar CS/H 83)	Endless Summer License Plate [CPSC]; Creates an Endless Summer license plate. Establishes an annual use fee for the plate. Provides for the distribution of use fees received from the sale of such plates.	
		TR 04/07/2010 Favorable GA 04/19/2010 RC	
2	<b>CS/SB 1912</b> Finance and Tax / Altman (Identical H 7219)	Internal Revenue Code Adoption/2010 [WPSC]; Provides for the adoption of the 2010 version of the Internal Revenue Code. Provides exceptions. Provides for retroactive operation.	
		FT 04/06/2010 Fav/CS GA 04/19/2010 WPSC	
3	<b>CS/SB 2572</b> Finance and Tax / Altman (Similar H 1539)	Tax Credits [CPSC]; Revises the priority of tax credits that may be taken against the corporate income tax or the franchise tax. Authorizes aerospace-sector jobs tax credits and tuition reimbursement tax credits. Authorizes a tax credit to aerospace businesses based on the salary or tuition reimbursed to certain employees. Prohibits a business from claiming an aerospace-sector jobs tax credit and a tuition reimbursement tax credit for the same employee, etc.	
		CM 03/24/2010 Favorable FT 04/06/2010 Fav/CS GA 04/19/2010 WPSC	
4	<b>CS/SB 736</b> Transportation / Garcia (Identical CS/CS/H 351, Compare CS/S 1208, S 1522)	Specialty License Plates [CPSC]; Creates a Catch Me, Release Me license plate, a Florida Horse Park license plate, and a Florida Biodiversity Foundation license plate. Establishes annual use fees for the plates. Provides for the distribution of use fees received from the sale of such plates. Revises the portion of use fees collected from the sale of the Florida Salutes Veterans license plate which is distributed to a direct-support organization, etc.	
		TR 04/07/2010 Fav/CS GA 04/19/2010 RC	

**COMMITTEE MEETING EXPANDED AGENDA**

General Government Appropriations  
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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	<b>SB 2788</b> Negron (Link CS/CS/S 8, CS/CS/S 1484)	Federal Grants Trust Fund/DFS [WPSC]; Creates the Federal Grants Trust Fund within the Department of Financial Services. Provides for the purpose of the trust fund and sources of funds. Provides for future review and termination or re-creation of the trust fund.	GA 04/19/2010
6	<b>SB 2790</b> Negron (Link CS/CS/S 8, CS/CS/S 1484)	Grants and Donations Trust Fund/DFS [WPSC]; Creates the Grants and Donations Trust Fund within the Department of Financial Services. Provides for the purpose of the trust fund and sources of funds. Provides for future review and termination or re-creation of the trust fund.	GA 04/19/2010
7	<b>CS/SB 1330</b> Regulated Industries / Fasano (Compare CS/CS/CS/H 663, CS/CS/CS/H 713, CS/H 7129, CS/S 274, CS/S 648)	Department of Business and Professional Regulation [CPSC]; Provides for certain professions or programs to be established within the DBPR. Specifies methods that the DBPR must use to serve an administrative complaint on a licensee. Provides for the issuance of temporary licenses to the spouses of members of the Armed Forces under specified conditions. Eliminates the fee charged for a certificate of authorization to conduct home inspections, etc.	RI 03/17/2010 Fav/CS GA 04/19/2010
8	<b>CS/SB 2074</b> Agriculture / Peaden (Similar CS/H 7103, Compare CS/CS/H 1445, CS/CS/S 382, S 2348)	Agriculture [EPSC]; Prohibits a county from enforcing certain limits on the activity of a bona fide farm operation on agricultural land under certain circumstances. Creates the "Agricultural Land Acknowledgement Act." Requires an applicant for certain development permits to sign and submit an acknowledgement of certain contiguous agricultural lands as a condition of the political subdivision issuing the permits, etc.	AG 03/09/2010 Fav/CS CA 03/17/2010 Favorable FT 04/13/2010 Favorable GA 04/19/2010

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General Government Appropriations

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	<b>CS/SB 2176</b> Banking and Insurance / Peadar (Similar CS/H 1563)	Commercial Insurance Rates [CPSC]; Exempts certain categories or types of insurance and types of commercial lines risks from certain rate requirements. Requires that insurers or rating organizations establish and use rates, rating schedules, or rating manuals allowing for a reasonable rate of return on certain insurance and risks. Exempts commercial motor vehicle insurance from certain motor vehicle insurance rate requirements, etc.	BI 03/24/2010 Not Considered BI 04/07/2010 Fav/CS GA 04/19/2010
10	<b>CS/CS/SB 1202</b> Judiciary / Communications, Energy, and Public Utilities / Bennett (Compare CS/CS/H 163)	Prepaid Wireless Telecommunications [EPSC]; Removes provisions for a study of the feasibility of collecting a fee for prepaid wireless telecommunications service. Revises the percentage of total funds that a county may carry forward to pay certain costs associated with the county's E911 or 911 system, to contract for E911 services, and to reimburse wireless telephone service providers for costs incurred to provide such services, etc.	CU 03/04/2010 Fav/CS CA 03/17/2010 Fav/1 Amendment JU 03/26/2010 Fav/CS FT 04/13/2010 Favorable GA 04/19/2010
11	<b>CS/SB 1952</b> Environmental Preservation and Conservation / Detert (Compare CS/H 1407)	Water Management Districts [EPSC]; Revises provisions relating to the membership of basin boards. Specifies the terms of service for basin board members designated by district governing board chairs. Provides that basin board members designated by such chairs are voting members and counted for quorum purposes. Authorizes basin boards to transact official business under certain conditions. Exempts cooperative funding programs from certain rulemaking requirements, etc.	EP 03/09/2010 Fav/CS GO 03/23/2010 Fav/2 Amendments GA 04/19/2010

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General Government Appropriations  
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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	<b>CS/SB's 2210 &amp; 1552</b> Regulated Industries / Constantine / Fasano (Similar CS/CS/CS/H 303)	Appraisers & Appraisal Management Companies [CPSC]; (THIS BILL COMBINES S2210 & S1552) Increases number of members on the Florida Real Estate Appraisal Board. Requires the Florida Real Estate Appraisal Board to adopt certain rules. Requires application, registration, and renewal fees for appraisal management companies. Requires such companies to register with the DBPR. Requires nonresident appraisal management companies to consent to commencement of actions in this state, etc.	RI 04/07/2010 Fav/CS Combined - Lead GO 04/14/2010 Favorable GA 04/19/2010
13	<b>CS/CS/SB 2086</b> Commerce / Banking and Insurance / Richter (Compare H 1219, S 2724)  (If Received)	Consumer Debt Collection [CPSC]; Requires a consumer debt collection agency to maintain records. Increases the administrative fine imposed against an out-of-state consumer debt collector that fails to register as required. Revises provisions relating to authorized activities of the Attorney General. Revises requirements for providing written notice of the assignment of debt. Revises prohibited acts with respect to consumer debt collection, etc.	BI 03/24/2010 Fav/CS CM 04/07/2010 Temporarily Postponed CM 04/13/2010 Fav/CS GA 04/19/2010 If received RC
14	<b>CS/CS/SB 570</b> Community Affairs / Environmental Preservation and Conservation / Constantine (Compare H 1559, CS/CS/S 550, CS/CS/S 1412, S 1696)	Environmental Protection [EPSC]; Revises the greenhouse gas reporting requirement for major emitters. Requires all public entities and those entities occupying buildings managed by the DMS to report recycling data to the county using the format designated by the DEP. Revises requirements for review of new waste-to-energy facility capacity by the DEP. Authorizes the Florida Building Commission to develop recommendations for recycling and composting, etc.	EP 03/04/2010 Workshop-Discussed EP 03/09/2010 Temporarily Postponed EP 03/17/2010 Fav/CS CA 04/14/2010 Fav/CS GA 04/19/2010

**COMMITTEE MEETING EXPANDED AGENDA**

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
15	<b>CS/SB 640</b> Regulated Industries / Jones	Pari-mutuel Wagering [CPSC]; Exempts pari-mutuel wagers at pari-mutuel facilities that do not operate slot machines from the tax on handle. Imposes a surcharge on pari-mutuel licensees that do not operate slot machines if the taxes on slot machine revenue are less than a certain amount. Revises the amounts that greyhound and jai alia permitholders that operate cardrooms must use to supplement greyhound purses or jai alai prize money, etc.	
		RI 04/13/2010 Fav/CS GA 04/19/2010 RC	

**The meeting materials for bills on the agenda are in the following order behind each tab:**

*If a Proposed Committee Substitute is being offered, materials precede the original bill in this order (a separate tab may be used for combined PCS and materials):*

- o Bill Analysis for the PCS*
- o Filed amendments to the PCS*
- o Proposed Committee Substitute*
- o Miscellaneous information*

- Bill Analysis**
- Filed amendments to the bill**
- Bill**
- Amendments from previous committees**
- Miscellaneous information**

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the General Government Appropriations Committee

BILL: SB 170

INTRODUCER: Senator Altman

SUBJECT: Endless Summer License Plate

DATE: April 15, 2010                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McManus	Meyer	TR	<b>Favorable</b>
2.	Pigott <i>REP</i>	DeLoach <i>AD</i>	GA	<b>Pre-meeting</b>
3.			RC	
4.				
5.				
6.				

**I. Summary:**

This bill requires the Department of Highway Safety and Motor Vehicles (department) to develop a specialty license plate titled "Endless Summer." The plate will be available to drivers for an annual use fee of \$25. These funds will be distributed to the Surfing's Evolution and Preservation Corporation, to fund its activities, programs, and projects aimed at preserving the sport of surfing. The "Endless Summer" license plate has met the statutory application requirements for a new specialty license plate and falls within the exception from the moratorium on new specialty license plates created by the 2008 Legislature. The department's cost to develop the license plate is approximately \$60,000, which is offset by the revenue from the application fee paid by the organization. The bill provides an effective date of October 1, 2010.

The bill substantially amends sections 320.08056 and 320.08058, Florida Statutes.

**II. Present Situation:**

**Specialty License Plates**

The Florida Legislature created the first specialty license plates in 1986. Specialty license plates are available for an annual use fee to any owner or lessee of a motor vehicle. Annual use fees ranging from \$15 to \$25, paid in addition to required license taxes and service fees, are distributed to a specified organization in support of the particular cause or charity signified in the plate's design and designated in statute. The Legislature may create a specialty license plate under its own initiative or it can do so at the request of an organization.



Section 320.08056, F.S., provides that the department is responsible for developing the specialty license plates and must begin production and distribution within one year after approval of the specialty license plate by the Legislature. Specialty license plates must bear the design required by law for the appropriate specialty plate, and the designs and colors must be approved by the department. In addition, the specialty license plate must bear the imprint of numerals from 1 to 999, inclusive, capital letters "A" through "Z," or a combination thereof.

The department is authorized to annually retain the first proceeds derived from the annual use fees collected in an amount sufficient to defray each specialty plate's pro rata (proportionate) share of the department's costs directly related to issuing the specialty license plate. A person wishing to purchase a specialty license plate must pay, in addition to the required license plate fee and license tax, a license plate annual use fee (from \$15 to \$25) and a processing fee of \$5.

Annual use fees and any interest earned from those fees may be used by the authorized organization for public or private purposes. However, the annual fees may not be used for commercial or for-profit activities or for general administrative expenses (except as specifically authorized or to pay the cost of the audit or report required to ensure the proceeds are used as authorized).

Section 320.08058, F.S., lists the approved specialty license plates and specifies funding requirements.

Section 320.08062, F.S., requires all organizations receiving annual use fee proceeds from the department to be responsible for ensuring proceeds are used in accordance with ss. 320.08056 and 320.08058, F.S. Each organization is either subject to an audit or is required to annually attest, under penalties of perjury, that such proceeds were used correctly. The department can examine all records pertaining to the use of specialty license plate revenues.

There are currently 113 specialty license plates authorized by the Legislature to date. Sales of specialty license plates generated over \$37 million in annual use fee revenues during the 2008-2009 fiscal year.

### **Surfing's Evolution and Preservation Corporation**

The Surfing's Evolution and Preservation Corporation is a nonprofit organization connected to Florida-based Ron Jon Surf Shop, established to fund activities, programs and projects aimed at preserving the sport of surfing.

The department has found that the "Endless Summer" license plate has met the application requirements and falls within the exception from the moratorium on new specialty license plates created by the 2008 Legislature, as the corporation submitted its materials before May 2, 2008.

**III. Effect of Proposed Changes:**

The bill authorizes the department to develop and issue a Surfing's Evolution and Preservation Corporation, license plate titled "Endless Summer." Drivers can purchase this specialty plate upon payment of the appropriate license taxes and fees and a \$25 annual use fee.

Surfing's Evolution & Preservation Corporation may retain all of the revenue from the annual use fees until all startup costs for developing and establishing the plate have been recovered. Thereafter, annual use fees shall be distributed to the Surfing's Evolution & Preservation Corporation, which may use the proceeds to fund the administrative, promotion, and marketing costs of the license plate program; to fund the proposed Surfing's Evolution & Preservation Experience project; provide funds for the provision of lifeguards or the building of artificial reefs; provide funds to organizations that house the history and artifacts of surfing or promote the sport through exhibits, lectures, and events; and to support programs and events of other organizations that support beaches and oceans and promote education on beach safety, coastal pollution, and beach ecology.

The bill provides an effective date of October 1, 2010.

**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:**

Persons who choose to purchase a “Endless Summer” plate can do so for a charge of \$25 (plus \$5 processing fee) in addition to the normal fees associated with buying a license plate.

The Surfing’s Evolution and Preservation Corporation has paid the \$60,000 application fee, which will be refunded if the plate is not approved by the Legislature.

**C. Government Sector Impact:**

The department is responsible for developing and distributing the “Endless Summer” license plate. The cost of this effort is approximately \$60,000. This impact will be offset by the \$60,000 application fee that the organization has already paid.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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

None.

**B. Amendments:**

None.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the General Government Appropriations Committee

BILL: CS/SB 1912

INTRODUCER: Finance and Tax Committee and Senator Altman

SUBJECT: Internal Revenue Code Adoption

DATE: April 15, 2010                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	ODonnell	McKee	FT	<b>Fav/CS</b>
2.	Blizzard <i>SLB</i>	DeLoach <i>AD</i>	GA	<b>Pre-meeting</b>
3.			WPSC	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

This bill updates references in chapter 220, Florida Statutes, titled the Florida Income Tax Code, to reflect changes in the U.S. Internal Revenue Code adopted in 2009 and effective January 1, 2010.

The Revenue Estimating Conference met on April 12, 2010, and determined this bill has no recurring fiscal impact.

The bill substantially amends section 220.03, Florida Statutes.

**II. Present Situation:**

Florida's Corporate Income Tax Code follows the federal Internal Revenue Code by using federal rules and starting with federal taxable income as the tax base for the Florida income tax. Section 220.03, F.S., defines specific terms as they apply to Florida's Corporate Income Tax Code. The term "Internal Revenue Code" is defined to mean those provisions of the U.S. Internal Revenue Code of 1986, as amended, in effect on January 1, 2009.

**III. Effect of Proposed Changes:**

This bill updates the Florida Income Tax Code to reflect changes in the U.S. Internal Revenue Code enacted by Congress and in effect beginning January 1, 2010. This definition provides for “piggybacking” each change made to the Internal Revenue Code during 2009. This bill takes effect upon becoming a law and operates retroactively to January 1, 2010.

**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:**

None.

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

This bill maintains the link between Florida’s corporate income tax code and the current federal income tax code.

The Revenue Estimating Conference met on April 12, 2010, and determined this bill has no recurring fiscal impact.

**B. Private Sector Impact:**

This bill ensures that corporations that are subject to Florida corporate income tax can, to the greatest degree possible, base their tax calculations on current federal law. Failure to pass this bill would result in increased bookkeeping burdens for these entities.

**C. Government Sector Impact:**

Since Florida’s corporate income tax is based upon a taxpayer’s income as calculated for federal tax purposes, Florida can rely on the efforts of the IRS to ensure the accuracy of the starting point for determining Florida tax liability. Passage of this bill is necessary to maintain this relationship to improve voluntary compliance with Florida’s income tax law.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

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

**CS by Finance and Tax on April 6, 2010:**

This bill updates the Florida Income Tax Code to reflect changes in the U.S. Internal Revenue Code enacted by Congress and in effect on January 1, 2010. This definition provides for “piggybacking” each change made to the Internal Revenue Code during 2009. This bill takes effect upon becoming a law and operates retroactively to January 1, 2010.

- B. **Amendments:**

None.

The Florida Senate  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the General Government Appropriations Committee

BILL: CS/SB 2572

INTRODUCER: Finance and Tax Committee and Senator Altman

SUBJECT: Tax Credits

DATE: April 15, 2010 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Cooper	CM	<b>Favorable</b>
2.	ODonnell	McKee	FT	<b>Fav/CS</b>
3.	Blizzard	DeLoach	GA	<b>Pre-meeting</b>
4.			WPSC	
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

This bill seeks to address, in part, job-losses associated with discontinuance of the Space Shuttle Program by creating two corporate income tax credits related to aerospace jobs originating after January 1, 2011, as follows.

- The aerospace sector jobs tax credit provides a maximum annual credit of up to \$12,500 per qualified employee based on wages subject to the unemployment tax. The credit is equal to 10 percent of the compensation paid to each qualified employee for their first through fifth year of employment up to the capped amount.
- The tuition reimbursement tax credit provides a credit equal to 50 percent of the tuition reimbursements paid to a qualified employee in a single tax year. The credit may only be claimed if the qualified employee was awarded an undergraduate or graduate degree, a technical certification, or a certification from a training program offered by Workforce Florida, Inc., within one year after being hired by the aerospace business.

A business cannot claim both credits for the same employee. The maximum amount of credits any aerospace business may claim in a single calendar year is \$200,000; the total amount of

credits claimed under the program in a calendar year by all eligible businesses is capped at \$2 million. Aerospace businesses may carry forward any unused credits up to five years.

The Revenue Estimating Conference met on March 19, 2010, and determined that the tax credits created by this bill will reduce the revenue to the General Revenue Fund by \$2 million annually beginning in the 2010-2011 fiscal year.

The bill substantially amends sections 220.02 and 220.13, Florida Statutes.

The bill creates section 220.1811, Florida Statutes.

## II. Present Situation:

Ending the Space Shuttle Program this year is projected to leave in its wake the loss of at least 9,000 Florida jobs directly associated with the program. State and regional economic development and workforce training agencies are developing strategies to address this potential loss of jobs, ranging from the recruitment of new companies to offering displaced workers retraining in related fields.

Currently, aerospace companies can utilize, depending on their location and investment, 12 general business incentives and at least four business sales tax exemptions. Additionally, the Legislature has created the Qualified Defense Contractor and Spaceflight Business (QDSC) Tax Refund program to provide a number of tax reimbursements for eligible companies based on job creation.

### Aerospace Work Force

The last mission for the Space Shuttle Program is scheduled for September 2010. The “Moon to Mars” successor program (known as Constellation) was scheduled to begin in 2015. However, President Obama’s budget for 2011 cancels this program. If approved, the National Aeronautics and Space Administration (NASA) will instead focus on research and development for robotic exploration, and the development of human spaceflight vehicles will occur in the U.S. commercial market.<sup>1</sup> The intervening period between the retirement of the Space Shuttle program and whichever direction the space program takes next is referred to as the “shuttle gap,” in which a number of employees in the aerospace industry, in Florida and elsewhere, may lose their current jobs.<sup>2</sup>

In August 2007, the Brevard Workforce Development Board, Inc., (BWDB) estimated that shuttle-related activity in Florida supports a workforce level of approximately 9,235 employees (6,340 United Space Alliance employees and 2,895 sub-tier and related support contractor employees). The majority of this workforce is located at or near the Kennedy Space Center.

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<sup>1</sup> NASA, Fiscal Year 2011 Budget Estimates, available at [http://www.nasa.gov/pdf/420990main\\_FY\\_2011\\_Budget\\_Overview\\_1\\_Feb\\_2010.pdf](http://www.nasa.gov/pdf/420990main_FY_2011_Budget_Overview_1_Feb_2010.pdf) (last visited 3/20/2010).

<sup>2</sup> Efforts to Address Workforce Issues Related to the Space Program, The Florida Senate Committee on Commerce, Issue Brief 2009-305 (October 2008), at [http://www.flsenate.gov/data/Publications/2009/Senate/reports/interim\\_reports/pdf/2009-305cm.pdf](http://www.flsenate.gov/data/Publications/2009/Senate/reports/interim_reports/pdf/2009-305cm.pdf) (last visited 3/22/2010).

However, the total economic impact of the Space Shuttle Program is statewide, and it has a specific shuttle-related supplier base of some 1,046 companies throughout the state.<sup>3</sup>

The BWDB further found that shuttle workforce skills are highly translatable to any work that the state pursues as part of its next generation space activities. The BWDB estimated that one-third of the Florida shuttle-related workforce will need transition assistance to prepare for working in a different industry or occupation, and one-third will need to upgrade their skills to participate in the next generation space programs, whether public or private. The remaining one-third are expected to retire.<sup>4</sup> Disregarding the number of employees who will retire, the BWDB estimates that at least 9,000 aerospace workers will lose their current positions.

In response to this anticipated shuttle gap, the 2008 Florida Legislature appropriated \$1.25 million to be used to provide services focused on retention and retraining of skilled talent in the space industry, which includes workforce skills analysis, training, placement services, and communications efforts. Workforce Florida, Inc., was authorized to develop a plan to implement this program.<sup>5</sup>

Besides retraining efforts, BWDB, the local economic development council, Space Florida, Enterprise Florida, Inc., and other entities are working to recruit new aerospace-related companies or technology-based businesses that could employ the already-skilled Shuttle workforce.

### **The Qualified Defense Contractor and Spaceflight Business (QDSC) Tax Refund Program<sup>6</sup>**

Amended in 2008 to include aerospace companies,<sup>7</sup> the QDSC was designed to recruit, retain, and encourage expansion of high-wage, high-skilled jobs in a competitive industry. This tax incentive targets the following types of projects: consolidation of certain Department of Defense (DOD) contracts; conversion of DOD production jobs to non-defense production jobs; those projects involving the reuse of defense-related facilities for specific activities; the manufacturing, processing, and assembly of space flight vehicles; and a number of other activities related to space flight.

Upon entering into a contract with the Governor's Office of Tourism, Trade, and Economic Development (OTTED), a qualified company is allowed tax refund payments equal to one of the following.

- \$3,000 times the number of jobs specified in the tax refund agreement.
- \$6,000 times the number of jobs if the project is located in a rural county or an enterprise zone.

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<sup>3</sup> Brevard Workforce Development Board, Inc., "Aerospace Workforce Outlook Report," Executive Summary, August 2007.

<sup>4</sup> Brevard Workforce Development Board, Inc., "Aerospace Workforce Outlook Report," Executive Summary, August 2007.

<sup>5</sup> From the Special Employment Security Administration Trust Fund. Line Item 2202, ch. 2008-152, L.O.F. Workforce Florida, Inc., received federal funds and grants in 2009 to continue dislocated aerospace workforce initiatives (about \$2.2 million).

<sup>6</sup> Section 288.1045, F.S.

<sup>7</sup> Chapter 2008-89, L.O.F.

A qualified company is also allowed additional tax refund payments equal to one of the following.

- \$1,000 times the number of jobs specified in the tax refund agreement if such jobs pay an annual average wage of at least 150 percent of the average private sector wage in the area.
- \$2,000 times the number of jobs created if such jobs pay an annual average wage of at least 200 percent of the average private sector wage in the area.

A qualified company may receive no more than \$2.5 million in tax refunds pursuant to the QDSC program in any fiscal year and no more than \$7.5 million over the term of its agreement with the OTTED.

The qualified business may receive refunds from the following types of taxes paid:

- Corporate income taxes paid pursuant to ch. 220, F.S., beginning with the first taxable year of the business which begins after entering into the agreement.
- Sales and use taxes paid pursuant to ch. 212, F.S.
- Intangible personal property taxes paid pursuant to ch. 199, F.S.
- Emergency excise taxes paid pursuant to ch. 221, F.S.
- Excise taxes paid on documents pursuant to ch. 201, F.S.
- Ad valorem taxes paid, as defined in s. 220.03(1)(a), F.S., on June 1, 1996.
- State communications services taxes administered under ch. 202, F.S.<sup>8</sup>

Since its inception, 41 QDSC applications have been received and 30 have been approved. There are nine active or complete QDSC projects that have created or retained 2,244 jobs over the years with an average wage of nearly \$61,515. There have been a total of \$9.5 million in tax refunds claimed.<sup>9</sup>

### III. Effect of Proposed Changes:

This bill is intended to address the loss of high-skilled aerospace jobs in Florida by providing incentives for new or existing aerospace businesses in Florida to expand their workforce. The bill aims to facilitate the employees' acquisition of new skills by allowing a 50 percent tax credit when a company reimburses an employees' education expenses.

**Section 1** amends s. 220.02, F.S., to add the new corporate tax credits to the list of existing tax credits as the last credit that may be claimed against a corporate income tax liability.

**Section 2** amends s. 220.13, F.S., to require corporate income tax payers to add the amount of the new credits taken for a particular tax year to their adjusted federal income.

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<sup>8</sup>This provision does not apply to the gross receipts tax imposed under ch. 203, F.S., and administered under ch. 202, F.S., or to the local communications services tax authorized by s. 202.19, F.S.

<sup>9</sup> Enterprise Florida Inc., 2009 Incentives Report, p. 17-18, available at [http://www.eflorida.com/uploadedFiles/Florida\\_Knowledge\\_Center/My\\_eFlorida\\_EFI\\_and\\_Partners/Floridas\\_Economic\\_Perspective/2009%20Incentives%20Report.pdf](http://www.eflorida.com/uploadedFiles/Florida_Knowledge_Center/My_eFlorida_EFI_and_Partners/Floridas_Economic_Perspective/2009%20Incentives%20Report.pdf) (last visited 3/20/2010).

**Section 3** creates s. 220.1811, F.S., which authorizes two aerospace-related tax credits: the aerospace sector jobs tax credit and the tuition reimbursement tax credit.

### **Definitions**

This section provides definitions for the following new terms.

- “Aerospace business” means a Florida company that is engaged in the aerospace industry, as defined in s. 331.03, F.S., as “the industry that designs and manufactures aircraft, rockets, missiles, spacecraft, satellites, space vehicles, space stations, space facilities or components thereof, and equipment, systems, facilities, simulators, programs, and related activities, including, but not limited to, the application of aerospace technologies in air-based, land-based, and sea-based platforms for commercial, civil, and defense purposes.”
- “Qualified employee” means a Florida resident who fulfills the following criteria.
  - Is first employed or re-employed by an aerospace business on or after January 1, 2011.
  - Has achieved one of the following.
    - An undergraduate or graduate degree at an accredited college or university.
    - A technical degree or certification related to aerospace from a technical training institution.
    - Completion of an aerospace development workforce training program coordinated by Workforce Florida, Inc.
  - Is not an owner, partner, or majority stockholder of an aerospace business.
  - Has been employed for at least six months.
- “Tuition reimbursed to a qualified employee” means a lump-sum payment by an aerospace company to a qualified employee, which may not exceed the average annual tuition, as reported by the Board of Governors of the State University System, for a Florida resident enrolled as a full-time student in a public college or university. The term does not include the cost of books, fees, or room and board.

### **Tax Credits**

The Aerospace-Sector Jobs Tax Credit provides a maximum annual credit of up to \$12,500 per qualified employee based on wages subject to the unemployment tax. The credit is equal to 10 percent of the compensation paid to each qualified employee for their first through fifth year of employment up to the capped amount.

The tuition reimbursement tax credit provides a credit equal to 50 percent of the tuition reimbursements paid to a qualified employee in a single tax year. The credit may only be claimed if the qualified employee was awarded an undergraduate or graduate degree, a technical certification, or a certification from a training program offered by Workforce Florida, Inc., within one year after being hired by the aerospace business.

Both credits may be carried forward to a subsequent year for up to five years. A business cannot claim both credits for the same employee. The maximum amount of credits that an aerospace business may claim in a single calendar year is \$200,000.

The total amount of credits claimed under the program in a calendar year by all eligible businesses is capped at \$2 million. Additionally, an aerospace business may not carry over more tax credits in an amended return than were claimed on the original return for the taxable year. This subsection does not limit increases in the amount of credit claimed on an amended return due to the use of any carry-forward credits.

### **Application process**

An aerospace business may apply to the Department of Revenue (department) for authorization to claim the new credits. Applications must be filed under oath and include the business's name and address and documentation that it is an aerospace business. For each employee for which a tax credit is sought, applications must include the following information.

- Employee's name and documentation that he or she is a qualified employee.
- Salary or hourly wages, including the hourly wages paid to the qualified employee that are subject to unemployment tax.
- Location of the community college, college, university, technical institution, or training program from which the qualified employee received his or her degree.
- Statement of whether the applicant is seeking an aerospace sector jobs tax credit or a tuition reimbursement tax credit.

The business bears the burden of demonstrating to the department's satisfaction that it meets the requirements for obtaining the tax credits.

### **Penalties**

Any aerospace business that fraudulently claims either of these credits is liable for repayment of the credit, plus a mandatory penalty in the amount of 200 percent of the credit, plus interest at the rate provided in s. 220.807, F.S. The business also is presumed to have committed a third-degree felony, which is punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

Similarly, an aerospace business that makes an underpayment of tax as a result of a grossly overstated claim for either tax credit commits a third-degree felony. The term "grossly overstated claim" means a claim in an amount in excess of 100 percent of the amount of credit allowable.

The department is authorized to adopt rules to prescribe any necessary forms required to claim an aerospace sector jobs tax credit and a tuition reimbursement tax credit, and to provide the guidelines and procedures required to administer the program.

Section 220.1811, F.S., with the exception of the credit-carryover provisions and the limits on the carryover of credits, expires December 31, 2020. An aerospace business may not claim a new tax credit provided for in this bill after that date. However, an aerospace business may continue to claim tax credits that have been carried over pursuant to paragraphs (2)(e) or (3)(c), if they are still within the five-year window.

**Section 4** provides an effective date of January 1, 2011, and specifies that the bill is applicable to tax years that begin on or after that date.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

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

The Revenue Estimating Conference met on March 19, 2010, and determined that the tax credits created by this bill will reduce revenues to the General Revenue Fund by \$2 million annually beginning in the 2010-2011 fiscal year.

**B. Private Sector Impact:**

Aerospace company workers may benefit if their employers are encouraged, by the availability of the tax credit, to reimburse their tuition expenses. Aerospace companies may benefit because they could use either the jobs tax credit or the tuition reimbursement tax credit to expand their workforce and hire employees who are continuing their education.

**C. Government Sector Impact:**

The department estimates that to implement the two new tax credits it will incur a cost of \$43,200 to modify the SUNTAX system. Other changes, including Taxpayer Information Publications, tax form changes, returns processing, and revenue accounting to determine eligibility for the tax credits, can be managed with existing resources or at no additional costs.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

In federal Fiscal Year 2008, NASA estimated the total impact of the agency's activity in Florida was \$4.1 billion in output, \$2.1 billion of household income, and 40,802 jobs. "This activity also generated \$246 million of federal taxes and \$103 million of state and local taxes. The largest

share of the impact – 98% of the output impact, 99% of the income impact and 99% of the employment impact – occurred in Central Florida.”<sup>10</sup>

For the tuition reimbursement tax credit, the bill leaves the amount of tuition to be reimbursed up to the business. Thus in one situation, a business could decide to reimburse a new employee’s entire four years of college tuition, and in another situation, a business may only reimburse the last year of tuition, or a portion there of, during which the employee worked for the business.

## **VIII. Additional Information:**

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

**CS by Finance and Tax on April 6, 2010:**

Changes were made to reflect that workforce Florida would be coordinating, rather than offering, a training program that qualified for a tuition reimbursement credit.

- B. **Amendments:**

None.

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

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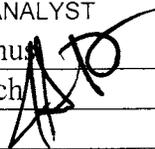
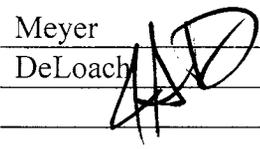
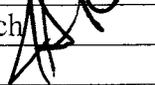
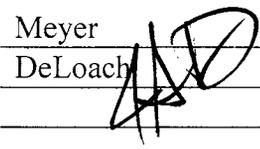
<sup>10</sup> See NASA, [Economic Impact of NASA in Florida FY 2008](http://www.nasa.gov/centers/kennedy/pdf/318131main_economic-impact08.pdf), available at [http://www.nasa.gov/centers/kennedy/pdf/318131main\\_economic-impact08.pdf](http://www.nasa.gov/centers/kennedy/pdf/318131main_economic-impact08.pdf) (last visited 3/20/2010).

**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 General Government Appropriations Committee

BILL: CS/SB 736  
 INTRODUCER: Transportation Committee and Senator Garcia  
 SUBJECT: Specialty License Plates  
 DATE: April 13, 2010 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McManus 	Meyer 	TR	<b>Fav/CS</b>
2.	DeLoach 	DeLoach 	GA	<b>Pre-meeting</b>
3.			RC	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

This bill requires the Department of Highway Safety and Motor Vehicles (DHSMV or department) to develop the following three specialty license plates.

- The “Catch Me, Release Me” specialty license plate. An annual use fee of \$25 per tag to be distributed to the Guy Harvey Ocean Foundation, Inc., to fund marine-related scientific research and public awareness.
- The “Discover Florida’s Horses” specialty license plate. An annual use fee of \$25 per tag to be distributed to the Florida Agricultural Center and Horse Park Authority, for continued development of the park’s education facilities, barns, and other structures, infrastructure improvements, and for park operations.
- The “Save Wild Florida” specialty license plate. An annual use fee of \$25 per tag to be distributed to the Florida Biodiversity Foundation, Inc., to fund research, education, and scientific study of the diversity of animals and plants and to aid in the preservation, study, conservation, and recovery of imperiled organisms.

The organizations have met the statutory application requirements for a new specialty license plate and fall within the exception from the moratorium on new specialty license plates created

by the 2008 Legislature. The department's cost to develop the license plates is approximately \$60,000 per plate, which is offset by the revenue from the application fees paid by the organizations.

The bill amends section 320.08058(4)(b), Florida Statutes, relating to the Florida Salutes Veterans license plates, to reduce the amount of annual use fees that may be transferred to the direct-support organization and to expand the time frame to transfer such funds.

This bill amends sections 320.08056 and 320.08058, Florida Statutes.

## **II. Present Situation:**

### **Specialty License Plates**

The Florida Legislature created the first specialty license plates in 1986. Specialty license plates are available for an annual use fee to any owner or lessee of a motor vehicle. Annual use fees ranging from \$15 to \$25, paid in addition to required license taxes and service fees, are distributed to a specified organization in support of the particular cause or charity signified in the plate's design and designated in statute. The Legislature may create a specialty license plate under its own initiative or it can do so at the request of an organization.

Section 320.08053, F.S., provides that an organization seeking authorization to establish a specialty license plate must submit the following.

- A request for the particular license plate with a description of the proposed plate in specific terms, including a sample plate conforming to the specifications set by the DHSMV.
- The results of a scientific sample survey of Florida motor vehicle owners that indicates at least 30,000 motor vehicle owners intend to purchase the proposed specialty license plate at the increased costs. The Auditor General is required to validate the methodology, results, and any evaluation by the DHSMV of the scientific sample survey prior to the submission of the specialty license plate for approval by the Legislature.
- An application fee, not to exceed \$60,000, to defray the DHSMV's cost for reviewing the application and developing the specialty license plate, if authorized.
- A marketing strategy outlining both the short and long term marketing plans, and a financial analysis outlining the anticipated revenue and the planned expenditures of the revenue from the requested specialty license plate.

The required documentation and fees must be submitted at least 90 days before the convening of the next regular session of the Florida Legislature. If a specialty license plate is approved by law, the organization must submit a proposed art design for the specialty plate to the DHSMV no later than 60 days after the act becomes a law. If the specialty license plate is not approved by the Legislature, the application fee is refunded to the requesting organization.

In an effort to manage the number of specialty license plates, the 2004 Legislature passed SB 2020, which provides that the DHSMV must discontinue the issuance of an approved specialty plate if the number of valid specialty license plates in use falls below 1,000 plates for at least 12 consecutive months. The DHSMV is authorized to discontinue the issuance and



attest, under penalties of perjury, that such proceeds were used correctly. The DHSMV can examine all records pertaining to the use of specialty license plate revenues.

There are currently 113 specialty license plates authorized by the Legislature to date. Sales of specialty license plates generated over \$37 million in annual use fee revenues during the 2008-2009 fiscal year.

### **Guy Harvey Ocean Foundation, Inc.**

The Guy Harvey Ocean Foundation, Inc., is an organization of philanthropists, conservationists, scientists, and educators focused on developing strategies for promoting the conservation of the world's oceans and nurturing the next generation of marine scientists. The foundation funds marine research and educational programs developed by universities, colleges, institutes, and nonprofit organizations.

The foundation's mission is to inspire scientific research and innovative educational programs to encourage conservation and best management practices for sustainable marine environments.

The foundation seeks to ensure future generations will enjoy and benefit from a naturally balanced ecosystem where fish and other marine wildlife flourish. The foundation's grant program allows leading scientists to develop new strategies for fisheries management, encouraging the cooperation of commercial and recreational fishers, and allows educators to create instructional programs.

The department has found the "Catch Me, Release Me" license plate has met the application requirements and falls within the exception from the moratorium on new specialty license plates created by the 2008 Legislature, as the foundation submitted its materials before May 2, 2008.

### **Florida Agriculture Center and Horse Park Authority**

The Florida Agriculture Center and Horse Park (Florida Horse Park) was created by the Florida Legislature in 1996. The Florida Horse Park is a year-round, world class equestrian facility that offers international caliber competition courses and is a popular destination for family tourism. The Florida Horse Park hosts local, national, and international competitions in virtually every equine discipline, including; dressage, polo, and versatility challenges. It has also been named an official training site for the United States Equestrian Team.

The department has found that the "Florida Horse Park" license plate has met the application requirements and falls within the exception from the moratorium on new specialty license plates created by the 2008 Legislature, as the Florida Horse Park submitted its materials before May 2, 2008.

### **Florida Biodiversity Foundation, Inc.**

The Florida Biodiversity Foundation, Inc., is a non-profit organization whose mission is to study, preserve, conserve and restore Lepidoptera, biodiversity and the environment, and includes the support, research, educational exhibits and literature appropriate to these topics. The Florida

Biodiversity Foundation, Inc., works closely with the McGuire Center for Lepidoptera and Biodiversity, the Florida Museum of Natural History, and the University of Florida.

The department has found that the "Save Wild Florida" license plate has met the application requirements and falls within the exception from the moratorium on new specialty license plates created by the 2008 Legislature, as the foundation submitted its materials before May 2, 2008.

### **III. Effect of Proposed Changes:**

The bill authorizes the department to develop and issue a Guy Harvey Ocean Foundation, Inc., license plate titled "Catch Me, Release Me." Drivers can purchase this specialty plate upon payment of the appropriate license taxes and fees and a \$25 annual use fee. The first \$60,000 annual use fees shall reimburse the Guy Harvey Ocean Foundation, Inc., for startup costs. Annual use fees shall be distributed to the Guy Harvey Ocean Foundation, Inc., which may use up to ten percent of the proceeds for the administrative costs directly associated with the operation of the foundation and for the promotion and marketing of the plates. The remaining proceeds shall be used to fund scientific research related to marine issues, including research of free-ranging pelagic marine species that inhabit, use, or migrate through the waters of this state, and to fund conservation initiatives and education and public outreach programs for school-aged children.

The bill authorizes the department to develop and issue a Florida Agriculture Center and Horse Park Authority license plate titled "Discover Florida's Horses." Drivers can purchase the specialty plate upon payment of the appropriate license taxes and fees and a \$25 annual use fee. Florida Horse Park may retain all of the revenue from the annual use fees until all startup costs for developing and establishing the plate have been recovered. Thereafter, annual fees shall be distributed to Florida Horse Park, which may use up to five percent of the proceeds to administer the license plate and up to five percent of the proceeds to promote and market the plate. The remaining fees shall be used to support continued development of the park, including the construction of additional educational facilities, barns, and other structures; to provide improvements to the existing infrastructure at the park; and to provide for operational expenses of the park.

The bill authorizes the department to develop and issue a Florida Biodiversity Foundation, Inc., license plate titled "Save Wild Florida." Drivers can purchase the specialty plate upon payment of the appropriate license taxes and fees and a \$25 annual use fee. The Florida Biodiversity Foundation, Inc., may retain 50 percent of the revenue from the annual use fees until all startup costs for developing and establishing the plate have been recovered. Thereafter, annual use fees shall be distributed to the Florida Biodiversity Foundation, Inc., which may use up to ten percent of the proceeds to fund the administrative, promotion, and marketing costs of the license plate program. The remaining fees shall be used by the Florida Biodiversity Foundation to fund research, education, and scientific study of the diversity of animals and plants and to aid in the preservation, study, conservation, and recovery of imperiled organisms.

Section 320.08058(4)(b), F.S., pertaining to the Florida Salutes Veterans license plates, is amended to reduce from 20 to 10 percent the amount of annual use fees that may be transferred

to the direct-support organization and expands the time frame to transfer such funds from 24 to 48 months.

The bill provides an effective date of October 1, 2010.

**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:

Persons choosing to purchase a “Catch Me, Release Me,” “Discover Florida’s Horses,” or a “Save Wild Florida” plate can do so for a charge of \$25 (plus \$5 processing fee) in addition to the normal fees associated with buying a license plate.

The Guy Harvey Ocean Foundation, Inc.; the Florida Agriculture Center and Horse Park Authority; and the Florida Biodiversity Foundation, Inc., have each paid the \$60,000 application fee, which will be refunded if the plates are not approved by the Legislature.

C. Government Sector Impact:

The department is responsible for developing and distributing the “Catch Me, Release Me,” “Discover Florida’s Horses,” and “Save Wild Florida” specialty license plates. The cost of this effort is approximately \$60,000 per specialty license plate. This impact will be offset by the \$60,000 application fee that each organization has already paid.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

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

**CS by Transportation on April 7, 2010:**

Amendment 504230 deleted everything after the enacting clause. It amends section 320.08058(4)(b), F.S., Florida Salutes Veterans License Plates, to reduce the amount of annual use fees that can be transferred to the direct-support organization as well as lengthen the timeframe to transfer such funds. The amendment also adds three new specialty license plates:

- “Catch Me, Release Me”
- “Discover Florida’s Horses”
- “Save Wild Florida”

- B. **Amendments:**

None.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the General Government Appropriations Committee

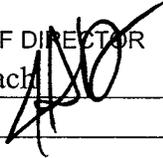
BILL: SB 2788

INTRODUCER: Senator Negron

SUBJECT: Federal Grants Trust Fund/Department of Financial Services

DATE: April 15, 2010

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Frederick 	DeLoach 	GA	<b>Pre-meeting</b>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill creates the Federal Grants Trust Fund within the Department of Financial Services. This trust fund is established to be used for allowable grant activities funded by restricted program revenues. Funds that will be credited to the Federal Grants Trust Fund will consist of grants and funding from the federal government, interest earnings, and cash advances from other trust funds. The bill becomes effective on the same date that SB 8 or similar legislation takes effect, if such legislation is enacted in the same legislative session or an extension thereof, and becomes law.

This bill does not substantially amend, create, or repeal any of the Florida Statutes.

**II. Present Situation:**

Section 19(f), Art. III of the State Constitution requires that every trust fund be created by a three-fifths vote of the membership in each house of the Legislature in a separate bill for the sole purpose of creating that trust fund. The Constitution also provides that all newly created trust funds terminate not more than four years after the initial creation unless recreated.

In order to meet accounting standards established by the Government Accounting Standards Board, s. 215.32, F.S., requires that agencies have trust funds for day-to-day operations. One of the required trust funds is a federal grants trust fund. The department currently does not have a federal grants trust fund. The creation of this trust fund complies with s. 215.32, F.S.

**III. Effect of Proposed Changes:**

The creation of this trust fund will allow the department to separately account for funds from grants and funding from the federal government, interest earnings, and cash advances from other trust funds. Pursuant to s. 215.32, F.S., the department will use this trust fund as a depository for funds to be used for allowable grant activities funded by restricted program revenues from federal sources.

The creation of this trust fund will align department accounts with the requirements of s. 215.32, F.S.

The trust fund will terminate four years after creation, pursuant to s. 19 (f)(2), Art. III of the State Constitution, unless re-created by the Legislature.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

This bill, creating a new trust fund, must pass by a three-fifths vote of the membership of each house to become law pursuant to s. 19 (f), Art. III of the State Constitution.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

Creation of the Federal Grants Trust Fund within the department will result in improved segregation of funds, accounting records.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

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

None.

B. **Amendments:**

None.

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

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**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 General Government Appropriations Committee

BILL: SB 2790

INTRODUCER: Senator Negron

SUBJECT: Grants and Donations Trust Fund/Department of Financial Services

DATE: April 15, 2010

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Frederick <i>mf</i>	DeLoach <i>[Signature]</i>	GA	<b>Pre-meeting</b>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill creates the Grants and Donations Trust Fund within the Department of Financial Services (department). The trust fund is established to be used for allowable grant and donor agreement activities funded by restricted contractual revenue. Funds that will be credited to the Grants and Donations Trust Fund will consist of grants and donations from private and public nonfederal sources, interest earnings, and cash advances from other trust funds. The bill becomes effective on the same date that SB 8 or similar legislation takes effect, if such legislation is enacted in the same legislative session or an extension thereof, and becomes law.

This bill does not substantially amend, create, or repeal any of the Florida Statutes.

**II. Present Situation:**

Section 19(f), Art. III of the State Constitution requires that every trust fund be created by a three-fifths vote of the membership in each house of the Legislature in a separate bill for the sole purpose of creating that trust fund. The Constitution also provides that all newly created trust funds terminate not more than four years after the initial creation unless recreated.

In order to meet accounting standards established by the Government Accounting Standards Board, s. 215.32, F.S., requires that agencies have trust funds for day-to-day operations. One of the required trust funds is a grants and donations trust fund. The department currently does not have a grants and donations trust fund. The creation of this trust fund complies with s. 215.32, F.S.

**III. Effect of Proposed Changes:**

The creation of this trust fund will allow the department to receive funds from grants and donations from private and public nonfederal sources, interest earnings, and cash advances from other trust funds. Pursuant to s. 215.32, F.S., the department will use this trust fund as a depository for funds to be used for allowable grant and donor agreement activities funded by restricted contractual revenue.

The creation of the trust fund is contingent upon passage of SB 8 or similar legislation taking effect and will align agency accounts with the requirements of s. 215.32, F. S.

The trust fund will terminate four years after creation, pursuant to s. 19 (f)(2), Art. III of the State Constitution, unless re-created by the Legislature.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

This bill, creating a new trust fund, must pass by a three-fifths vote of the membership of each house to become law pursuant to s. 19 (f), Art. III of the State Constitution.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

Creation of the Grants and Donations Trust Fund within the department will result in improved segregation of funds and accounting records.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

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

None.

**B. Amendments:**

None.

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

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**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 General Government Appropriations Committee

BILL: CS/SB 1330

INTRODUCER: Regulated Industries Committee and Senators Fasano and Altman

SUBJECT: Department of Business and Professional Regulation

DATE: April 15, 2010 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi/ Harrington	Imhof	RI	<b>Fav/CS</b>
2.		Burgess	BI	<b>Withdrawn</b>
3.	Frederick <i>mf</i>	DeLoach <i>AD</i>	GA	<b>Pre-meeting</b>
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

This bill amends numerous provisions relating to regulatory activities of the Department of Business and Professional Regulation (department). The bill includes the following provisions.

- Amends the department's service of process procedures to require the department to call the licensee's last telephone number of record and publish in a newspaper if service via mail is unsuccessful.
- Provides that ch. 455, F.S., applies only to the regulation of the Division of Professions.
- Creates a temporary professional license for spouses of active duty members of the Armed Forces of the United States who have been assigned to a duty station in Florida.
- Requires that upon a determination by the department that it erroneously issued a license, or upon the revocation of a license, the licensee must surrender his or her license to the department.
- Prohibits an examinee whose examination materials were confiscated based upon suspicion of theft or unlawful reproduction of examination materials from taking another examination until the criminal investigation is concluded.

- Amends various provisions of the home inspection licensing program (scheduled to become effective July 1, 2010), which include amendments to the definition of home inspection services, eliminating the certificate of authorization, authorizing applicants to take the licensure examination without having to obtain department approval, requiring a criminal history check for applicants, delaying the effective date for enforcement provisions, changing the grandfather provision, and providing additional rulemaking authority to the department.
- Amends various provisions of the mold-related services licensure program (scheduled to become effective July 1, 2010), which include amendments eliminating the certificate of authorization, authorizing applicants to take the licensure examination without having to obtain department approval, clarifying that the two-year degree requirement must be an associate of arts degree or equivalent with 30 semester hours in specified courses, delaying the effective date for enforcement provisions, changing the grandfather provision, and providing additional rulemaking authority to the department.
- Expands the exemption from licensure requirements to allow veterinary interns or residents who are graduates in training to be a graduate of a school recognized by the Educational Commission for Foreign Veterinary Graduates.
- Transfers carbon monoxide regulation in public lodging establishments from the Division of Hotels and Restaurants to the State Fire Marshal.
- Revises the qualifications of members of the Florida Real Estate Appraisal Board.
- Allows the Florida State Boxing Commission to issue a notice to cease and desist for unlicensed activity.
- Removes the requirement that cosmetology applicants must take the examination within 6 months after approval to take the examination.
- Repeals HIV/AIDS educational requirements for funeral directors and embalmers from ch. 455, F.S. This provision is covered in chapter 497, Florida Statutes.

The regulatory costs associated with Home Inspection and Mold Related Services will be addressed in the General Appropriations Act for the Fiscal Year 2010-2011. According to the department, the implementation of all other provisions of the bill can be absorbed within current resources.

The bill provides an effective date of July 1, 2010.

The bill amends the following sections of the Florida Statutes: 20.165, 455.275, 455.017, 455.02, 455.213, 455.217, 455.2175, 455.227, 455.228, 468.8311, 468.8312, 468.8313, 468.8318, 468.8319, 468.832, 468.8324, 468.8412, 468.8413, 468.8414, 468.8418, 468.8419, 468.842, 468.8421, 468.8423, 474.203, 475.175, 475.613, 477.019, 509.211, 554.108, and 561.17.

The bill creates sections 468.8325, 468.8424, and 548.076, Florida Statutes.

The bill repeals section 455.2226, Florida Statutes.

The bill reenacts provisions of the following sections of the Florida Statutes: 468.436, 468.832, 468.842, 471.033, 473.323, 475.25, 475.624, 476.204, 477.029, 481.225, 481.325, and 468.8314.

## II. Present Situation:

### Department of Business and Professional Regulation

The department was established in 1993 with the merger of the Department of Business Regulation and the Department of Professional Regulation.<sup>1</sup> The department is created in s. 20.165, F.S. Section 20.165(2), F.S., creates the following eleven divisions within the department:

- Division of Administration.
- Division of Alcoholic Beverages and Tobacco.
- Division of Certified Public Accounting.
- Division of Florida Condominiums, Timeshares, and Mobile Homes.
- Division of Hotels and Restaurants.
- Division of Pari-mutuel Wagering.
- Division of Professions.
- Division of Real Estate.
- Division of Regulation.
- Division of Technology.
- Division of Service Operations.

In addition to administering the professional boards, the department processes applications for licensure and license renewal. The department also receives and investigates complaints made against licensees and, if necessary, brings administrative charges.

Chapter 455, F.S., provides the general powers of the department and sets forth the procedural and administrative frame-work for all of the professional boards housed under the department, specifically the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.

### Professional Boards

Section 20.165(4)( a), F.S., establishes the following professional boards within the Division of Professions:

- Board of Architecture and Interior Design, created under part I of ch. 481, F.S.
- Florida Board of Auctioneers, created under part VI of ch. 468, F.S.
- Barbers' Board, created under ch. 476, F.S.
- Florida Building Code Administrators and Inspectors Board, created under part XII of ch. 468, F.S.
- Construction Industry Licensing Board, created under part I of ch. 489, F.S.
- Board of Cosmetology, created under ch. 477, F.S.
- Electrical Contractors' Licensing Board, created under part II of ch. 489, F.S.
- Board of Employee Leasing Companies, created under part XI of ch. 468, F.S.

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<sup>1</sup> Chapter 93-220, L.O.F.

- Board of Landscape Architecture, created under part II of ch. 481, F.S.
- Board of Pilot Commissioners, created under ch. 310, F.S.
- Board of Professional Engineers, created under ch. 471, F.S.
- Board of Professional Geologists, created under ch. 492, F.S.
- Board of Veterinary Medicine, created under ch. 474, F.S.

Section 20.165(4)(b), F.S., establishes the following board and commission within the Division of Real Estate:

- Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S.
- Florida Real Estate Commission, created under part I of ch. 475, F.S.

Section 20.165(4)(c), F.S., establishes the Board of Accountancy, created under ch. 473, F.S., within the Division of Certified Public Accounting.

The Florida State Boxing Commission,<sup>2</sup> the Board of Pilot Commissioners,<sup>3</sup> the Pilot Rate Review Board<sup>4</sup> are also housed within the department. The department also has regulatory oversight responsibilities over the following professions:

- Farm labor contractors under part III of ch. 450, F.S.
- Talent agencies under part VII of ch. 468.

Section 20.165, F.S., does not include the home inspection and mold-related services licensure programs provided for in parts XV and XVI of ch. 468, F.S.

### **Service of Process**

The department cannot revoke, suspend, annul, or withdraw any license unless the department has first served an administrative complaint (complaint) which affords reasonable notice to the licensee of facts or conduct which warrants the intended action and unless the licensee has been given an adequate opportunity to request an administrative proceeding.<sup>5</sup> The department must first attempt to serve the complaint by personal service or certified mail. When personal service cannot be made and the certified mail notice is returned undelivered, the agency can serve notice via publication in a newspaper published in the county of the licensee's last known address at it appears in the records of the agency. If the address is in another state, the notice may be published in Leon County. Licensees have a duty to update their address with the department.<sup>6</sup>

### **Members of the Armed Forces**

Section 455.02, F.S., provides that members of the Armed Forces of the United States on active duty, who are in good standing with their professional board, may maintain the good standing

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<sup>2</sup>Section 548.003, F.S.

<sup>3</sup>Chapter 310, F.S.

<sup>4</sup>*Id.*

<sup>5</sup>Section 120.60(5), F.S.

<sup>6</sup>Section 455.275(1), F.S.

without paying dues or fees while on active duty and for a period of six months after discharge from active duty, provided the member is not engaged in his or her profession in the private sector for profit. Spouses of members of the armed forces may also be exempt from renewal provisions provided the spouse is absent from the state because of their spouses' duties with the Armed Forces.<sup>7</sup>

### **Theft or Reproduction of an Examination**

Section 455.2175, F.S., provides that theft or reproduction of an examination administered by the department constitutes a felony of the third degree.<sup>8</sup> According to the department, the Bureau of Education and Testing works to ensure examination security, including the use of roving proctors during examination administration. On at least three occasions, candidates have been caught illegally copying exam questions. The department refers such cases of copying or reproduction to the appropriate state attorney for prosecution.

### **Discipline**

Among others grounds, being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession constitutes a ground for discipline.<sup>9</sup>

### **Home Inspectors**

In 2007, part XV of ch. 468, F.S., was created to govern home inspectors.<sup>10</sup> A home inspector is any person who provides home inspection services for a fee or compensation.<sup>11</sup> "Home inspection services" means a visual examination of one or more of the installed systems and components of a home, such as the structure, electrical system, HVAC, roof, plumbing system, interior or exterior components, or the site conditions for purposes of providing a written professional opinion on the condition of the home.

In order to be licensed as a home inspector, an applicant must take an examination, apply to the department, and pay a license fee.<sup>12</sup> An applicant must be of good moral character and must have completed a course of study of at least 120 hours which covers all of the following components of a home: structure, electrical system, HVAC system, roof covering, plumbing system, interior components, exterior components, and site conditions that affect the structure.<sup>13</sup> A corporation or partnership may be issued a certificate of authorization to offer home inspection services so long as all personnel of the corporation or partnership are licensed.<sup>14</sup>

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<sup>7</sup> Section 455.02(2), F.S.

<sup>8</sup> A third degree felony is punishable by a fine not to exceed \$5,000 and a prison term not to exceed five years. *See*, sections 775.082(3)(d) and 775.083(1)(c), F.S.

<sup>9</sup> Section 455.227(1)(c), F.S.

<sup>10</sup> Chapter 2007-235, L.O.F.

<sup>11</sup> Section 468.8311(3), F.S.

<sup>12</sup> The initial license fee shall not exceed \$200. Section 468.8312(3), F.S.

<sup>13</sup> Section 468.8313(2), F.S.

<sup>14</sup> Sections 468.8318(1) and (2), F.S.

Section 468.8319, F.S., prohibits an individual from performing home inspections or holding themselves out to be home inspectors without proper licensure and without complying with the home inspector regulations. Although the legislation was passed in 2007, s. 468.8319, F.S., does not take effect until July 1, 2010.<sup>15</sup> The delay in the effective date was intended to give the department time to implement rules and give members in the industry time to apply for and obtain proper licenses.

Section 468.8324, F.S., provides a grandfather clause for persons who perform home inspections. The section states that such a person may qualify to be licensed by the department as a home inspector if the person meets the licensure requirements for a home inspector by July 1, 2010. The licensure requirements require the completion of a course of study, passage of an examination, payment of a license fee, submission of an application, and proof of good moral character. As it is currently written, the grandfather provision does not take into consideration prior experience and education.

### **Mold-Related Services**

Part XVI of ch. 468, F.S., govern mold-related services.<sup>16</sup> Any person who performs mold assessment or mold remediation must be licensed by the department.<sup>17</sup> “Mold Assessment” means a process performed by an assessor which includes the physical sampling and detailed evaluation of data obtained from a building history and inspection to formula a hypothesis about the origin, identity, location, and extent of mold growth of greater than 10 square feet.<sup>18</sup> “Mold Remediation” means the removal, cleaning, sanitizing, demolition, or other treatment of mold of greater than 10 square feet.<sup>19</sup>

An applicant for a mold assessor or mold remediator license must take an examination, apply to the department, and pay license fees.<sup>20</sup> The applicant is qualified if the applicant is of good moral character and has satisfied the education requirements. An applicant for a mold remediation license must either have a two-year degree in microbiology, engineering, architecture, industrial hygiene, occupational safety, or a related field of science and a minimum of one year of documented field experience in a field related to mold remediation or a high school diploma and four years of documented field experience.<sup>21</sup> An applicant for a mold assessor license must have a two-year degree in the same courses of study and one year of documented field experience in conducting microbial sampling or investigations or a high school diploma and four years of documented field experience.<sup>22</sup> The department may also issue a certificate of authority for a partnership or corporation that offers mold assessment or mold remediation.<sup>23</sup>

Section 468.842, F.S., prohibits an individual from performing mold assessment or remediation or holding themselves out to be a mold assessor or remediator without proper licensure and

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<sup>15</sup> Part XV (home inspectors) and part XVI (mold-related services) of ch. 468, F.S., take effect on July 1, 2010.

<sup>16</sup> See 2007-235, L.O.F.

<sup>17</sup> Section 468.8414(1), F.S.

<sup>18</sup> Section 468.8411(3), F.S.

<sup>19</sup> Section 468.8411(5), F.S.

<sup>20</sup> The initial licensure fee shall not exceed \$200. Section 468.8412(3), F.S.

<sup>21</sup> Section 468.8413(2)(a)1., F.S.

<sup>22</sup> Section 468.8413(2)(b)1., F.S.

<sup>23</sup> Section 468.8418(1), F.S.

without complying with the mold-related service regulations. Although the legislation was passed in 2007, s. 468.842, F.S., does not take effect until July 1, 2010.<sup>24</sup> The delay in the effective date was intended to give the department time to implement rules and give members in the industry time to apply for and obtain proper licenses.

Section 468.8423, F.S., provides a grandfather clause for persons who perform mold-related services. The section states that such a person may qualify to be licensed by the department as a mold assessor or mold remediator if the person meets the licensure requirements for a mold assessor or mold remediator by July 1, 2010. The licensure requirements require the completion of a specific education requirements, passage of an examination, payment of a license fee, submission of an application, and proof of good moral character. As it is currently written, the grandfather provision does not take into consideration prior experience and education.

### **Cosmetology**

The Board of Cosmetology (board) within the department is charged with the regulation of cosmetology under ch. 477, F.S. Section 477.014, F.S., provides that no person other than a duly licensed cosmetologist shall practice cosmetology or use the name or title of a cosmetologist. Section 477.013, F.S., defines “cosmetology” as:

the mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than medical purposes, including, but not limited to, hair shampooing, hair cutting, hair arranging, hair coloring, permanent waving, and hair relaxing for compensation. This term also includes performing hair removal, including wax treatments, manicures, pedicures, and skin care services.

Section 477.019, F.S., requires that an applicant for licensure as a cosmetologist must be at least 16 years of age or have received a high school diploma, and must pay the required application fee. An applicant for licensure as a cosmetologist must satisfy an experience requirement or education requirement. The experience requirement consists of being authorized to practice cosmetology in another state or country for at least a year. The education requirement consists of a minimum of 1,200 hours of training from a school of cosmetology licensed pursuant to ch. 1005, F.S., a cosmetology program within the public school system, the Cosmetology Division of the Florida School for the Deaf and the Blind, or a government-operated cosmetology program in this state.

Section 477.019, F.S., permits applicants for licensure as a cosmetologist to apply to take the license examination in the last 100 hours of their required 1,200 hours of course work. The applicant must take the examination within 6 months of the approval of the application to sit for the examination. According to the department, this provision, which was enacted in 2008,<sup>25</sup> was intended to streamline the application processes, but has had the opposite effect because the department must review the candidate’s information twice – once when they apply to sit for the examination and again to verify completion of 1,200 hours prior to issuing the license.

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<sup>24</sup> *Supra* at n. 15.

<sup>25</sup> Chapter 2008-240, L.O.F.

## Carbon Monoxide Detectors

Carbon monoxide (CO), often called the silent killer, is an invisible, odorless, colorless gas created when fuels (such as gasoline, wood, coal, natural gas, propane, oil, and methane) burn incompletely. In the home, heating and cooking equipment that burn fuel are potential sources of CO. Vehicles or generators running in an attached garage can also produce dangerous levels of CO.

According to the National Safety Council, carbon monoxide exposure at low concentrations may result in fatigue in healthy people and chest pain in people with heart disease. At higher concentrations, carbon monoxide may cause impaired vision and coordination, headaches, dizziness, confusion, and nausea. It can cause flu-like symptoms that clear up after the person is no longer exposed to the source of the carbon monoxide. Carbon monoxide can be fatal at very high concentrations.<sup>26</sup>

Section 509.211(4), F.S., requires public lodging establishments to equip every enclosed space or room, which contains a boiler that is located in any portion of the establishment that also contains sleeping rooms, with one or more carbon monoxide (CO) sensor devices. It also requires the Division of Hotels and Restaurants within DBPR to determine whether CO hazards exist within enclosures.

The provision in Section 509.211(4), F.S., is named “Janelle’s Law” in memory of a Janelle Bertot and Anthony Perez who died from carbon monoxide poisoning.<sup>27</sup> Janelle Bertot and Anthony Perez were students at Florida International University when they died on November 14, 2004, from CO poisoning as a result of CO that leaked from their motor vehicle. Janelle’s family and friends have established a charitable foundation in her name which seeks to raise the awareness of young people and the general public about the dangers of CO poisoning. The act also honors the memory of Tom Lueders, who died from carbon monoxide poisoning on December 27, 2006.<sup>28</sup>

Section 553.885(1), F.S., requires that every building that has a fossil-fuel-burning heater or appliance, a fireplace, or an attached garage for which a building permit is issued for new construction on or after July 1, 2008, must have an approved operational carbon monoxide alarm installed within 10 feet of each room used for sleeping purposes. The Florida Building Commission is required to administer this provision and to incorporate these requirements into the Florida Building Code. If the building is a new hospital, an inpatient hospice facility, or a nursing home facility licensed by the Agency for Health Care Administration, the approved, operational carbon monoxide detector must be installed inside or directly outside of each room or area within the hospital or facility where a fossil-fuel-burning heater, engine, or appliance is located. The detector must be connected to the fire alarm system of the hospital or facility as a supervisory signal.

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<sup>26</sup> See National Fire Protection Association at: <http://www.nfpa.org/itemDetail.asp?categoryID=1733&itemID=41644&URL=Safety%20Information/For%20consumers/Carbon%20monoxide/Symptoms%20of%20CO%20poisoning> (Last visited February 26, 2010).

<sup>27</sup> See 2007-181, L.O.F.

<sup>28</sup> *Id.*

The carbon monoxide detector requirement in s. 553.885(1), F.S., does not apply to existing buildings.

### **Public Lodging Establishments**

The Department of Business and Professional Regulation is the state agency charged with enforcing the provisions of ch. 509, F.S., and all other applicable laws relating to the inspection and regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare. According to the department, there are over 37,898 licensed public lodging establishments.<sup>29</sup>

### **Boiler Safety**

Section 554.103, F.S., requires the Department of Financial Services (DFS) to adopt by rule a State Boiler Code for the safe construction, installation, inspection, maintenance, and repair of boilers in this state.<sup>30</sup> The state boiler inspection program is administered by the chief inspector, who is appointed by the Chief Financial Officer. The department must also employ deputy inspectors who must each hold a certificate of competency from the DFS.

Section 554.108(8), F.S., requires that only boilers that are located in public assembly locations must be inspected. An annual inspection and certification is required for power boilers and high pressure, high temperature water boilers. Low pressure steam or vapor heating boilers must receive a certificate inspection every two years. Hot water heating boilers and hot water supply boilers must also receive a certificate inspection every two years, and must receive a receive an internal inspection every 4 years if the construction of the boiler permits such an inspection.

### **Boxing**

The Florida State Boxing Commission (commission) within the department is the agency responsible for the enforcement of ch. 548, F.S., relating to the regulation of pugilistic exhibitions. Section 548.001, F.S., provides that the provisions constituting ch. 548, F.S., shall be known and may be cited as the "Joe Lang Kershaw Act."<sup>31</sup> The commission consists of five members who are appointed by the Governor subject to Senate confirmation.

Section 548.006(1), F.S., grants the commission exclusive jurisdiction over every match held within the state which involves a professional, including boxing, kickboxing, and mixed martial arts. The commission has exclusive jurisdiction of all amateur sanctioning organizations of amateur boxing and kickboxing matches. Section 548.006(4), F.S., also provides that professional and amateur matches shall be held in accordance with ch. 548, F.S., and the rules adopted by the commission.

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<sup>29</sup> For FY 2008-2009 there were 37,898 licensed public lodging establishments. *Annual Report, Fiscal Year 2008-2009*, Division of Hotels and Restaurants, Department of Business and Professional Regulation. A copy is available at: [http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2008\\_09.pdf](http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2008_09.pdf) (Last visited March 1, 2010).

<sup>30</sup> Rule 69A-51.010, F.A.C.

<sup>31</sup> In 1968, Joe Lang Kershaw became the first African-American elected to the Florida Legislature in the 20<sup>th</sup> Century.

Section 548.003(2)(k), F.S., authorizes the commission to adopt safety standards for those who are competing and for those who attend these type of events. Section 548.0065(3), F.S., provides for periodic compliance checks by the commission to ensure enforcement of approved health and safety standards and supervision of matches by approved amateur sanctioning organizations.

Section 548.0065(4), F.S., provides that any member of the commission may suspend the approval of a sanctioning organization for failure to supervise the amateur matches or to enforce the approved health and safety standards. The suspension must comply with the suspension procedures in s. 120.60(6), F.S. The commission must hold a hearing within 10 days after the date on which the approval is suspended. Any member of the commission, or commission representative, may immediately stop a boxing or kickboxing match if it appears the match violates the health and safety standards required by rule as required by ch. 548, F.S. It provides that law enforcement personnel may assist any member of the commission, or commission representative, to enforce the order to stop the match.

The commission does not have the statutory authority to issue a notice to cease and desist to persons violating any provision of ch. 548, F.S.<sup>32</sup> According to the department, organized unsanctioned (unlicensed) boxing, kickboxing, and mixed martial arts events are currently taking place in Florida, and unsanctioned events are dangerous and may cause injury. According to the department, health and safety standards in rule 61K1-1, F.A.C., which require emergency medical personnel or ambulance service, are not followed at unsanctioned events for participants who may be injured, and death may occur from injuries obtained during competition if medical personnel services are not available.

### **Alcoholic Beverages and Tobacco**

The Division of Alcoholic Beverages and Tobacco (division) within the department is the agency authorized to enforce the provisions of the Beverage Law in chs. 561, 562, 563, 564, 565, 567, and 568, F.S.<sup>33</sup> The Beverage Law regulates the manufacture, distribution, and sale of wine, beer, and liquor via manufacturers, distributors, and vendors.<sup>34</sup>

Section 561.17(1), F.S., requires persons to apply for an alcoholic beverage license before manufacturing, bottling, distributing, selling, or in any way dealing in alcoholic beverages. The alcoholic beverage license application must be a sworn application in duplicate on forms provided by the division. According to the department, the division recently implemented the document management system "OnBase." This system provides an electronic and official copy of the application and all associated materials. According to the department, the electronic version eliminates the need for the applicant to submit the application in duplicate.

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<sup>32</sup> The department can issue a cease and desist only for activities that fall within the Division of Professions; boxing is not regulated by ch. 455, F.S.

<sup>33</sup> See s. 561.01(6), F.S.

<sup>34</sup> See s. 561.14, F.S.

### III. Effect of Proposed Changes:

#### Department of Business and Professional Regulation

**Section 1** amends subsection (4) of s. 20.165, F.S., to add home inspector and mold-related service licensing programs to the list of boards or professions established within the Division of Professions for the department.

**Section 2** amends s. 455.275, F.S., by creating a new subsection (3). Subsection (3) provides procedures for service of process of administrative complaints. The bill provides that the department shall provide service via regular mail to the licensee's last known address of record. If service cannot be achieved by mail, the department shall call the last telephone number of record and cause a short, plain notice to the licensee to be published once each week for four consecutive weeks in a newspaper published in the county of the licensee's last known address of record. If there is no county newspaper, then the complaint may be published in a newspaper of general circulation in that county. If the address is in another state or foreign territory or county, the complaint may be published in Leon County. The procedures do not require the department to attempt service by personal service.

**Section 3** amends s. 455.017, F.S., to provide that ch. 455, F.S., applies only to the regulation by the Division of Professions.

**Section 4** amends s. 455.02, F.S., by creating a new subsection (3). Subsection (3) provides that spouses of members of Armed Forces may be issued a temporary professional license if the spouse submits an application to the department establishing that the service member spouse has been assigned to a duty station in Florida, proof of marriage to the service member, and proof that the spouse holds a similar license in another state or country and is in good standing. The spouse must also submit a completed set of fingerprints in the manner required by the department. The temporary license expires six months after it has been issued and is not renewable.

**Section 5** amends s. 455.213, F.S., to require a licensee to surrender his or her license to the department if the applicable board, or the department when there is no board, revokes the license or determines that the license was issued in error.

**Section 6** amends s. 455.217, F.S., to provide that the Division of Professions shall provide the services related to examinations for the department and not the Division of Service Operations. The section also provides that the department shall provide procedures for applicants that have taken and failed an examination and amends the section to provide that the procedures apply to the last examination taken by the applicant.

**Section 7** amends s. 455.2175, F.S., to provide that an examinee whose examination materials have been confiscated upon suspicion of a violation of this section may not participate in another examination until the criminal investigation or prosecution is resolved.

**Section 8** repeals s. 455.2226, F.S., relating to human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS) instruction for funeral directors and embalmers

as part of their biennial relicensure or recertification. Under current law, HIV and AIDS instruction for funeral directors and embalmers, who are regulated by the Board of Funeral, Cemetery, and Consumer Services within the Department of Financial Services, are required by s. 497.367, F.S., to complete HIV and AIDS instruction as part of their continuing education prerequisite before every third biennial licensure renewal.

**Section 9** amends s. 455.227, F.S., to provide that entering a plea of guilty to a crime which relates to the practice of the profession is grounds for discipline of the licensee.

**Section 10** amends s. 455.228, F.S., changing the term cease and desist “order” to cease and desist “notice” to conform to other terminology in the section.

### **Home Inspection Services**

**Section 11** amends s. 468.8311, F.S., to change the definition of “home inspection services” from the visual examination of one or more systems or components to a visual inspection of all of the following systems and components of a home, including the structure, electrical system, HVAC system, roof, plumbing system, interior components, exterior components, and site conditions.

**Section 12** amends s. 468.8312, F.S., to delete the fee for a certificate of authorization for home inspection services.

**Section 13** provides that an applicant must satisfy the examination requirements before he or she applies for licensure as a home inspector. It creates a new subsection (6) in s. 468.8313, F.S., to require an applicant for a home inspector license to submit a complete set of electronic fingerprints. The fingerprints shall be submitted to the Department of Law Enforcement and forwarded to the Federal Bureau of Investigation for a background check.

**Section 14** deletes the requirement of a certificate of authorization for home inspection services.

**Section 15** amends the effective date for paragraphs (a) and (b) of subsection (1) of s. 468.8319, F.S., to July 1, 2011. This provides time to meet the home inspector licensure requirements of part XV of ch. 468, F.S.

**Section 16** amends s. 468.8319, F.S., to provide that a person may not inspect a property in which the inspector has any financial interest or perform or offer to perform any repairs to a home in which the inspector’s company has prepared the inspection report, regardless of whether a fee was collected. The bill clarifies that the specified prohibitions and penalties apply to any person who commits a violation.

**Section 17** amends s. 468.832, F.S., to include failing to meet any standard of practice adopted by the rule of the department as a ground for discipline.

**Section 18** amends the grandfather provision for home inspectors. The new grandfather provision requires an applicant to submit an applicant to the department no later than March 1, 2011 and submit proof that the applicant has been certified as a home inspector by a state or

national association and has completed at least 14 hours of education on home inspection or has three years experience as a home inspector, has completed 14 hours of training. To establish proof of experience, the applicant must submit 120 home inspection reports. The applicant for the grandfather provision must not have had a license in a related field revoked, suspended, or a fine assessed of over \$500 within 5 years following the date of application. The applicant must also submit to a background check, be of good moral character, and have the required general liability insurance.

**Section 19** creates s. 468.8325, F.S., to give the department rulemaking authority to administer the home inspector provisions.

### **Mold-Related Services**

**Section 20** deletes the requirement for a certificate of authorization fee for mold-related services.

**Section 21** amends s. 468.8413, F.S., to provide that an applicant for a mold assessor or mold remediator shall apply to the department for licensure after the applicant has satisfied the examination. The section clarifies that the applicant for mold remediation or mold assessor must have an associate of arts degree or an equivalent degree, and the applicant must have completed at least 30 semester hours in microbiology, engineering, architecture, industrial hygiene, occupational safety, or a related field of science, and one year of field related experience or the applicant must have a high school diploma and four years of experience.

**Section 22** amends s. 468.8414, F.S., to provide that the department must require an applicant for license by endorsement to possess the required liability insurance.

**Section 23** amends s. 468.8418, F.S., to delete the provisions requiring a certificate of authorization for mold-related services.

**Section 24** amends s. 468.8419, F.S., to provide that the specified prohibitions and penalties apply to any person who commits a violation.

**Section 25** provides that paragraphs (a) and (b) of subsection (1) of s. 468.8419, F.S., shall take effect on July 1, 2011. This provides time to meet the mold-related licensure requirements of part XVI of ch. 468, F.S.

**Section 26** amends s. 468.842, F.S., to provide that failing to meet a standard of practice adopted by rule of the department constitutes a ground for discipline.

**Section 27** amends s. 468.8421, F.S., to provide that the insurance requirement for mold assessors must cover preliminary and post-remediation activities.

**Section 28** amends the grandfather provision for mold-related services. The new grandfather provision requires an applicant to submit an applicant to the department no later than March 1, 2011, and submit proof that the applicant has been certified as a mold assessor or mold remediator by a state or national association and has completed at least 60 hours of education for an assessor and 30 hours of education for a remediator or has three years experience as a mold

assessor or mold remediator. To establish proof of experience, the applicant must submit 40 invoices for mold assessments or mold remediations. The applicant for the grandfather provision must not have had a license in a related field revoked, suspended, or a fine assessed of over \$500 within 5 years following the date of application. The applicant must also submit to a background check, be of good moral character, and have the required general liability insurance.

**Section 29** creates s. 468.8424, F.S., to give the department rulemaking authority to administer the mold-related service provisions.

### **Veterinary Medicine**

**Section 30** amends s. 474.203, F.S., which provides exemptions to the practice of veterinary medicine provisions in this chapter. The bill revises the exemption for veterinary medicine interns and resident veterinarians who do not hold a valid license under ch. 474, F.S. Current law requires that a intern or resident veterinarian must be a graduate of a school or college of veterinary medicine accredited by the American Veterinary Medical Association Council on Education. The bill would permit interns and resident veterinarian who graduate from a school or college recognized by the American Veterinary Medical Association Commission for Foreign Veterinary Graduates to also qualify for the exemption.

### **Real Estate Professionals**

**Section 31** amends s. 475.175(1)(a), F.S., which relates to the regulation of real estate brokers and sales associates by the Florida Real Estate Commission, to require that applicants for licensure must submit digital fingerprints to determine if the applicant has a criminal history. The bill deletes the requirement that a fingerprint card must be submitted.

**Section 32** amends s. 475.613(1), F.S., which establishes the membership of the seven-member Real Estate Appraisal Board and requires that two members of the board must be representatives of the general public and not connected in any way with the practice of real estate appraisal, real estate brokerage, or mortgage lending. The bill allows members of the general public who are connected to the practice of real estate brokerage or mortgage lending to serve on the board.

### **Cosmetologists**

**Section 33** deletes subsection (3) of s. 477.019, F.S., which permits applicants for licensure as a cosmetologist to apply to take the license examination in the last 100 hours of their required 1,200 hours of course work in a licensed cosmetology school or program. The provision deleted by the bill also requires that applicant take the examination within 6 months of the approval of the application.

### **Public Lodging Establishments – Carbon Monoxide Detectors**

**Section 34** repeals subsection (4) of s. 509.211, F.S., to delete the requirement that public lodging establishments must equip every enclosed space or room, which contains a boiler that is located in any portion of the establishment that also contains sleeping rooms, with one or more carbon monoxide sensor devices, and that requires the Division of Hotels and Restaurants to

determine whether CO hazards exist within enclosures. This responsibility is transferred to the Department of Financial Services (DFS) in section 36 of the bill.

### **Florida State Boxing Commission**

**Section 35** creates s. 548.076, F.S., to provide that the department may issue a notice to cease and desist pursuant to s. 455.228, F.S., when the department has probable cause to believe that any person not licensed by the commission has violated any provision of ch. 548, F.S.

### **Public Lodging Establishments – Carbon Monoxide Detectors**

**Section 36** creates subsection (4) of s. 554.108, F.S., to provide carbon monoxide detection requirements that are substantively identical to those in s. 509.211(4), F.S. However, the bill gives the enforcement responsibility for the inspection of carbon monoxide detectors to the boiler safety program within the DFS. The installation or determination of whether carbon monoxide hazards have been adequately mitigated must be made in accordance with rules adopted by the DFS. The boiler inspector must also determine whether the location containing the boiler contains the required carbon monoxide detectors.

### **Alcoholic Beverage Regulation**

**Section 37** amends subsection (1) of s. 561.17, F.S., relating to the application requirement for a license to manufacture, bottle, distribute, sell, or in any way deal in alcoholic beverages, to delete the requirement that the application must be filed in duplicate.

The bill also amends s. 561.17(1), F.S., to conform the language in this subsection to the current bill drafting conventions.

### **Other Provisions**

**Section 38 through 49** reenact paragraph (a) of subsection (2) of s. 468.436, subsection (1) of s. 468.832, subsection (1) of s. 468.842, subsection (1) of s. 471.033, paragraph (a) of subsection (1) of s. 473.323, paragraph (a) of subsection (1) of s. 475.25, subsection (1) of s. 475.624, paragraph (h) of subsection (1) of s. 476.204, paragraph (h) of subsection (1) of s. 477.029, paragraph (a) of subsection (1) of s. 481.225, paragraph (a) of subsection (1) of s. 481.325, and subsection (2) of s. 468.8314, F.S., to incorporate amendments made to s. 455.227, F.S.

**Section 50** provides an effective date of July 1, 2010.

## **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 amends the grandfather provisions for home inspectors and mold-related services. The changes allow the department to consider prior experience and education and to license individuals who have been operating in these professions, thus allowing these individuals to continue in their profession. The bill also delays the effective date for enforcement provisions, giving the department more time to implement rules and procedures and to give individuals already engaged in the profession ample time to comply with those procedures.

C. Government Sector Impact:

The regulatory costs associated with Home Inspection and Mold Related Services will be addressed in the General Appropriations Act for the Fiscal Year 2010-2011. According to the department, the implementation of all other provisions of the bill can be absorbed within current resources.

VI. **Technical Deficiencies:**

Sections 468.8318 and 468.8418, F.S., contain the title of "Certification of corporations and partnership" even though the bill removes the certification requirement for these entities.

VII. **Related Issues:**

None.

VIII. **Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

**CS by Regulated Industries on March 17, 2010:**

The CS makes some technical changes. First, it clarifies that the complaint is served on the licensee and not the notice. Second, it repeals s. 455.2226, F.S., because the regulation of funeral directors and embalmers is no longer housed under the department. Third, the CS clarifies that the home inspector and mold-related service prohibitions apply to any person who commits a specified violation, removing the language that referenced a company or mold-assessor or home inspector.

The CS amends the service of process procedures for the department. The CS requires the department to first attempt to serve the complaint on the licensee at his or her last known address of record. If service cannot be completed via mail, then the department must call the last telephone number of record and cause a short, plain notice to be published once each week for 4 consecutive weeks in a newspaper published in the county of the licensee's last known address of record. If there is no county newspaper, then the complaint may be published in a newspaper of general circulation.

The CS deletes section 38 of the bill, which created a special liquor license for movie theatres.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate

House

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COMMITTEE AMENDMENT  
DATE: 4/14/10  
TIME: 5:40 p.m.

The Committee on General Government Appropriations (Dean)  
recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (4) of section 20.165, Florida  
Statutes, is amended to read:

20.165 Department of Business and Professional Regulation.—  
There is created a Department of Business and Professional  
Regulation.

(4) (a) The following boards and programs are established  
within the Division of Professions:



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- 13           1. Board of Architecture and Interior Design, created under  
14 part I of chapter 481.
- 15           2. Florida Board of Auctioneers, created under part VI of  
16 chapter 468.
- 17           3. Barbers' Board, created under chapter 476.
- 18           4. Florida Building Code Administrators and Inspectors  
19 Board, created under part XII of chapter 468.
- 20           5. Construction Industry Licensing Board, created under  
21 part I of chapter 489.
- 22           6. Board of Cosmetology, created under chapter 477.
- 23           7. Electrical Contractors' Licensing Board, created under  
24 part II of chapter 489.
- 25           8. Board of Employee Leasing Companies, created under part  
26 XI of chapter 468.
- 27           9. Board of Landscape Architecture, created under part II  
28 of chapter 481.
- 29           10. Board of Pilot Commissioners, created under chapter  
30 310.
- 31           11. Board of Professional Engineers, created under chapter  
32 471.
- 33           12. Board of Professional Geologists, created under chapter  
34 492.
- 35           13. Board of Veterinary Medicine, created under chapter  
36 474.
- 37           14. Home inspection services licensing program, created  
38 under part XV of chapter 468.
- 39           15. Mold-related services licensing program, created under  
40 part XVI of chapter 468.
- 41           (b) The following board and commission are established



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42 within the Division of Real Estate:

43 1. Florida Real Estate Appraisal Board, created under part  
44 II of chapter 475.

45 2. Florida Real Estate Commission, created under part I of  
46 chapter 475.

47 (c) The following board is established within the Division  
48 of Certified Public Accounting:

49 ~~1.~~ Board of Accountancy, created under chapter 473.

50 Section 2. Subsection (2) of section 215.37, Florida  
51 Statutes, is amended to read:

52 215.37 Department of Business and Professional Regulation  
53 and the boards to be financed from fees collected; deposit of  
54 funds; service charge; appropriation.-

55 (2) The regulation ~~by the department~~ of professions, as  
56 defined in s. 455.01 ~~chapter 455~~, by the department shall be  
57 financed solely from revenue collected by it from fees and other  
58 charges and deposited in the Professional Regulation Trust Fund,  
59 and all such revenue is hereby appropriated to the department.  
60 However, it is legislative intent that each profession shall  
61 operate within its anticipated fees.

62 Section 3. Subsection (4) of section 322.142, Florida  
63 Statutes, is amended to read:

64 322.142 Color photographic or digital imaged licenses.-

65 (4) The department may maintain a film negative or print  
66 file. The department shall maintain a record of the digital  
67 image and signature of the licensees, together with other data  
68 required by the department for identification and retrieval.  
69 Reproductions from the file or digital record are exempt from  
70 the provisions of s. 119.07(1) and shall be made and issued only



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71 for departmental administrative purposes; for the issuance of  
72 duplicate licenses; in response to law enforcement agency  
73 requests; to the Department of Business and Professional  
74 Regulation pursuant to an interagency agreement for the purpose  
75 of accessing digital images for reproduction of licenses issued  
76 by the Department of Business and Professional Regulation; to  
77 the Department of State pursuant to an interagency agreement to  
78 facilitate determinations of eligibility of voter registration  
79 applicants and registered voters in accordance with ss. 98.045  
80 and 98.075; to the Department of Revenue pursuant to an  
81 interagency agreement for use in establishing paternity and  
82 establishing, modifying, or enforcing support obligations in  
83 Title IV-D cases; to the Department of Children and Family  
84 Services pursuant to an interagency agreement to conduct  
85 protective investigations under part III of chapter 39; or to  
86 the Department of Financial Services pursuant to an interagency  
87 agreement to facilitate the location of owners of unclaimed  
88 property, the validation of unclaimed property claims, and the  
89 identification of fraudulent or false claims.

90 Section 4. Section 455.017, Florida Statutes, is amended to  
91 read:

92 455.017 Applicability of this chapter. ~~The provisions of~~  
93 This chapter applies ~~apply~~ only to the regulation ~~by the~~  
94 ~~department~~ of professions by the department.

95 Section 5. Section 455.02, Florida Statutes, is amended to  
96 read:

97 455.02 Licensure of members of the Armed Forces in good  
98 standing with administrative boards and their spouses.—

99 (1) Any member of the Armed Forces of the United States now



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100 or hereafter on active duty who, at the time of becoming such a  
101 member, was in good standing with any administrative board of  
102 the state and was entitled to practice or engage in his or her  
103 profession or vocation in the state shall be kept in good  
104 standing by such administrative board, without registering,  
105 paying dues or fees, or performing any other act on his or her  
106 part to be performed, as long as he or she is a member of the  
107 Armed Forces of the United States on active duty and for a  
108 period of 6 months after discharge from active duty as a member  
109 of the Armed Forces of the United States, if provided he or she  
110 is not engaged in his or her licensed profession or vocation in  
111 the private sector for profit.

112 (2) The boards listed in s. 20.165 shall adopt ~~promulgate~~  
113 rules that exempt ~~exempting~~ the spouse ~~spouses~~ of a member  
114 ~~members~~ of the Armed Forces of the United States from licensure  
115 renewal provisions, but only in cases of his or her absence from  
116 the state because of his or her spouse's ~~their spouses'~~ duties  
117 with the Armed Forces.

118 (3) (a) The department may issue a temporary professional  
119 license to the spouse of an active duty member of the Armed  
120 Forces of the United States if the spouse applies to the  
121 department in the format prescribed by the department. An  
122 application must include:

123 1. Proof that the applicant is married to a member of the  
124 Armed Forces of the United States who is on active duty.

125 2. Proof that the applicant holds a valid license for the  
126 profession issued by another state, the District of Columbia,  
127 any possession or territory of the United States, or any foreign  
128 jurisdiction.



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129       3. Proof that the applicant's spouse is assigned to a duty  
130 station in this state and that the applicant is also assigned to  
131 a duty station in this state pursuant to the member's official  
132 active duty military orders.

133       4. Proof that a complete set of the applicant's  
134 fingerprints are submitted to the Department of Law Enforcement  
135 for a statewide criminal history check. The Department of Law  
136 Enforcement shall forward the fingerprints to the Federal Bureau  
137 of Investigation for a national criminal history check. The  
138 department shall, and the board may, review the results of the  
139 criminal history checks according to the level 2 screening  
140 standards in s. 435.04 and determine whether the applicant meets  
141 the licensure requirements. The costs of fingerprint processing  
142 shall be borne by the applicant. If the applicant's fingerprints  
143 are submitted through an authorized agency or vendor, the agency  
144 or vendor shall collect the required processing fees and remit  
145 the fees to the Department of Law Enforcement.

146       (b) An application must be accompanied by an application  
147 fee prescribed by the department that is sufficient to cover the  
148 cost of issuance of the temporary license.

149       (c) A temporary license expires 6 months after the date of  
150 issuance and is not renewable.

151       Section 6. Section 455.2122, Florida Statutes, is created  
152 to read:

153       455.2122 Education.—A board, or the department when there  
154 is no board, shall approve distance learning courses as an  
155 alternative to classroom courses to satisfy prelicensure or  
156 postlicensure education requirements in part VIII of chapter 468  
157 or part I of chapter 475. A board, or the department when there



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158 is no board, may not require centralized examinations for  
159 completion of prelicensure or postlicensure education  
160 requirements for professions licensed under part VIII of chapter  
161 468 or part I of chapter 475.

162 Section 7. Section 455.2123, Florida Statutes, is amended  
163 to read:

164 455.2123 Continuing education.—A board, or the department  
165 when there is no board, may provide by rule that distance  
166 learning may be used to satisfy continuing education  
167 requirements. A board, or the department when there is no board,  
168 shall approve distance learning courses as an alternative to  
169 classroom courses to satisfy continuing education requirements  
170 in part VIII, part XV, or part XVI of chapter 468 or part I or  
171 part II of chapter 475 and may not require centralized  
172 examinations for completion of continuing education requirements  
173 for the professions licensed under part VIII, part XV, or part  
174 XVI of chapter 468 or part I or part II of chapter 475.

175 Section 8. Subsection (2) of section 455.213, Florida  
176 Statutes, is amended to read:

177 455.213 General licensing provisions.—

178 (2) Before the issuance of any license, the department may  
179 charge an initial license fee as determined by rule of the  
180 applicable board or, if no such board exists, by rule of the  
181 department. Upon receipt of the appropriate license fee, except  
182 as provided in subsection (3), the department shall issue a  
183 license to any person certified by the appropriate board, or its  
184 designee, or the department when there is no board, as having  
185 met the applicable requirements imposed by law or rule. However,  
186 an applicant who is not otherwise qualified for licensure is not



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187 entitled to licensure solely based on a passing score on a  
188 required examination. Upon a determination by the department  
189 that it erroneously issued a license, or upon the revocation of  
190 a license by the applicable board, or by the department when  
191 there is no board, the licensee must surrender his or her  
192 license to the department.

193 Section 9. Subsections (1) and (3) of section 455.217,  
194 Florida Statutes, are amended to read:

195 455.217 Examinations.—This section shall be read in  
196 conjunction with the appropriate practice act associated with  
197 each regulated profession under this chapter.

198 (1) The Division of Professions ~~Service Operations~~ of the  
199 Department of Business and Professional Regulation shall  
200 provide, contract, or approve services for the development,  
201 preparation, administration, scoring, score reporting, and  
202 evaluation of all examinations. The division shall seek the  
203 advice of the appropriate board in providing such services.

204 (a) The department, acting in conjunction with the Division  
205 of Service Operations, the Division of Professions, and the  
206 Division of Real Estate, as appropriate, shall ensure that  
207 examinations adequately and reliably measure an applicant's  
208 ability to practice the profession regulated by the department.  
209 After an examination developed or approved by the department has  
210 been administered, the board or department may reject any  
211 question which does not reliably measure the general areas of  
212 competency specified in the rules of the board or department,  
213 when there is no board. The department shall use qualified  
214 outside testing vendors for the development, preparation, and  
215 evaluation of examinations, when such services are economically



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216 and viably available and approved by the department.

217 (b) For each examination developed by the department or  
218 contracted vendor, to the extent not otherwise specified by  
219 statute, the board or the department when there is no board,  
220 shall by rule specify the general areas of competency to be  
221 covered by the examination, the relative weight to be assigned  
222 in grading each area tested, the score necessary to achieve a  
223 passing grade, and the fees, where applicable, to cover the  
224 actual cost for any purchase, development, and administration of  
225 the required examination. However, statutory fee caps in each  
226 practice act shall apply. This subsection does not apply to  
227 national examinations approved and administered pursuant to  
228 paragraph (d).

229 (c) If a practical examination is deemed to be necessary,  
230 rules shall specify the criteria by which examiners are to be  
231 selected, the grading criteria to be used by the examiner, the  
232 relative weight to be assigned in grading each criterion, and  
233 the score necessary to achieve a passing grade. When a mandatory  
234 standardization exercise for a practical examination is required  
235 by law, the board may conduct such exercise. Therefore, board  
236 members may serve as examiners at a practical examination with  
237 the consent of the board.

238 (d) A board, or the department when there is no board, may  
239 approve by rule the use of any national examination which the  
240 department has certified as meeting requirements of national  
241 examinations and generally accepted testing standards pursuant  
242 to department rules. Providers of examinations, which may be  
243 either profit or nonprofit entities, seeking certification by  
244 the department shall pay the actual costs incurred by the



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245 department in making a determination regarding the  
246 certification. The department shall use any national examination  
247 which is available, certified by the department, and approved by  
248 the board. The name and number of a candidate may be provided to  
249 a national contractor for the limited purpose of preparing the  
250 grade tape and information to be returned to the board or  
251 department or, to the extent otherwise specified by rule, the  
252 candidate may apply directly to the vendor of the national  
253 examination. The department may delegate to the board the duty  
254 to provide and administer the examination. Any national  
255 examination approved by a board, or the department when there is  
256 no board, prior to October 1, 1997, is deemed certified under  
257 this paragraph. Any licensing or certification examination that  
258 is not developed or administered by the department in-house or  
259 provided as a national examination shall be competitively bid.

260 (e) The department shall adopt rules regarding the security  
261 and monitoring of examinations. In order to maintain the  
262 security of examinations, the department may employ the  
263 procedures set forth in s. 455.228 to seek fines and injunctive  
264 relief against an examinee who violates the provisions of s.  
265 455.2175 or the rules adopted pursuant to this paragraph. The  
266 department, or any agent thereof, may, for the purposes of  
267 investigation, confiscate any written, photographic, or  
268 recording material or device in the possession of the examinee  
269 at the examination site which the department deems necessary to  
270 enforce such provisions or rules.

271 (f) If the professional board with jurisdiction over an  
272 examination concurs, the department may, for a fee, share with  
273 any other state's licensing authority an examination developed



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274 by or for the department unless prohibited by a contract entered  
275 into by the department for development or purchase of the  
276 examination. The department, with the concurrence of the  
277 appropriate board, shall establish guidelines that ensure  
278 security of a shared exam and shall require that any other  
279 state's licensing authority comply with those guidelines. Those  
280 guidelines shall be approved by the appropriate professional  
281 board. All fees paid by the user shall be applied to the  
282 department's examination and development program for professions  
283 regulated by this chapter. All fees paid by the user for  
284 professions not regulated by this chapter shall be applied to  
285 offset the fees for the development and administration of that  
286 profession's examination. If both a written and a practical  
287 examination are given, an applicant shall be required to retake  
288 only the portion of the examination for which he or she failed  
289 to achieve a passing grade, if he or she successfully passes  
290 that portion within a reasonable time of his or her passing the  
291 other portion.

292 (3) Except for national examinations approved and  
293 administered pursuant to paragraph (1)(d), the department shall  
294 provide procedures for applicants who have taken and failed an  
295 examination developed by the department or a contracted vendor  
296 to review their most recently administered examination  
297 questions, answers, papers, grades, and grading key for the  
298 questions the candidate answered incorrectly or, if not  
299 feasible, the parts of the examination failed. Applicants shall  
300 bear the actual cost for the department to provide examination  
301 review pursuant to this subsection. An applicant may waive in  
302 writing the confidentiality of his or her examination grades.



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303 Section 10. Section 455.2175, Florida Statutes, is amended  
304 to read:

305 455.2175 Penalty for theft or reproduction of an  
306 examination.—In addition to, or in lieu of, any other discipline  
307 imposed pursuant to s. 455.227, the theft of an examination in  
308 whole or in part or the act of reproducing or copying any  
309 examination administered by the department, whether such  
310 examination is reproduced or copied in part or in whole and by  
311 any means, constitutes a felony of the third degree, punishable  
312 as provided in s. 775.082, s. 775.083, or s. 775.084. An  
313 examinee whose examination materials are confiscated is not  
314 permitted to take another examination until the criminal  
315 investigation reveals that the examinee did not violate this  
316 section.

317 Section 11. Section 455.2226, Florida Statutes, is  
318 repealed.

319 Section 12. Paragraph (c) of subsection (1) of section  
320 455.227, Florida Statutes, is amended to read:

321 455.227 Grounds for discipline; penalties; enforcement.—

322 (1) The following acts shall constitute grounds for which  
323 the disciplinary actions specified in subsection (2) may be  
324 taken:

325 (c) Being convicted or found guilty of, or entering a plea  
326 of guilty or nolo contendere to, regardless of adjudication, a  
327 crime in any jurisdiction which relates to the practice of, or  
328 the ability to practice, a licensee's profession.

329 Section 13. Subsection (1) of section 455.228, Florida  
330 Statutes, is amended to read:

331 455.228 Unlicensed practice of a profession; cease and



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332 desist notice; civil penalty; enforcement; citations; allocation  
333 of moneys collected.-

334 (1) When the department has probable cause to believe that  
335 any person not licensed by the department, or the appropriate  
336 regulatory board within the department, has violated any  
337 provision of this chapter or any statute that relates to the  
338 practice of a profession regulated by the department, or any  
339 rule adopted pursuant thereto, the department may issue and  
340 deliver to such person a notice to cease and desist from such  
341 violation. In addition, the department may issue and deliver a  
342 notice to cease and desist to any person who aids and abets the  
343 unlicensed practice of a profession by employing such unlicensed  
344 person. The issuance of a notice to cease and desist shall not  
345 constitute agency action for which a hearing under ss. 120.569  
346 and 120.57 may be sought. For the purpose of enforcing a cease  
347 and desist notice order, the department may file a proceeding in  
348 the name of the state seeking issuance of an injunction or a  
349 writ of mandamus against any person who violates any provisions  
350 of such notice order. In addition to the foregoing remedies, the  
351 department may impose an administrative penalty not to exceed  
352 \$5,000 per incident pursuant to the provisions of chapter 120 or  
353 may issue a citation pursuant to the provisions of subsection  
354 (3). If the department is required to seek enforcement of the  
355 notice order for a penalty pursuant to s. 120.569, it shall be  
356 entitled to collect its attorney's fees and costs, together with  
357 any cost of collection.

358 Section 14. Subsection (3) is added to section 455.275,  
359 Florida Statutes, to read:

360 455.275 Address of record.-



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361       (3) (a) Notwithstanding any provision of law, when an  
362 administrative complaint is served on a licensee of the  
363 department, the department shall provide service by regular mail  
364 to the licensee's last known address of record, by certified  
365 mail to the last known address of record, and, if possible, by  
366 e-mail.

367       (b) If service, as provided in paragraph (a), does not  
368 provide the department with proof of service, the department  
369 shall call the last known telephone number of record and cause a  
370 short, plain notice to the licensee to be published once each  
371 week for 4 consecutive weeks in a newspaper published in the  
372 county of the licensee's last known address of record. If a  
373 newspaper is not published in the county, the administrative  
374 complaint may be published in a newspaper of general circulation  
375 in the county. If the licensee's last known address is located  
376 in another state or in a foreign jurisdiction, the  
377 administrative complaint may be published in Leon County  
378 pursuant to s. 120.60(5).

379       Section 15. Section 468.83, Florida Statutes, is amended to  
380 read:

381       468.83 Home inspection services licensing program;  
382 purpose.-

383       (1) There is created within the department the home  
384 inspection services licensing program.

385       (2) The Legislature recognizes that there is a need to  
386 require the licensing of home inspectors and to ensure that  
387 consumers of home inspection services can rely on the competence  
388 of home inspectors, as determined by educational and experience  
389 requirements and testing. Therefore, the Legislature deems it



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390 necessary in the interest of the public welfare to regulate home  
391 inspectors in this state.

392 Section 16. Subsection (4) of section 468.8311, Florida  
393 Statutes, is amended to read:

394 468.8311 Definitions.—As used in this part, the term:

395 (4) "Home inspection services" means a limited visual  
396 examination of ~~one or more of~~ the following readily accessible  
397 installed systems and components of a home: the structure,  
398 electrical system, HVAC system, roof covering, plumbing system,  
399 interior components, exterior components, and site conditions  
400 that affect the structure, for the purposes of providing a  
401 written professional opinion of the condition of the home.

402 Section 17. Subsections (5) through (8) of section  
403 468.8312, Florida Statutes, are renumbered as subsections (4)  
404 through (7), respectively, and present subsection (4) of that  
405 section is amended to read:

406 468.8312 Fees.—

407 ~~(4) The fee for a certificate of authorization shall not~~  
408 ~~exceed \$125.~~

409 Section 18. Subsections (1) and (2) of section 468.8313,  
410 Florida Statutes, are amended, and paragraph (d) is added to  
411 subsection (5) of that section, to read:

412 468.8313 Examinations.—

413 (1) A person desiring to be licensed as a home inspector  
414 must shall apply to the department after satisfying the  
415 examination requirements of this part ~~to take a licensure~~  
416 ~~examination.~~

417 (2) An applicant may ~~shall be entitled to take the~~  
418 ~~licensure examination for the purpose of determining whether he~~



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419 ~~or she is qualified to practice in this state as a home~~  
420 ~~inspector if he or she passes the required examination, the~~  
421 ~~applicant is of good moral character, and completes has~~  
422 ~~completed~~ a course of study of at least ~~no less than~~ 120 hours  
423 that covers all of the following components of a home:  
424 structure, electrical system, HVAC system, roof covering,  
425 plumbing system, interior components, exterior components, and  
426 site conditions that affect the structure.

427 (5)

428 (d) An applicant for a license shall submit, together with  
429 the application, a complete set of electronic fingerprints to  
430 the department. The department shall submit the fingerprints to  
431 the Department of Law Enforcement for state processing, and the  
432 Department of Law Enforcement shall forward the fingerprints to  
433 the Federal Bureau of Investigation for national processing, to  
434 determine whether the applicant has a criminal history record.  
435 The department shall review the background results to determine  
436 whether the applicant meets licensure requirements. The  
437 applicant is responsible for the costs associated with  
438 processing the fingerprints. The authorized agencies or vendors  
439 shall collect such fees and pay for the processing costs due to  
440 the Department of Law Enforcement.

441 Section 19. Section 468.8318, Florida Statutes, is amended  
442 to read:

443 468.8318 Certification of corporations and partnerships.—

444 ~~(1) The department shall issue a certificate of~~  
445 ~~authorization to a corporation or partnership offering home~~  
446 ~~inspection services to the public if the corporation or~~  
447 ~~partnership satisfies all of the requirements of this part.~~



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448           ~~(2)~~ The practice of or the offer to practice home  
449 inspection services by licensees through a corporation or  
450 partnership offering home inspection services to the public, or  
451 by a corporation or partnership offering such services to the  
452 public through licensees under this part as agents, employees,  
453 officers, or partners, is permitted subject to the provisions of  
454 this part, provided that all personnel of the corporation or  
455 partnership who act in its behalf as home inspectors in this  
456 state are licensed as provided by this part; ~~and further~~  
457 ~~provided that the corporation or partnership has been issued a~~  
458 ~~certificate of authorization by the department as provided in~~  
459 ~~this section.~~ Nothing in this section shall be construed to  
460 allow a corporation to hold a license to practice home  
461 inspection services. No corporation or partnership shall be  
462 relieved of responsibility for the conduct or acts of its  
463 agents, employees, or officers by reason of its compliance with  
464 this section, nor shall any individual practicing home  
465 inspection services be relieved of responsibility for  
466 professional services performed by reason of his or her  
467 employment or relationship with a corporation or partnership.

468           ~~(3)~~ ~~For the purposes of this section, a certificate of~~  
469 ~~authorization shall be required for a corporation, partnership,~~  
470 ~~association, or person practicing under a fictitious name and~~  
471 ~~offering home inspection services to the public; however, when~~  
472 ~~an individual is practicing home inspection services in his or~~  
473 ~~her own given name, he or she shall not be required to register~~  
474 ~~under this section.~~

475           ~~(4)~~ ~~Each certificate of authorization shall be renewed~~  
476 ~~every 2 years. Each partnership and corporation certified under~~



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477 ~~this section shall notify the department within 1 month of any~~  
478 ~~change in the information contained in the application upon~~  
479 ~~which the certification is based.~~

480 ~~(5) Disciplinary action against a corporation or~~  
481 ~~partnership shall be administered in the same manner and on the~~  
482 ~~same grounds as disciplinary action against a licensed home~~  
483 ~~inspector.~~

484 Section 20. Section 468.8319, Florida Statutes, is amended  
485 to read:

486 468.8319 Prohibitions; penalties.—

487 (1) A person ~~home inspector, a company that employs a home~~  
488 ~~inspector, or a company that is controlled by a company that~~  
489 ~~also has a financial interest in a company employing a home~~  
490 ~~inspector~~ may not:

491 (a) Effective July 1, 2011, practice or offer to practice  
492 home inspection services unless the person has complied with the  
493 provisions of this part;

494 (b) Effective July 1, 2011, use the name or title  
495 "certified home inspector," "registered home inspector,"  
496 "licensed home inspector," "home inspector," "professional home  
497 inspector," or any combination thereof unless the person has  
498 complied with the provisions of this part;

499 (c) Present as his or her own the license of another;

500 (d) Knowingly give false or forged evidence to the  
501 department or an employee thereof;

502 (e) Use or attempt to use a license that has been suspended  
503 or revoked;

504 (f) Perform or offer to perform, ~~prior to closing, for any~~  
505 ~~additional fee,~~ any repairs to a home on which the inspector or



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506 the inspector's company has prepared a home inspection report.  
507 This paragraph does not apply to a home warranty company that is  
508 affiliated with or retains a home inspector to perform repairs  
509 pursuant to a claim made under a home warranty contract;

510 (g) Inspect ~~for a fee~~ any property in which the inspector  
511 or the inspector's company has any financial or transfer  
512 interest;

513 (h) Offer or deliver any compensation, inducement, or  
514 reward to any broker or agent therefor for the referral of the  
515 owner of the inspected property to the inspector or the  
516 inspection company; or

517 (i) Accept an engagement to make an omission or prepare a  
518 report in which the inspection itself, or the fee payable for  
519 the inspection, is contingent upon either the conclusions in the  
520 report, preestablished findings, or the close of escrow.

521 (2) Any person who is found to be in violation of any  
522 provision of this section commits a misdemeanor of the first  
523 degree, punishable as provided in s. 775.082 or s. 775.083.

524 (3) This section does not apply to unlicensed activity as  
525 described in paragraph (1)(a), paragraph (1)(b), or s. 455.228  
526 which occurs before July 1, 2011.

527 Section 21. Paragraph (j) is added to subsection (1) of  
528 section 468.832, Florida Statutes, to read:

529 468.832 Disciplinary proceedings.—

530 (1) The following acts constitute grounds for which the  
531 disciplinary actions in subsection (2) may be taken:

532 (j) Failing to meet any standard of practice adopted by  
533 rule of the department.

534 Section 22. Section 468.8324, Florida Statutes, is amended



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535 to read:

536 468.8324 Grandfather clause.--

537 (1) A person who performs home inspection services as  
538 defined in this part may qualify for licensure to be licensed by  
539 the department as a home inspector if the person submits his or  
540 her application to the department by March 1, 2011, whether  
541 postmarked or delivered by that date, and if the person: meets  
542 the licensure requirements of this part by July 1, 2010.

543 (a) Is certified as a home inspector by a state or national  
544 association that requires, for such certification, successful  
545 completion of a proctored examination on home inspection  
546 services and completes at least 14 hours of verifiable education  
547 on such services; or

548 (b) At the time of application, has at least 3 years of  
549 experience as a home inspector and completes at least 14 hours  
550 of verifiable education on home inspection services. To  
551 establish the 3 years of experience, an applicant must submit at  
552 least 120 home inspection reports prepared by the applicant.

553 (2) The department may investigate the validity of a home  
554 inspection report submitted under paragraph (1)(b) and, if the  
555 applicant submits a false report, may take disciplinary action  
556 against the applicant under s. 468.832(1)(e) or (g).

557 (3) An applicant may not qualify for licensure under this  
558 section if he or she has had a home inspector license or a  
559 license in any related field revoked at any time or suspended  
560 within the previous 5 years or has been assessed a fine that  
561 exceeds \$500 within the previous 5 years. For purposes of this  
562 subsection, a license in a related field includes, but is not  
563 limited to, licensure in real estate, construction, mold-related



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564 services, or building code administration or inspection.

565 (4) An applicant for licensure under this section must  
566 comply with the criminal history, good moral character, and  
567 insurance requirements of this part.

568 Section 23. Section 468.8325, Florida Statutes, is created  
569 to read:

570 468.8325 Rulemaking authority.—The department shall adopt  
571 rules to administer this part.

572 Section 24. Section 468.84, Florida Statutes, is amended to  
573 read:

574 468.84 Mold-related services licensing program; legislative  
575 purpose.—

576 (1) There is created within the department the mold-related  
577 services licensing program.

578 (2) The Legislature finds it necessary in the interest of  
579 the public safety and welfare, to prevent damage to real and  
580 personal property, to avert economic injury to the residents of  
581 this state, and to regulate persons and companies that hold  
582 themselves out to the public as qualified to perform mold-  
583 related services.

584 Section 25. Subsections (7) through (10) of section  
585 468.8412, Florida Statutes, are renumbered as subsections (6)  
586 through (9), respectively, and present subsection (6) of that  
587 section is amended to read:

588 468.8412 Fees.—

589 ~~(6) The fee for a biennial certificate of authorization~~  
590 ~~renewal shall not exceed \$400.~~

591 Section 26. Subsections (1) and (2) of section 468.8413,  
592 Florida Statutes, are amended, and paragraph (d) is added to



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593 subsection (4) of that section, to read:

594 468.8413 Examinations.—

595 (1) A person desiring to be licensed as a mold assessor or  
596 mold remediator must ~~shall~~ apply to the department after  
597 satisfying the examination requirements of this part ~~to take a~~  
598 ~~licensure examination.~~

599 (2) An applicant may ~~shall be entitled to take the~~  
600 ~~licensure examination to practice in this state as a mold~~  
601 ~~assessor or mold remediator if~~ he or she passes the required  
602 examination, the applicant is of good moral character, and  
603 completes ~~has satisfied~~ one of the following requirements:

604 (a)1. For a mold remediator, at least a 2-year associate of  
605 arts degree, or the equivalent, with at least 30 semester hours  
606 in microbiology, engineering, architecture, industrial hygiene,  
607 occupational safety, or a related field of science from an  
608 accredited institution and a minimum of 1 year of documented  
609 field experience in a field related to mold remediation; or

610 2. A high school diploma or the equivalent with a minimum  
611 of 4 years of documented field experience in a field related to  
612 mold remediation.

613 (b)1. For a mold assessor, at least a 2-year associate of  
614 arts degree, or the equivalent, with at least 30 semester hours  
615 in microbiology, engineering, architecture, industrial hygiene,  
616 occupational safety, or a related field of science from an  
617 accredited institution and a minimum of 1 year of documented  
618 field experience in conducting microbial sampling or  
619 investigations; or

620 2. A high school diploma or the equivalent with a minimum  
621 of 4 years of documented field experience in conducting



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622 microbial sampling or investigations.

623 (4)

624 (d) An applicant for a license shall submit, together with  
625 the application, a complete set of electronic fingerprints to  
626 the department. The department shall submit the fingerprints to  
627 the Department of Law Enforcement for state processing, and the  
628 Department of Law Enforcement shall forward the fingerprints to  
629 the Federal Bureau of Investigation for national processing, to  
630 determine whether the applicant has a criminal history record.  
631 The department shall review the background results to determine  
632 whether the applicant meets licensure requirements. The  
633 applicant is responsible for the costs associated with  
634 processing the fingerprints. The authorized agencies or vendors  
635 shall collect such fees and pay for the processing costs due to  
636 the Department of Law Enforcement.

637 Section 27. Subsection (3) of section 468.8414, Florida  
638 Statutes, is amended to read:

639 468.8414 Licensure.—

640 (3) The department shall certify as qualified for a license  
641 by endorsement an applicant who is of good moral character, who  
642 has the insurance coverage required under s. 468.8421, and who:

643 (a) Is qualified to take the examination as set forth in s.  
644 468.8413 and has passed a certification examination offered by a  
645 nationally recognized organization that certifies persons in the  
646 specialty of mold assessment or mold remediation that has been  
647 approved by the department as substantially equivalent to the  
648 requirements of this part and s. 455.217; or

649 (b) Holds a valid license to practice mold assessment or  
650 mold remediation issued by another state or territory of the



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651 United States if the criteria for issuance of the license were  
652 substantially the same as the licensure criteria that is  
653 established by this part as determined by the department.

654 Section 28. Section 468.8418, Florida Statutes, is amended  
655 to read:

656 468.8418 Certification of partnerships and corporations.—

657 ~~(1) The department shall issue a certificate of~~  
658 ~~authorization to a corporation or partnership offering mold~~  
659 ~~assessment or mold remediation services to the public if the~~  
660 ~~corporation or partnership satisfies all of the requirements of~~  
661 ~~this part.~~

662 ~~(2) The practice of or the offer to practice mold~~  
663 ~~assessment or mold remediation by licensees through a~~  
664 ~~corporation or partnership offering mold assessment or mold~~  
665 ~~remediation to the public, or by a corporation or partnership~~  
666 ~~offering such services to the public through licensees under~~  
667 ~~this part as agents, employees, officers, or partners, is~~  
668 ~~permitted subject to the provisions of this part, provided that~~  
669 ~~the corporation or partnership has been issued a certificate of~~  
670 ~~authorization by the department as provided in this section.~~  
671 Nothing in this section shall be construed to allow a  
672 corporation to hold a license to practice mold assessment or  
673 mold remediation. No corporation or partnership shall be  
674 relieved of responsibility for the conduct or acts of its  
675 agents, employees, or officers by reason of its compliance with  
676 this section, nor shall any individual practicing mold  
677 assessment or mold remediation be relieved of responsibility for  
678 professional services performed by reason of his or her  
679 employment or relationship with a corporation or partnership.



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680           ~~(3) For the purposes of this section, a certificate of~~  
681 ~~authorization shall be required for a corporation, partnership,~~  
682 ~~association, or person practicing under a fictitious name,~~  
683 ~~offering mold assessment or mold remediation; however, when an~~  
684 ~~individual is practicing mold assessment or mold remediation~~  
685 ~~under his or her own given name, he or she shall not be required~~  
686 ~~to register under this section.~~

687           ~~(4) Each certificate of authorization shall be renewed~~  
688 ~~every 2 years. Each partnership and corporation certified under~~  
689 ~~this section shall notify the department within 1 month of any~~  
690 ~~change in the information contained in the application upon~~  
691 ~~which the certification is based.~~

692           ~~(5) Disciplinary action against a corporation or~~  
693 ~~partnership shall be administered in the same manner and on the~~  
694 ~~same grounds as disciplinary action against a licensed mold~~  
695 ~~assessor or mold remediator.~~

696           Section 29. Section 468.8419, Florida Statutes, is amended  
697 to read:

698           468.8419 Prohibitions; penalties.—

699           (1) A person ~~mold assessor, a company that employs a mold~~  
700 ~~assessor, or a company that is controlled by a company that also~~  
701 ~~has a financial interest in a company employing a mold assessor~~  
702 may not:

703           (a) Effective July 1, 2011, perform or offer to perform any  
704 mold assessment unless the mold assessor has documented training  
705 in water, mold, and respiratory protection under s. 468.8414(2).

706           (b) Effective July 1, 2011, perform or offer to perform any  
707 mold assessment unless the person has complied with the  
708 provisions of this part.



709 (c) Use the name or title "certified mold assessor,"  
710 "registered mold assessor," "licensed mold assessor," "mold  
711 assessor," "professional mold assessor," or any combination  
712 thereof unless the person has complied with the provisions of  
713 this part.

714 (d) Perform or offer to perform any mold remediation to a  
715 structure on which the mold assessor or the mold assessor's  
716 company provided a mold assessment within the last 12 months.

717 (e) Inspect for a fee any property in which the assessor or  
718 the assessor's company has any financial or transfer interest.

719 (f) Accept any compensation, inducement, or reward from a  
720 mold remediator or mold remediator's company for the referral of  
721 any business to the mold remediator or the mold remediator's  
722 company.

723 (g) Offer any compensation, inducement, or reward to a mold  
724 remediator or mold remediator's company for the referral of any  
725 business from the mold remediator or the mold remediator's  
726 company.

727 (h) Accept an engagement to make an omission of the  
728 assessment or conduct an assessment in which the assessment  
729 itself, or the fee payable for the assessment, is contingent  
730 upon the conclusions of the assessment.

731 (2) A mold remediator, a company that employs a mold  
732 remediator, or a company that is controlled by a company that  
733 also has a financial interest in a company employing a mold  
734 remediator may not:

735 (a) Perform or offer to perform any mold remediation unless  
736 the remediator has documented training in water, mold, and  
737 respiratory protection under s. 468.8414(2).



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738 (b) Perform or offer to perform any mold remediation unless  
739 the person has complied with the provisions of this part.

740 (c) Use the name or title "certified mold remediator,"  
741 "registered mold remediator," "licensed mold remediator," "mold  
742 remediator," "professional mold remediator," or any combination  
743 thereof unless the person has complied with the provisions of  
744 this part.

745 (d) Perform or offer to perform any mold assessment to a  
746 structure on which the mold remediator or the mold remediator's  
747 company provided a mold remediation within the last 12 months.

748 (e) Remediate for a fee any property in which the mold  
749 remediator or the mold remediator's company has any financial or  
750 transfer interest.

751 (f) Accept any compensation, inducement, or reward from a  
752 mold assessor or mold assessor's company for the referral of any  
753 business from the mold assessor or the mold assessor's company.

754 (g) Offer any compensation, inducement, or reward to a mold  
755 assessor or mold assessor's company for the referral of any  
756 business from the mold assessor or the mold assessor's company.

757 (3) Any person who violates any provision of this section  
758 commits:

759 (a) A misdemeanor of the second degree for a first  
760 violation, punishable as provided in s. 775.082 or s. 775.083.

761 (b) A misdemeanor of the first degree for a second  
762 violation, punishable as provided in s. 775.082 or s. 775.083.

763 (c) A felony of the third degree for a third or subsequent  
764 violation, punishable as provided in s. 775.082, s. 775.083, or  
765 s. 775.084.

766 (4) This section does not apply to unlicensed activity as



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767 described in paragraphs (1)(a)-(d) or s. 455.228 which occurs  
768 before July 1, 2011.

769 Section 30. Paragraph (j) is added to subsection (1) of  
770 section 468.842, Florida Statutes, to read:

771 468.842 Disciplinary proceedings.—

772 (1) The following acts constitute grounds for which the  
773 disciplinary actions in subsection (2) may be taken:

774 (j) Failing to meet any standard of practice adopted by  
775 rule of the department.

776 Section 31. Subsection (1) of section 468.8421, Florida  
777 Statutes, is amended to read:

778 468.8421 Insurance.—

779 (1) A mold assessor shall maintain general liability and  
780 errors and omissions for both preliminary and postremediation  
781 mold assessment insurance coverage in an amount of at least \$1  
782 million not less than \$1,000,000.

783 Section 32. Section 468.8423, Florida Statutes, is amended  
784 to read:

785 468.8423 Grandfather clause.—

786 (1) A person who performs mold assessment or mold  
787 remediation as defined in this part may qualify for licensure to  
788 be licensed by the department as a mold assessor or mold  
789 remediator if the person submits his or her application to the  
790 department by March 1, 2011, whether postmarked or delivered by  
791 that date, and if the person: meets the licensure requirements  
792 of this part by July 1, 2010.

793 (a) Is certified as a mold assessor or mold remediator by a  
794 state or national association that requires, for such  
795 certification, successful completion of a proctored examination



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796 on mold assessment or mold remediation, as applicable, and  
797 completes at least 60 hours of education on mold assessment or  
798 at least 30 hours of education on mold remediation, as  
799 applicable; or

800 (b) At the time of application, has at least 3 years of  
801 experience as a mold assessor or mold remediator. To establish  
802 the 3 years of experience, an applicant must submit at least 40  
803 mold assessments or remediation invoices prepared by the  
804 applicant.

805 (2) The department may investigate the validity of a mold  
806 assessment or remediation invoice submitted under paragraph  
807 (1)(b) and, if the applicant submits a false assessment or  
808 invoice, may take disciplinary action against the applicant  
809 under s. 468.842(1)(e) or (g).

810 (3) An applicant may not qualify for licensure under this  
811 section if he or she has had a mold assessor or mold remediator  
812 license or a license in any related field revoked at any time or  
813 suspended within the previous 5 years or has been assessed a  
814 fine that exceeds \$500 within the previous 5 years. For purposes  
815 of this subsection, a license in a related field includes, but  
816 is not limited to, licensure in real estate, construction, home  
817 inspection, building code administration or inspection, or  
818 indoor air quality.

819 (4) An applicant for licensure under this section must  
820 comply with the good moral character and insurance requirements  
821 of this part.

822 Section 33. Section 468.8424, Florida Statutes, is created  
823 to read:

824 468.8424 Rulemaking authority.—The department shall adopt



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825 rules to administer this part.

826 Section 34. Subsection (2) and paragraph (a) of subsection  
827 (5) of section 474.203, Florida Statutes, are amended to read:

828 474.203 Exemptions.—This chapter shall not apply to:

829 (2) A person practicing as an intern or resident  
830 veterinarian who does not hold a valid license issued under this  
831 chapter and who is a graduate in training at a school or college  
832 of veterinary medicine located in this state and accredited by  
833 the American Veterinary Medical Association Council on Education  
834 or a school or college recognized by the American Veterinary  
835 Medical Association Commission for Foreign Veterinary Graduates.  
836 Such intern or resident must be a graduate of a school or  
837 college of veterinary medicine accredited by the American  
838 Veterinary Medical Association Council on Education or a school  
839 or college of veterinary medicine recognized by the Educational  
840 Commission for Foreign Veterinary Graduates of the American  
841 Veterinary Medical Association. This exemption expires when such  
842 intern or resident completes or is terminated from such  
843 training. Each school or college at which such intern or  
844 resident is in training shall, on July 1 of each year, provide  
845 the board with a written list of all such interns or residents  
846 designated for this exemption, and the school or college shall  
847 also notify the board of any additions or deletions to the list.

848 (5) (a) Any person, or the person's regular employee,  
849 administering to the ills or injuries of her or his own animals,  
850 including, but not limited to, castration, spaying, and  
851 dehorning of herd animals, unless title is ~~has been~~ transferred  
852 or employment provided for the purpose of circumventing this  
853 law. This exemption does ~~shall~~ not apply to any person licensed



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854 as a veterinarian in another state or foreign jurisdiction and  
855 is out-of-state veterinarians practicing temporarily in this the  
856 state. However, only a veterinarian may immunize or treat an  
857 animal for diseases which are communicable to humans and which  
858 are of public health significance.

859  
860 For the purposes of chapters 465 and 893, persons exempt  
861 pursuant to subsection (1), subsection (2), or subsection (4)  
862 are deemed to be duly licensed practitioners authorized by the  
863 laws of this state to prescribe drugs or medicinal supplies.

864 Section 35. Section 475.02, Florida Statutes, is amended to  
865 read:

866 475.02 Florida Real Estate Commission.—

867 (1) There is created within the department the Florida Real  
868 Estate Commission. The commission shall consist of seven members  
869 who shall be appointed by the Governor, subject to confirmation  
870 by the Senate. Four members must be licensed brokers, each of  
871 whom has held an active license for the 5 years preceding  
872 appointment; one member must be a licensed broker or a licensed  
873 sales associate who has held an active license for the 2 years  
874 preceding appointment; and two members must be persons who are  
875 not, and have never been, brokers or sales associates. At least  
876 one member of the commission must be 60 years of age or older.  
877 The current members may complete their present terms unless  
878 removed for cause.

879 (2) Members shall be appointed for 4-year terms.

880 (3) Notwithstanding s. 112.313, any member of the  
881 commission who is a licensed real estate broker or sales  
882 associate and who holds an active real estate school permit,



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883 chief administrator permit, school instructor permit, or any  
884 combination of such permits issued by the department, to the  
885 extent authorized pursuant to such permit, may offer, conduct,  
886 or teach any course prescribed or approved by the commission or  
887 the department.

888 Section 36. Paragraph (a) of subsection (1) of section  
889 475.175, Florida Statutes, is amended to read:

890 475.175 Examinations.—

891 (1) A person shall be entitled to take the license  
892 examination to practice in this state if the person:

893 (a) Submits to the department the appropriate signed or  
894 electronically authenticated application, digital fingerprint  
895 data, and fee, and a fingerprint card. The digital fingerprints  
896 fingerprint card shall be forwarded to the Division of Criminal  
897 Justice Information Systems within the Department of Law  
898 Enforcement for purposes of processing the fingerprints  
899 fingerprint card to determine if the applicant has a criminal  
900 history record. The fingerprints fingerprint card shall also be  
901 forwarded to the Federal Bureau of Investigation for purposes of  
902 processing the fingerprints fingerprint card to determine if the  
903 applicant has a criminal history record. The information  
904 obtained by the processing of the fingerprints fingerprint card  
905 by the ~~Florida~~ Department of Law Enforcement and the Federal  
906 Bureau of Investigation shall be sent to the department for the  
907 purpose of determining if the applicant is statutorily qualified  
908 for examination. ~~Effective July 1, 2006, an applicant shall~~  
909 ~~provide fingerprints in electronic format.~~

910 Section 37. Section 475.613, Florida Statutes, is amended  
911 to read:



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912 475.613 Florida Real Estate Appraisal Board.—

913 (1) There is created the Florida Real Estate Appraisal  
914 Board, which shall consist of seven members appointed by the  
915 Governor, subject to confirmation by the Senate. Four members of  
916 the board must be real estate appraisers who have been engaged  
917 in the general practice of appraising real property in this  
918 state for at least 5 years immediately preceding appointment. In  
919 appointing real estate appraisers to the board, while not  
920 excluding other appraisers, the Governor shall give preference  
921 to real estate appraisers who are not primarily engaged in real  
922 estate brokerage or mortgage lending activities. One member of  
923 the board must represent organizations that use appraisals for  
924 the purpose of eminent domain proceedings, financial  
925 transactions, or mortgage insurance. Two members of the board  
926 shall be representatives of the general public and shall not be  
927 connected in any way with the practice of real estate appraisal,  
928 ~~real estate brokerage, or mortgage lending.~~ The appraiser  
929 members shall be as representative of the entire industry as  
930 possible, and membership in a nationally recognized or state-  
931 recognized appraisal organization shall not be a prerequisite to  
932 membership on the board. To the extent possible, no more than  
933 two members of the board shall be primarily affiliated with any  
934 one particular national or state appraisal association. Two of  
935 the members must be licensed or certified residential real  
936 estate appraisers and two of the members must be certified  
937 general real estate appraisers at the time of their appointment.

938 (a) Members of the board shall be appointed for 4-year  
939 terms. Any vacancy occurring in the membership of the board  
940 shall be filled by appointment by the Governor for the unexpired



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941 term. Upon expiration of her or his term, a member of the board  
942 shall continue to hold office until the appointment and  
943 qualification of the member's successor. A member may not be  
944 appointed for more than two consecutive terms. The Governor may  
945 remove any member for cause.

946 (b) The headquarters for the board shall be in Orlando.

947 (c) The board shall meet at least once each calendar  
948 quarter to conduct its business.

949 (d) The members of the board shall elect a chairperson at  
950 the first meeting each year.

951 (e) Each member of the board is entitled to per diem and  
952 travel expenses as set by legislative appropriation for each day  
953 that the member engages in the business of the board.

954 (2) The board shall have, through its rules, full power to  
955 regulate the issuance of licenses, certifications,  
956 registrations, and permits; to discipline appraisers in any  
957 manner permitted under this section; to establish qualifications  
958 for licenses, certifications, registrations, and permits  
959 consistent with this section; to regulate approved courses; to  
960 establish standards for real estate appraisals; and to establish  
961 standards for and regulate supervisory appraisers.

962 (3) Notwithstanding s. 112.313, any member of the board who  
963 is a licensed or certified real estate appraiser and who holds  
964 an active appraiser instructor permit issued by the department,  
965 to the extent authorized pursuant to such permit, may offer,  
966 conduct, or teach any course prescribed or approved by the board  
967 or the department.

968 Section 38. Subsections (4) through (8) of section 477.019,  
969 Florida Statutes, are renumbered as subsections (3) through (7),



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970 respectively, and paragraph (c) of subsection (2) and present  
971 subsection (3) of that section are amended to read:

972 477.019 Cosmetologists; qualifications; licensure;  
973 supervised practice; license renewal; endorsement; continuing  
974 education.—

975 (2) An applicant shall be eligible for licensure by  
976 examination to practice cosmetology if the applicant:

977 (c)1. Is authorized to practice cosmetology in another  
978 state or country, has been so authorized for at least 1 year,  
979 and does not qualify for licensure by endorsement as provided  
980 for in subsection (5) ~~(6)~~; or

981 2. Has received a minimum of 1,200 hours of training as  
982 established by the board, which shall include, but shall not be  
983 limited to, the equivalent of completion of services directly  
984 related to the practice of cosmetology at one of the following:

985 a. A school of cosmetology licensed pursuant to chapter  
986 1005.

987 b. A cosmetology program within the public school system.

988 c. The Cosmetology Division of the Florida School for the  
989 Deaf and the Blind, provided the division meets the standards of  
990 this chapter.

991 d. A government-operated cosmetology program in this state.

992  
993 The board shall establish by rule procedures whereby the school  
994 or program may certify that a person is qualified to take the  
995 required examination after the completion of a minimum of 1,000  
996 actual school hours. If the person then passes the examination,  
997 he or she shall have satisfied this requirement; but if the  
998 person fails the examination, he or she shall not be qualified



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999 to take the examination again until the completion of the full  
1000 requirements provided by this section.

1001 ~~(3) An application for the licensure examination for any~~  
1002 ~~license under this section may be submitted for examination~~  
1003 ~~approval in the last 100 hours of training by a pregraduate of a~~  
1004 ~~licensed cosmetology school or a program within the public~~  
1005 ~~school system, which school or program is certified by the~~  
1006 ~~Department of Education with fees as required in paragraph~~  
1007 ~~(2) (b). Upon approval, the applicant may schedule the~~  
1008 ~~examination on a date when the training hours are completed. An~~  
1009 ~~applicant shall have 6 months from the date of approval to take~~  
1010 ~~the examination. After the 6 months have passed, if the~~  
1011 ~~applicant failed to take the examination, the applicant must~~  
1012 ~~reapply. The board shall establish by rule the procedures for~~  
1013 ~~the pregraduate application process.~~

1014 Section 39. Subsection (4) of section 509.211, Florida  
1015 Statutes, is amended to read:

1016 509.211 Safety regulations.—

1017 (4) Every enclosed space or room that contains a boiler  
1018 regulated under chapter 554 which is fired by the direct  
1019 application of energy from the combustion of fuels and that is  
1020 located in any portion of a public lodging establishment that  
1021 also contains sleeping rooms shall be equipped with one or more  
1022 carbon monoxide sensor devices that bear the label of a  
1023 nationally recognized testing laboratory and have been tested  
1024 and listed as complying with the most recent Underwriters  
1025 Laboratories, Inc., Standard 2034, or its equivalent, unless it  
1026 is determined that carbon monoxide hazards have otherwise been  
1027 adequately mitigated as determined by the Division of State Fire



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1028 Marshal of the Department of Financial Services. Such devices  
1029 shall be integrated with the public lodging establishment's fire  
1030 detection system. Any such installation or determination shall  
1031 be made in accordance with rules adopted by the Division of  
1032 State Fire Marshal.

1033 Section 40. Section 548.076, Florida Statutes, is created  
1034 to read:

1035 548.076 Cease and desist notices.—When the department has  
1036 probable cause to believe that any person not licensed by the  
1037 commission has violated any provision of this chapter, or any  
1038 rule adopted pursuant thereto, the department may issue and  
1039 deliver to such person a notice to cease and desist from such  
1040 violation. The department shall issue and enforce such cease and  
1041 desist notices in accordance with s. 455.228.

1042 Section 41. Subsection (1) of section 561.17, Florida  
1043 Statutes, is amended to read:

1044 561.17 License and registration applications; approved  
1045 person.—

1046 (1) Any person, before engaging in the business of  
1047 manufacturing, bottling, distributing, selling, or in any way  
1048 dealing in alcoholic beverages, shall file, with the district  
1049 licensing personnel of the district of the division in which the  
1050 place of business for which a license is sought is located, a  
1051 sworn application in the format prescribed ~~duplicate on forms~~  
1052 ~~provided to the district licensing personnel~~ by the division.  
1053 The applicant must be a legal or business entity, person, or  
1054 persons and must include all persons, officers, shareholders,  
1055 and directors of such legal or business entity that have a  
1056 direct or indirect interest in the business seeking to be



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1057 licensed under this part. However, the applicant does not  
1058 include any person that derives revenue from the license solely  
1059 through a contractual relationship with the licensee, the  
1060 substance of which contractual relationship is not related to  
1061 the control of the sale of alcoholic beverages. ~~Before~~ Prior to  
1062 any application is being approved, the division may require the  
1063 applicant to file a set of fingerprints on regular United States  
1064 Department of Justice forms for herself or himself and for any  
1065 person or persons interested directly or indirectly with the  
1066 applicant in the business for which the license is being sought,  
1067 when ~~se~~ required by the division. If the applicant or any person  
1068 who is interested with the applicant either directly or  
1069 indirectly in the business or who has a security interest in the  
1070 license being sought or has a right to a percentage payment from  
1071 the proceeds of the business, either by lease or otherwise, is  
1072 not qualified, the division shall deny the application ~~shall be~~  
1073 ~~denied by the division~~. However, any company regularly traded on  
1074 a national securities exchange and not over the counter; any  
1075 insurer, as defined in the Florida Insurance Code; or any bank  
1076 or savings and loan association chartered by this state, another  
1077 state, or the United States which has an interest, directly or  
1078 indirectly, in an alcoholic beverage license is ~~shall not be~~  
1079 required to obtain the division's ~~division~~ approval of its  
1080 officers, directors, or stockholders or any change of such  
1081 positions or interests. A shopping center with five or more  
1082 stores, one or more of which has an alcoholic beverage license  
1083 and is required under a lease common to all shopping center  
1084 tenants to pay no more than 10 percent of the gross proceeds of  
1085 the business holding the license to the shopping center, is



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1086 shall not be considered as having an interest, directly or  
1087 indirectly, in the license.

1088 Section 42. For the purpose of incorporating the amendment  
1089 made by this act to section 455.227, Florida Statutes, in a  
1090 reference thereto, paragraph (a) of subsection (2) of section  
1091 468.436, Florida Statutes, is reenacted to read:

1092 468.436 Disciplinary proceedings.—

1093 (2) The following acts constitute grounds for which the  
1094 disciplinary actions in subsection (4) may be taken:

1095 (a) Violation of any provision of s. 455.227(1).

1096 Section 43. For the purpose of incorporating the amendment  
1097 made by this act to section 455.227, Florida Statutes, in a  
1098 reference thereto, paragraph (a) of subsection (1) of section  
1099 468.832, Florida Statutes, is reenacted to read:

1100 468.832 Disciplinary proceedings.—

1101 (1) The following acts constitute grounds for which the  
1102 disciplinary actions in subsection (2) may be taken:

1103 (a) Violation of any provision of this part or s.  
1104 455.227(1);

1105 Section 44. For the purpose of incorporating the amendment  
1106 made by this act to section 455.227, Florida Statutes, in a  
1107 reference thereto, paragraph (a) of subsection (1) of section  
1108 468.842, Florida Statutes, is reenacted to read:

1109 468.842 Disciplinary proceedings.—

1110 (1) The following acts constitute grounds for which the  
1111 disciplinary actions in subsection (2) may be taken:

1112 (a) Violation of any provision of this part or s.  
1113 455.227(1);

1114 Section 45. For the purpose of incorporating the amendment



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1115 made by this act to section 455.227, Florida Statutes, in a  
1116 reference thereto, paragraph (a) of subsection (1) of section  
1117 471.033, Florida Statutes, is reenacted to read:

1118 471.033 Disciplinary proceedings.—

1119 (1) The following acts constitute grounds for which the  
1120 disciplinary actions in subsection (3) may be taken:

1121 (a) Violating any provision of s. 455.227(1), s. 471.025,  
1122 or s. 471.031, or any other provision of this chapter or rule of  
1123 the board or department.

1124 Section 46. For the purpose of incorporating the amendment  
1125 made by this act to section 455.227, Florida Statutes, in a  
1126 reference thereto, paragraph (a) of subsection (1) of section  
1127 473.323, Florida Statutes, is reenacted to read:

1128 473.323 Disciplinary proceedings.—

1129 (1) The following acts constitute grounds for which the  
1130 disciplinary actions in subsection (3) may be taken:

1131 (a) Violation of any provision of s. 455.227(1) or any  
1132 other provision of this chapter.

1133 Section 47. For the purpose of incorporating the amendment  
1134 made by this act to section 455.227, Florida Statutes, in a  
1135 reference thereto, paragraph (a) of subsection (1) of section  
1136 475.25, Florida Statutes, is reenacted to read:

1137 475.25 Discipline.—

1138 (1) The commission may deny an application for licensure,  
1139 registration, or permit, or renewal thereof; may place a  
1140 licensee, registrant, or permittee on probation; may suspend a  
1141 license, registration, or permit for a period not exceeding 10  
1142 years; may revoke a license, registration, or permit; may impose  
1143 an administrative fine not to exceed \$5,000 for each count or



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1144 separate offense; and may issue a reprimand, and any or all of  
1145 the foregoing, if it finds that the licensee, registrant,  
1146 permittee, or applicant:

1147 (a) Has violated any provision of s. 455.227(1) or s.  
1148 475.42. However, licensees under this part are exempt from the  
1149 provisions of s. 455.227(1)(i).

1150 Section 48. For the purpose of incorporating the amendment  
1151 made by this act to section 455.227, Florida Statutes, in a  
1152 reference thereto, subsection (1) of section 475.624, Florida  
1153 Statutes, is reenacted to read:

1154 475.624 Discipline.—The board may deny an application for  
1155 registration or certification; may investigate the actions of  
1156 any appraiser registered, licensed, or certified under this  
1157 part; may reprimand or impose an administrative fine not to  
1158 exceed \$5,000 for each count or separate offense against any  
1159 such appraiser; and may revoke or suspend, for a period not to  
1160 exceed 10 years, the registration, license, or certification of  
1161 any such appraiser, or place any such appraiser on probation, if  
1162 it finds that the registered trainee, licensee, or  
1163 certificateholder:

1164 (1) Has violated any provisions of this part or s.  
1165 455.227(1); however, certificateholders, registrants, and  
1166 licensees under this part are exempt from the provisions of s.  
1167 455.227(1)(i).

1168 Section 49. For the purpose of incorporating the amendment  
1169 made by this act to section 455.227, Florida Statutes, in a  
1170 reference thereto, paragraph (h) of subsection (1) of section  
1171 476.204, Florida Statutes, is reenacted to read:

1172 476.204 Penalties.—



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1173 (1) It is unlawful for any person to:

1174 (h) Violate any provision of s. 455.227(1), s. 476.194, or  
1175 s. 476.214.

1176 Section 50. For the purpose of incorporating the amendment  
1177 made by this act to section 455.227, Florida Statutes, in a  
1178 reference thereto, paragraph (h) of subsection (1) of section  
1179 477.029, Florida Statutes, is reenacted to read:

1180 477.029 Penalty.—

1181 (1) It is unlawful for any person to:

1182 (h) Violate any provision of s. 455.227(1), s. 477.0265, or  
1183 s. 477.028.

1184 Section 51. For the purpose of incorporating the amendment  
1185 made by this act to section 455.227, Florida Statutes, in a  
1186 reference thereto, paragraph (a) of subsection (1) of section  
1187 481.225, Florida Statutes, is reenacted to read:

1188 481.225 Disciplinary proceedings against registered  
1189 architects.—

1190 (1) The following acts constitute grounds for which the  
1191 disciplinary actions in subsection (3) may be taken:

1192 (a) Violating any provision of s. 455.227(1), s. 481.221,  
1193 or s. 481.223, or any rule of the board or department lawfully  
1194 adopted pursuant to this part or chapter 455.

1195 Section 52. For the purpose of incorporating the amendment  
1196 made by this act to section 455.227, Florida Statutes, in a  
1197 reference thereto, paragraph (a) of subsection (1) of section  
1198 481.325, Florida Statutes, is reenacted to read:

1199 481.325 Disciplinary proceedings.—

1200 (1) The following acts constitute grounds for which the  
1201 disciplinary actions in subsection (3) may be taken:



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1202 (a) Violation of any provision of s. 455.227(1), s.  
1203 481.321, or s. 481.323.

1204 Section 53. For the purpose of incorporating the amendment  
1205 made by this act to section 468.832, Florida Statutes, in a  
1206 reference thereto, subsection (2) of section 468.8314, Florida  
1207 Statutes, is reenacted to read:

1208 468.8314 Licensure.—

1209 (2) The department shall certify for licensure any  
1210 applicant who satisfies the requirements of s. 468.8313 and who  
1211 has passed the licensing examination. The department may refuse  
1212 to certify any applicant who has violated any of the provisions  
1213 of s. 468.832.

1214 Section 54. This act shall take effect July 1, 2010.

1215

1216 ===== T I T L E A M E N D M E N T =====

1217 And the title is amended as follows:

1218 Delete everything before the enacting clause  
1219 and insert:

1220 A bill to be entitled

1221 An act relating to the Department of Business and  
1222 Professional Regulation; amending s. 20.165, F.S.;  
1223 assigning certain programs to regulation by the  
1224 department's Division of Professions; amending ss.  
1225 215.37 and 455.017, F.S.; specifying that the  
1226 department is responsible for the regulation of  
1227 certain professions; amending s. 322.142, F.S.;  
1228 authorizing the Department of Highway Safety and Motor  
1229 Vehicles to issue reproductions of driver's licenses  
1230 to the Department Business and Professional Regulation



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1231 pursuant to an interagency agreement for a specified  
1232 purpose; amending s. 455.02, F.S.; authorizing the  
1233 temporary professional licensure of the spouses of  
1234 active duty members of the United States Armed Forces  
1235 under certain circumstances; providing application  
1236 requirements; requiring criminal history checks and  
1237 fees; creating s. 455.2122, F.S.; authorizing distance  
1238 learning courses to satisfy certain licensing  
1239 education requirements for community association  
1240 managers and real estate brokers and sales associates;  
1241 prohibiting requirements for centralized examinations  
1242 to complete such education requirements; amending s.  
1243 455.2123, F.S.; authorizing distance learning courses  
1244 to satisfy certain continuing education requirements  
1245 for community association managers, home inspectors,  
1246 mold assessors and remediators, and real estate  
1247 brokers, sales associates, and appraisers; prohibiting  
1248 requirements for centralized examinations to complete  
1249 such education requirements; amending s. 455.213,  
1250 F.S.; requiring a licensee to surrender his or her  
1251 license under certain circumstances; amending s.  
1252 455.217, F.S.; revising the departmental unit  
1253 responsible for administration of certain  
1254 examinations; limiting an applicant's review of failed  
1255 examination questions; amending s. 455.2175, F.S.;  
1256 prohibiting an examinee whose examination materials  
1257 are confiscated from taking another examination under  
1258 certain circumstances; repealing s. 455.2226, F.S.,  
1259 relating to continuing education courses on HIV and



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1260 AIDS required for licensees and certificateholders  
1261 under the Florida Funeral, Cemetery, and Consumer  
1262 Services Act; amending s. 455.227, F.S.; revising  
1263 grounds for the discipline of professional licensees;  
1264 providing penalties; amending s. 455.228, F.S.;  
1265 revising terminology for cease and desist notices;  
1266 amending s. 455.275, F.S.; providing for the service  
1267 of administrative complaints on certain licensees and  
1268 publication of certain notices; amending s. 468.83,  
1269 F.S.; creating the home inspection services licensing  
1270 program within the department; amending s. 468.8311,  
1271 F.S.; revising the definition of the term "home  
1272 inspection services" for purposes of provisions  
1273 regulating home inspectors; amending s. 468.8312,  
1274 F.S.; deleting limits on fees for certificates of  
1275 authorization to conform to changes made by the act;  
1276 amending s. 468.8313, F.S.; requiring home inspector  
1277 license applicants to satisfy certain examination  
1278 requirements before application for licensure;  
1279 requiring criminal history checks and fees; amending  
1280 s. 468.8318, F.S.; deleting requirements for  
1281 certificates of authorization for corporations or  
1282 partnerships offering home inspection services;  
1283 amending s. 468.8319, F.S.; prohibiting certain acts  
1284 relating to home inspection services; delaying  
1285 implementation of certain prohibited acts; providing  
1286 penalties; exempting from punishment certain  
1287 unlicensed activity occurring before a specified date;  
1288 amending s. 468.832, F.S.; providing an additional



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1289 ground for discipline of licensed home inspectors;  
1290 amending s. 468.8324, F.S.; extending the time for  
1291 licensure of home inspectors under certain grandfather  
1292 provisions; revising the licensing criteria for such  
1293 provisions; authorizing the department to investigate  
1294 the validity of home inspection reports submitted for  
1295 licensure under the grandfather provisions; providing  
1296 penalties for the submission of false reports;  
1297 creating s. 468.8325, F.S.; requiring the department  
1298 to adopt rules; amending s. 468.84, F.S.; creating the  
1299 mold-related services licensing program within the  
1300 department; amending s. 468.8412, F.S.; deleting  
1301 limits on fees for certificates of authorization to  
1302 conform to changes made by the act; amending s.  
1303 468.8413, F.S.; requiring mold assessor and mold  
1304 remediator license applicants to satisfy certain  
1305 examination requirements before application for  
1306 licensure; revising the educational requirements for  
1307 licensure as a mold assessor or mold remediator;  
1308 requiring criminal history checks and fees; amending  
1309 s. 468.8414, F.S.; specifying that certain insurance  
1310 coverage is required for licensure by endorsement;  
1311 amending s. 468.8418, F.S.; deleting requirements for  
1312 certificates of authorization for corporations or  
1313 partnerships offering mold-related services; amending  
1314 s. 468.8419, F.S.; prohibiting certain acts relating  
1315 to mold assessment and remediation; delaying  
1316 implementation of certain prohibited acts; providing  
1317 penalties; exempting from punishment certain



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1318 unlicensed activity occurring before a specified date;  
1319 amending s. 468.842, F.S.; providing an additional  
1320 ground for discipline of licensed mold assessors and  
1321 mold remediators; amending s. 468.8421, F.S.; revising  
1322 insurance coverage requirements for mold assessors;  
1323 amending s. 468.8423, F.S.; extending the time for  
1324 licensure of mold assessors and mold remediators under  
1325 certain grandfather provisions; revising the licensing  
1326 criteria for such provisions; authorizing the  
1327 department to investigate the validity of mold  
1328 assessments and remediation invoices submitted for  
1329 licensure under the grandfather provisions; providing  
1330 penalties for the submission of false assessments or  
1331 invoices; creating s. 468.8424, F.S.; requiring the  
1332 department to adopt rules; amending s. 474.203, F.S.;  
1333 revising certain exemptions from regulation of  
1334 veterinary medical practice; amending s. 475.02, F.S.;  
1335 authorizing certain members of the Florida Real Estate  
1336 Commission to offer, conduct, and teach courses  
1337 prescribed or approved by the commission or the  
1338 department; amending s. 475.175, F.S.; revising the  
1339 application and fingerprint requirements for real  
1340 estate broker and sales associate licenses; deleting a  
1341 requirement that license applicants provide  
1342 fingerprints in an electronic format; amending s.  
1343 475.613, F.S.; revising qualifications of members of  
1344 the Florida Real Estate Appraisal Board; authorizing  
1345 certain board members to offer, conduct, and teach  
1346 courses prescribed or approved by the board or the



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1347 department; amending s. 477.019, F.S.; deleting time  
1348 limits for cosmetology license applicants to take the  
1349 licensure examination; conforming a cross-reference;  
1350 amending s. 509.211, F.S.; assigning responsibility  
1351 for the regulation of carbon monoxide hazards in  
1352 certain public lodging establishments to the Division  
1353 of State Fire Marshal of the Department of Financial  
1354 Services; creating s. 548.076, F.S.; authorizing the  
1355 Department of Business and Professional Regulation to  
1356 issue and enforce notices to cease and desist from  
1357 violations of provisions regulating pugilistic  
1358 exhibitions; providing penalties; amending s. 561.17,  
1359 F.S.; revising application requirements for alcoholic  
1360 beverage licenses; reenacting ss. 468.436(2)(a),  
1361 468.832(1)(a), 468.842(1)(a), 471.033(1)(a),  
1362 473.323(1)(a), 475.25(1)(a), 475.624(1),  
1363 476.204(1)(h), 477.029(1)(h), 481.225(1)(a), and  
1364 481.325(1)(a), F.S., relating to disciplinary  
1365 proceedings for community association managers, home  
1366 inspectors, mold assessors, mold remediators,  
1367 engineers, certified public accountants, real estate  
1368 brokers and sales associates, real estate appraisers,  
1369 barbers, cosmetologists, architects, and landscape  
1370 architects, to incorporate the amendment made to s.  
1371 455.227, F.S., in references thereto; reenacting s.  
1372 468.8314(2), F.S., relating to the licensure of home  
1373 inspectors, to incorporate the amendment made to s.  
1374 468.832, F.S., in a reference thereto; providing an  
1375 effective date.

The Florida Senate  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the General Government Appropriations Committee

BILL: CS/SB 2074

INTRODUCER: Agriculture Committee and Senator Peaden

SUBJECT: Agriculture

DATE: April 15, 2010

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Poole	AG	<b>Fav/CS</b>
2.	Wolfgang	Yeatman	CA	<b>Favorable</b>
3.		Burgess	BI	<b>Withdrawn</b>
4.	Fournier	McKee	FT	<b>Favorable</b>
5.	Blizzard	DeLoach	GA	<b>Pre-meeting</b>
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

This bill includes the following provisions related to agriculture.

- Prohibits counties from enforcing any regulations on land classified as agricultural if the activity is regulated by best management practices, interim measures, or regulations adopted as rules under chapter 120, Florida Statutes.
- Prohibits counties from imposing an assessment or fee for stormwater management on land classified as agricultural if the operation has a National Pollutant Discharge Elimination System permit, an environmental resource permit, a works-of-the-district permit, or implements best management practices.
- Allows a county to enforce its wetland protection acts adopted before July 1, 2003.
- Creates the Agricultural Land Acknowledgement Act to ensure that agricultural practices will not be subject to interference by residential use of land contiguous to agricultural land.
- Requires an applicant for certain development permits to sign and submit an acknowledgement of certain contiguous agricultural lands as a condition of the political subdivision issuing the permits.
- Expands eligibility for exemption from a local business tax for persons who sell farm, aquacultural, grove, horticultural, floricultural, or tropical fish farm products.

- Expands the definition of “farm tractor” to include any motor vehicle that is operated principally on a farm, grove, or orchard in agricultural or horticultural pursuits and that is operated on the roads of this state only incidentally to transportation between the owner’s or operator’s headquarters and the farm, grove, or orchard or between one farm, grove, or orchard and another.
- Reverses legislation enacted in 2005 to return tropical foliage to exempt status from the provisions of the License and Bond law.
- Exempts farm fences from the Florida Building Code and expands the definition of nonresidential farm buildings that are exempt from county or municipal codes and fees.
- Allows additional fiscally sound multi-peril crop insurers to sell crop insurance in Florida.
- Makes section 823.145, Florida Statutes, consistent with section 403.707, Florida Statutes, relating to the disposal of certain materials used in agricultural operations.

The Revenue Estimating Conference estimates this bill has a negative but indeterminate fiscal impact on local government revenue through the reduction of assessments, fees and local business taxes. Licensing revenue in the General Inspection Trust Fund within the Department of Agriculture and Consumer Services is also reduced by an insignificant amount.

The bill substantially amends the following sections of the Florida Statutes: 163.3162, 205.064, 322.01, 604.15, 604.50, 624.4095 and 823.145.

The bill creates section 163.3163, Florida Statutes.

## **II. Present Situation:**

### **Agricultural Lands and Practices Act**

In 2003, the Legislature passed the Agricultural Lands and Practices Act, codified in s. 163.3162, F.S., to prohibit counties from adopting any duplicative ordinance, resolution, regulation, rule, or policy that limits activity of a bona fide farm or farm operation on agricultural land if such activity is regulated through best management practices (BMPs), interim measures, or by an existing state, regional, or federal regulatory program. Prior to the enactment of this legislation, some counties had enacted measures to regulate various agricultural operations in the state which were duplicative and more restrictive than those already dictated through BMPs or an existing governmental regulatory program. While the Agricultural Land and Practices Act banned the adoption of future local government restrictive measures, it did not explicitly prohibit the enforcement of existing local government measures.

### **Stormwater Utility Fees**

A number of counties have adopted stormwater utility fees to provide a funding source for stormwater management and water quality programs, and have imposed these fees on agricultural lands even though the land owner has a permitted stormwater management system or has implemented BMPs. The revenue generated directly supports maintenance and upgrade of existing storm drain systems, development of drainage plans, flood control measures, water-quality programs, administrative costs, and sometimes construction of major capital improvements. Unlike a stormwater program that draws on the general tax fund or uses property

taxes for revenue, the people who benefit from stormwater utility fees are the only ones who pay. This may create a duplicative financial burden for the agricultural operation that is already paying to manage its own permitted stormwater management system, yet has to pay again for a county program.

### **Right to Farm Act**

Section 823.14, F.S., also known as the Florida Right to Farm Act (RTFA), has been law since 1979. In the RTFA, the Legislature recognized the importance of agricultural production to Florida's economy and the importance of the preservation of agriculture. The Legislature found that agricultural activities in urban areas are potential grounds for lawsuits based on the theory of nuisance. The purpose of the RTFA was to protect reasonable agricultural activities on farm land from nuisance suits. Generally, no farm in operation for a year or more since its established date of operation, which was not a nuisance at the established date of operation, can be a public or private nuisance if the farm operations conform to generally accepted agricultural and management practices. If an existing farm's operations expand to a more excessive operation with regard to noise, odor, dust, or fumes, it can be considered a nuisance if it is adjacent to an established homestead or business as of March 15, 1982. Growers and farmers report that the RTFA has not stopped neighbors and local governments from leveling complaints and making attempts to obstruct agriculture operations. There is further conflict in some instances when there is a lack of record as to whether the farming operation or the urban area was in existence first.

### **Local Business Tax**

Section 205.022, F.S., defines "person" to mean any individual, firm, partnership, joint adventure, syndicate, or other group or combination acting as a unit, association, corporation, estate, trust, business trust, trustee, executor, administrator, receiver, or other fiduciary, and includes the plural as well as the singular. Section 205.064, F.S., provides an exemption from local business taxes to "natural persons" engaged in the selling of certain agricultural products. Currently, cities and one county are interpreting the term "natural person" to exclude corporations, partnerships and other non-natural persons for exemption purposes.

### **Dealers in Agricultural Products**

The Agricultural License and Bond Law, ss. 604.15-604.34, F.S., gives market protection to producers of perishable agricultural commodities. The law is intended to facilitate the marketing of Florida agricultural products by encouraging a better understanding between buyers and sellers and by providing a marketplace that is relatively free of unfair trading practices and defaults. In the 2005 Legislative Session, the definition of the term "agricultural products" was amended to include tropical foliage as a non-exempt agricultural product produced in the state. Until that point, tropical foliage had been exempt from the provisions of the law. For the most part, agricultural products considered exempt from the law are generally those offered by the growers or groups of growers selling their own products; all persons who buy for cash and pay at the time of purchase with U.S. currency; dealers operating as bonded licensees under the Federal Packers and Stockyards Act; or retail operations purchasing less than \$1,000 in product per month from Florida producers. Due to the manner by which the foliage business is conducted,

the change has not been proven beneficial to the foliage industry and it has requested a reenactment of the exemption.

### **Nonresidential Farm Buildings**

Sections 553.73 and 604.50, F.S., exempt nonresidential farm buildings located on a farm from the Florida Building Code and any county or municipal building code, making building permits unnecessary for such buildings. In 1974, the Legislature established statewide standards known as the State Minimum Building Codes, and in 1998, the Legislature created a statewide unified building code.<sup>1</sup> Nonresidential farm buildings have been exempt from building codes since 1998. In 2001, Attorney General Robert Butterworth opined:

The plain language of sections 553.73(7)(c)<sup>2</sup> and 604.50, Florida Statutes, exempts all nonresidential buildings located on a farm from state and local building codes. Thus, to the extent that the State Minimum Building Codes require an individual to obtain a permit for the construction, alteration, repair, or demolition of a building or structure, no such permits are required for nonresidential buildings located on a farm.<sup>3</sup>

Despite the Attorney General Opinion, there have been instances of some counties and municipalities assessing fees and requiring permits for nonresidential buildings, even though the buildings are exempt from building codes and are not inspected.

### **Crop Insurance**

Crop insurance is purchased by agricultural producers, to protect themselves against either the loss of their crops due to natural disasters or the loss of revenue due to declines in the prices of agricultural commodities. In the U.S., a subsidized multi-peril federal insurance program, administered by the Risk Management Agency, is available to most farmers. The program is authorized by the Federal Crop Insurance Act (title V of the Agricultural Adjustment Act of 1938, P.L. 75-430). Multi-peril crop insurance covers the broad perils of drought, flood, insects, disease, etc., which may affect many insureds at the same time and present the insurer with excessive losses. To make this class of insurance, the perils are often bundled together in a single policy, called a multi-peril crop insurance (MPCI) policy. MPCI coverage is usually offered by a government insurer and premiums are usually partially subsidized by the government. The earliest MPCI program was first implemented in 1938 by the Federal Crop Insurance Corporation (FCIC), an agency of the U.S. Department of Agriculture. The FCIC authorizes reinsurers. Certain crop insurers are interested in doing business in Florida, but are currently unable to write insurance because of current statutory constructs.

### **Disposal of Agricultural Waste**

Polyethylene plastic has long been used in numerous forms by the agricultural industry. Polyethylene mulch plastic is commonly disposed of by burning. Chapters 823 and 403, F.S.,

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<sup>1</sup> Fla. Att'y Gen. Opinion 2001-71, 2001 WL 1194681 (Fla. A.G. 2001).

<sup>2</sup> The cited statute has since changed to s. 553.73(9)(c), F.S.

<sup>3</sup> Fla. Att'y Gen. Opinion 2001-71.

both regulate open burning of materials used in agricultural production. The Department of Environmental Protection does not require a permit for burning certain solid wastes if the activity does not create a public nuisance or any condition adversely affecting the environment or public health and does not violate other state or local laws, ordinances, rules, regulations or orders. Section 403.707(2)(e), F.S., provides an exemption for disposal of solid waste resulting from normal farm operations, including polyethylene agricultural plastic, damaged, nonsalvageable, untreated wood pallets, and packing material that cannot be feasibly recycled. Section 823.145, F.S., under the Department of Agriculture and Consumer Services, differs in that it only lists mulch plastic as approved for open burning.

### III. Effect of Proposed Changes:

**Section 1** amends s. 163.3162, F.S., to prohibit a county from enforcing any regulations on agricultural land if the activity is regulated by Best Management Practices, interim measures or regulations adopted as rules under chapter 120, F.S., by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or a water management district as part of a statewide or regional program; or if the activity is regulated by the U.S. Department of Agriculture, the U.S. Army Corps of Engineers, or the U.S. Environmental Protection Agency.

This section prohibits a county government from charging an assessment or fee for stormwater management on a farm operation on agricultural land, if the farm operation has a National Pollutant Discharge Elimination System permit, environmental resource permit, or works-of-the-district permit or implements best management practices adopted as rules under chapter 120 by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or a water management district as part of a statewide or regional program.

Under specified circumstances, this section allows a county to charge an assessment if credits against the assessment are provided for implementation of one of the following.

- Best management practices.
- Stormwater quality and quantity measures required as part of a National Pollutant Discharge Elimination System permit, environmental resource permit or works-of-the-district permit.
- Best management practices or alternative measures that the landowner demonstrates to the county to be of equivalent or greater stormwater benefit than those provided by implementation of best management practices.

The powers of a county to enforce applicable wetlands, springs protection, or stormwater ordinances, regulations, or rules adopted before July 1, 2003, are not limited by the provisions of the bill. It does not limit a county's powers to enforce wetlands, springs protection or stormwater ordinances, regulations, or rules pertaining to the Wekiva River Protection Area. In addition, it does not limit the powers of a county to enforce ordinances, regulations, or rules as directed by law or implemented consistent with the requirements of a program operated under a delegation agreement from a state agency or water management district. The provisions of this bill do not apply to a municipal services benefit unit established before March 1, 2009, predominantly for flood control or water supply benefits.

**Section 2** creates s. 163.3163, F.S., to create the Agricultural Land Acknowledgement Act to ensure that generally accepted agricultural practices will not be subject to interference by residential use of land contiguous to sustainable agricultural land. This section defines the terms “contiguous,” “farm operation,” and “sustainable agricultural land.” It requires that before a political subdivision issues a local land use permit for nonagricultural land contiguous to agricultural land, that as a condition of issuing the permit, the permit applicant must sign and submit to the political subdivision, in a format that is recordable, a written Acknowledgement of Contiguous Agricultural Land. The acknowledgement must be filed and recorded in the official records of the county in which the political subdivision is located. It also authorizes the Department of Agriculture and Consumer Services, in cooperation with the Department of Revenue, to adopt rules to administer this section.

**Section 3** amends s. 205.064, F.S., to exempt farms that operate as business entities other than sole proprietorships from being required to obtain a local business tax receipt to sell their own agricultural products.

**Section 4** amends s. 322.01, F.S., to expand the definition of “farm tractor” to include any motor vehicle that is operated principally on a farm, grove, or orchard in agricultural or horticultural pursuits and that is operated on the roads of this state only incidentally to transportation between the owner’s or operator’s headquarters and the farm, grove, or orchard or between one farm, grove, or orchard and another.

**Section 5** amends s. 604.15, F.S., to revise the definition of “agricultural products” to make tropical foliage exempt from regulation under provisions relating to dealers in agricultural products such as license and bond laws.

**Section 6** amends s. 604.50, F.S., to exempt farm fences from the Florida Building Code and farm fences and nonresidential farm buildings and fences from county or municipal codes and fees, except floodplain management regulations. It provides that a nonresidential farm building may include, but not be limited to, a barn, greenhouse, shade house, farm office, storage building, or poultry house.

**Section 7** amends s. 624.4095, F.S., to allow additional fiscally sound multi-peril crop insurers to meet the statutorily required capital and surplus requirements for admission into the state and allows the Office of Insurance Regulation latitude in considering financial accounting matters for crop insurers. It provides that gross written premiums for certain crop insurance not be included when calculating the insurer’s gross writing ratio. It requires that liabilities for ceded reinsurance premiums be netted against the assets for amounts recoverable from reinsurers, and requires that insurers who write other insurance products must disclose a breakout of the gross written premiums for crop insurance.

**Section 8** amends s. 823.145, F.S., to remove inconsistent statutory language relating to the materials used in agricultural operations that may be disposed of by open burning. The changes in this section would make s. 823.145, F.S., consistent with s. 403.707, F.S., which is under the Department of Environmental Protection.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

This bill reduces the authority of counties and municipalities to collect stormwater fees and local business taxes. This bill falls under subsection (b) of section 18 of Article VII, Florida Constitution. Subsection (b) requires a two-thirds vote of the membership of each house of the Legislature in order to enact a general law reducing the authority that municipalities and counties had on February 1, 1989, to raise revenues in the aggregate.

Subsection (d) of section 18 of Article VII, Florida Constitution provides an exemption if the law is determined to have an insignificant fiscal impact. An insignificant fiscal impact means an amount not greater than the average statewide population for the applicable fiscal year times ten cents (FY 2009-2010 \$1.88 million).

If it is determined that this bill has more than an insignificant fiscal impact, the bill will require a two-thirds vote of the membership of each house of the Legislature.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

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

The Revenue Estimating Conference estimates this bill has a negative but indeterminate impact on local government revenue through the reduction of assessments, fees and local business taxes. State licensing revenue is also reduced by an insignificant amount.

**B. Private Sector Impact:**

This bill removes tropical foliage from the definition of agriculture products and eliminates the requirements that those who sell tropical foliage are required to be licensed. This will be a cost savings to the dealers. Florida tropical foliage producers will see an increase in financial risk as a result of the exemption.

**C. Government Sector Impact:**

The bill will reduce revenues by \$22,800 in the General Inspection Trust Fund within the Department of Agriculture and Consumer Services due to the elimination of the licensing requirements on sellers of tropical foliage.

The bill will limit the ability of local governments to collect stormwater assessments, fees and local business taxes. This fee limitation will differ from county to county.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by the Agriculture Committee on March 9, 2010:**

Committee Substitute for Senate Bill 2074 is different from Senate Bill 2074 in that it:

- Re-formats Section 1, but makes no substantive changes.
- Changes a date on line 150 of the committee substitute. A county's powers would not be limited to enforce wetlands, springs protection, or stormwater ordinances, regulations, or rules adopted before July 1, 2003, rather than January 15, 2009.
- Re-formats Section 6 and adds examples of structures that the term "nonresidential farm building" would include.

**B. Amendments:**

None.



623092

LEGISLATIVE ACTION

Senate

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House

FLORIDA GOVERNMENT  
APPROPRIATIONS  
DATE: 4/15/10  
TIME: 1:04 p.m.

The Committee on General Government Appropriations (Aronberg)  
recommended the following:

**Senate Amendment**

Delete line 253

and insert:

the roads of this state only incidentally for transportation

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LEGISLATIVE ACTION

Senate

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House

**GENERAL GOVERNMENT  
APPROPRIATIONS**  
DATE: 4/15/10  
TIME: 10:20 a.m.

The Committee on General Government Appropriations (Dean)  
recommended the following:

**Senate Amendment (with title amendment)**

Between lines 327 and 328  
insert:

Section 9. The Department of Agriculture and Consumer  
Services shall meet with duly authorized representatives of  
established organizations representing the Florida pest control  
industry and prepare a report that shall be submitted to the  
President of the Senate, the Speaker of the House of  
Representatives, the chairperson of the Senate Committee on  
Agriculture, and the chairperson of the House Committee on  
Agribusiness by January 1, 2011. The report shall include



13 recommended amendments to chapter 482, Florida Statutes, which  
14 provide for disciplinary action to be taken against licensees  
15 who violate laws or rules pertaining to the pretreatment of soil  
16 to protect newly constructed homes, pest control at sensitive  
17 facilities such as schools and nursing homes, and also the  
18 fumigation of existing homes for protection against termite  
19 damage, thereby providing additional safeguards for consumers.  
20 The report may also address other issues of concern to the  
21 department and to members of the industry, such as changes to  
22 requirements for professional liability insurance coverage or  
23 the amount of bond required, duties and responsibilities of a  
24 certified operator, issuance of a centralized pest control  
25 service center license, and limited certification for commercial  
26 wildlife management personnel.

27  
28 ===== T I T L E A M E N D M E N T =====

29 And the title is amended as follows:

30 Delete line 53

31 and insert:

32 open burning; requiring that the Department of  
33 Agriculture and Consumer Services and representatives  
34 of the state pest control industry prepare a report  
35 for the President of the Senate, the Speaker of the  
36 House of Representatives, and the chairpersons of  
37 specified legislative committees by a certain date;  
38 requiring that the report include recommendations for  
39 changes in the law to provide for disciplinary action  
40 against licensees of the pest control industry under  
41 certain circumstances; providing that the report may



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also address additional issues of concern to members  
of the industry; providing an effective date.



473010

LEGISLATIVE ACTION

Senate

House

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GENERAL GOVERNMENT  
APPROPRIATIONS  
DATE: 4/16/10  
TIME: 9:35 a.m.

The Committee on General Government Appropriations (Aronberg)  
recommended the following:

1           **Senate Amendment**

2  
3           Delete line 96

4           and insert:

5           the assessment or fee on a bona fide farm operation for water  
6           quality or flood control benefit of:

**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 General Government Appropriations Committee

BILL: CS/SB 2176

INTRODUCER: Banking and Insurance Committee and Senator Peadar

SUBJECT: Commercial Insurance Rates

DATE: April 15, 2010 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Burgess	Burgess	BI	Fav/CS
2.	Frederick <i>JBF</i>	DeLoach <i>AD</i>	GA	Pre-meeting
3.				
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

The bill amends the insurance “Rating Law,” to allow specified types of commercial lines insurance to be exempt from the rate filing and review requirements of s. 627.062(2), F.S.<sup>1</sup> An insurer must notify the Office of Insurance Regulation (office or OIR) of any changes to rates for these exempted types of insurance within 30 days after the effective date of the change. The bill specifies the information that must be included in the notice and requires that underwriting files, premiums, and loss and expense statistics must be maintained by the insurer and subject to review by the OIR.

<sup>1</sup> The bill specifies the following types of insurance to be exempt: excess or umbrella; surety and fidelity; boiler and machinery and leakage and fire-extinguishing equipment; errors and omissions; directors and officers, employment practices and management liability; intellectual property and patent infringement liability; advertising injury and Internet liability insurance; property risks rated under a highly protected risks rating plan; and any other commercial lines categories of insurance or commercial lines risks that the Office of Insurance Regulation (OIR) determines should not be subject to the filing and review requirements of paragraph (2)(a) or paragraph (2)(f) because of the existence of a competitive market for such insurance, similarity of such insurance to other categories or kinds of insurance not subject to filing and review requirements of paragraph (2)(a) or paragraph (2)(f), or potential improvement of the general operational efficiency of the Office of Insurance Regulation.

The bill provides that commercial motor vehicle insurance covering a fleet of 5 or more vehicles is exempt from: s. 627.0651(1), F.S., requiring certain rate filing information; s. 627.0651(2), F.S., requiring the OIR to review the rate filing; s. 627.0651(9), F.S., allowing the OIR to require information necessary to evaluate the filing; and s. 627.0645, F.S., requiring annual rate filings.

Although the bill exempts the specified lines from the filing and review requirements, these types of insurance coverages continue to be subject to the requirement that rates must not be excessive, inadequate, or unfairly discriminatory.

This bill substantially amends sections 627.062 and 627.0651, Florida Statutes.

## II. Present Situation:

### Kinds of Insurance

The Florida Insurance Code specifies that insurance shall be classified into the following “kinds of insurance”: life, health, property, casualty, surety, marine, and title. Certain insurance coverage may come within the definition of more than one kind of insurance, and the inclusion within the definition of one kind does not necessarily exclude coverage from being considered within the definition of another kind. In addition, kinds of insurance are classified into different “lines of insurance.”<sup>2</sup> Each kind of insurance is defined in a separate section.<sup>3</sup> “Property Insurance” is defined as insurance on real or personal property against loss from any hazard.<sup>4</sup> “Casualty Insurance”<sup>5</sup> is defined as including:

- Vehicle insurance -- covers damage to land vehicles, aircraft, or riding animal.
- Liability insurance -- covers legal liability.
- Workers’ compensation.
- Burglary and theft.
- Personal property floater -- insurance on personal effects.
- Glass.
- Boiler and machinery -- insurance against liability and loss to property resulting from accidents or explosions of boilers, pipes, etc.
- Leakage and fire extinguishing equipment.
- Credit insurance.
- Credit property insurance -- coverage on personal property used as collateral.
- Malpractice.
- Animal.
- Elevator – coverage for damage to property resulting from the maintenance or use of elevators.
- Entertainments – coverage indemnifying the producer of motion pictures, television productions, sporting events, etc., for postponements or cancellations due to the death or illness of the principals.

<sup>2</sup> Sections 624.601 through 624.6012, F.S.

<sup>3</sup> Sections 624.602 through 624.608, F.S.

<sup>4</sup> Section 624.604, F.S.

<sup>5</sup> Section 624.605, F.S.

- Failure to record documents.
- Failure to file personal property instruments.
- Debt cancellation.
- Miscellaneous.

“Surety insurance” is defined to include contract bonds, indemnity bonds, contract performance guarantee bonds, performance bonds for judicial proceedings, fidelity insurance, and residual value insurance.

### **Ratemaking Regulation for Property, Casualty, and Surety Insurance**

The rating requirements for property, casualty, and surety insurance are located in Part I of ch. 627, F.S.,<sup>6</sup> which is entitled the “Rating Law,” and applies to all property, casualty and surety insurance. Section 627.062, F.S., imposes rating standards that apply to all insurance subject to Part I, and requires that rates may not be excessive, inadequate, or unfairly discriminatory. Every insurance rate regulated by Part I is held to this standard and must be submitted by the insurer to the Office of Insurance Regulation, which reviews the rate and either approves or disapproves the rate.<sup>7</sup> Generally, insurers may choose to submit their rate to the OIR pursuant to either the “file and use” method or the “use and file” method. Under “file and use,” the insurer submits to the OIR their proposed rate at least 90 days before the rate’s effective date. The proposed rate must not be implemented until it is approved. Under “use and file,” the insurer may implement the rate before filing for approval, but must then submit the filing within 30 days of the rate’s effective date. If a portion of the rate is subsequently found to be excessive, the insurer must refund to policyholders the portion of the rate that is excessive. Currently, all proposed rate increases for residential property insurance must be submitted under the “file and use” method.

In determining whether a rate is excessive, inadequate, or unfairly discriminatory, the office uses the following statutory factors required by s. 627.062(2)(b), F.S.

- Past and prospective loss experience in Florida and in other jurisdictions.
- Past and prospective expenses.
- Degree of competition to insure the risk.
- Investment income reasonably expected by the insurer.
- Reasonableness of the judgment reflected in the filing.
- Dividends, saving, or unabsorbed premium deposits returned to Florida insureds.
- Adequacy of loss reserves.
- Cost of reinsurance.
- Trend factors, including those for actual losses per insured unit.
- Catastrophe and conflagration hazards, when applicable.
- Projected hurricane losses, if applicable.
- A reasonable margin for underwriting profit and contingencies.
- Cost of medical services, when applicable.
- Other relevant factors impacting frequency and severity of claims or expenses.

<sup>6</sup> Sections 627.011, F.S., through 627.311, F.S.

<sup>7</sup> Section 627.062(2)(h), F.S.

Section 627.062(2), F.S., explicitly does not apply to workers' compensation and employer's liability insurance, or to motor vehicle insurance.

Motor vehicle insurance is subject to standards established in s. 627.06501, F.S., through s. 627.06535, F.S. The standards under s. 627.0651, F.S., for determining whether a rate is excessive, inadequate, or unfairly discriminatory are almost identical to those in s. 627.062, F.S., with the notable addition of the cost of motor repairs as a factor, and the omission of projected hurricane losses.

### **Excess Rates**

The Rating Law in s. 627.171, F.S., permits an insurer to use a rate in excess of the otherwise applicable filed rate on a specific risk if the insurer obtains the signed, written consent of the insured prior to the policy inception date. The signed consent form must include the filed rate and the excess rate for the risk insured. An insurer may not use excess rates for more than 5 percent of its personal lines insurance policies or more than 10 percent of its commercial lines policies written or renewed in each calendar year.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 627.062, F.S., relating to rating requirements for property, casualty and surety policies. The bill excludes the following types of insurance from the filing and review requirements of ss. 627.062(2)(a) and (f), F.S.

- Excess or umbrella.
- Surety and fidelity.
- Boiler and machinery and leakage and fire-extinguishing equipment.
- Errors and omissions.
- Directors and officers, employment practices and management liability.
- Intellectual property and patent infringement liability.
- Advertising injury and Internet liability.
- Property risks rated under a highly protected risks rating plan.
- Any other commercial lines categories of insurance or commercial lines risks that the OIR determines should not be subject to the filing and review requirements because of the existence of a competitive market for such insurance, similarity of such insurance to other categories or kinds of insurance not subject to filing and review requirements, or to improve the general operational efficiency of the OIR.

These types of insurance coverages continue to be subject to s. 627.062(1), F.S., which requires that rates must not be excessive, inadequate, or unfairly discriminatory.

The bill requires that an insurer must notify the OIR of any changes for the types of insurance subject to this provision, no later than 30 days after the effective date of the change in rates. The notice to the OIR must include the following information.

- The name of the insurer.

- The type of insurance.
- The total premium written during the immediately preceding year for that type of insurance.
- The average statewide percentage change in rates.

Underwriting files, premiums, and loss and expense statistics must be maintained by the insurer and are subject to inspection by the OIR.

**Section 2** amends s. 627.0651, F.S., relating to rate setting for motor vehicle insurance. The bill provides that commercial motor vehicle insurance covering a fleet of five or more self-propelled vehicles are exempt from the following provisions.

- Section 627.0651(1), F.S., which establishes the procedures required for automobile insurers to file rates, rating schedules and rating manuals.
- Section 627.0651(2), F.S., which specifies the factors the OIR must apply to determine whether an automobile insurer's rates are excessive, inadequate, or unfairly discriminatory.
- Section 627.0651(2), F.S., which allows the OIR to require information necessary to evaluate the filing.
- Section 627.0645, F.S., which requires annual rate filings.

The bill provides that rates for insurance under this section may not be excessive, inadequate, or unfairly discriminatory, and must be set to allow the insurer a reasonable rate of return. The bill requires an insurer to notify the OIR of any rate changes within 30 days of the effective date of the change. The bill requires that the notice must include the name of the insurer, the type or kind of insurance subject to rate change, total premium written during the immediately preceding year by the insurer for the type or kind of insurance subject to the rate change, and the average statewide percentage change in rates. The bill requires that the insurer must maintain underwriting files, premiums, losses, and expense statistics, which are subject to examination by the OIR. The bill requires that the OIR consider all the factors that are required in current s. 627.0651(2)(a)–(l), F.S., and s. 627.0651(3)-(8), F.S. to determine if the rate is excessive, inadequate, or unfairly discriminatory.

The bill provides that a rating organization must also notify the office of any changes to loss cost for insurance and risks within 30 days after the effective date of the change. This notice must include the name of the rating organization, the type or kind of insurance subject to a loss cost change, loss costs during the immediately preceding year, and the average statewide percentage change in loss cost. The bill requires the rating organization to maintain loss and exposure statistics, which are subject to examination by the OIR. The bill requires that the OIR consider all the factors that are required in current s. 627.0651(2)(a)–(l), F.S., and s. 627.0651(3)-(8), F.S., to determine if the rate is excessive, inadequate, or unfairly discriminatory.

The bill requires that in reviewing the rate, the OIR may require the insurer to provide at the insurer's expense all information necessary to evaluate the condition of the company and the reasonableness of the rate.

**Section 3** provides an effective date of January 1, 2011.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

The bill will allow insurers that sell the types of coverage that are being exempted from certain provisions of ss. 627.062(2), F.S., and 627.0651, F.S., to make pricing changes on a more expedited basis and avoid some of the expense incurred in a full rate review process.

## C. Government Sector Impact:

The bill relieves the specified types of insurance from filing and review requirements; however, those products must still meet the requirement that rates shall not be excessive, inadequate or unfairly discriminatory. The OIR will no longer be required to review every rate filing for the types of insurance that are being exempted from that requirement. The OIR reports that many of the rate filings that will no longer be required under the bill are currently being filed as part of a larger comprehensive filing (e.g., product review, form review) that will continue to require OIR review.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

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

**CS by Banking and Insurance on April 7, 2010:**

The Committee Substitute deleted the following types of insurance from those that are exempted from the rate filing and review requirements of s. 627.062(2), F.S.:

- Commercial motor vehicle;
- Professional liability, except medical malpractice coverage;
- Environmental liability;
- Unique or unusual risks or portions of risks not rated according to manuals, rating plans, or rate schedules, including “A” rates;
- Commercial lines insurance risks, excluding property and medical malpractice coverage, producing an annual premium of \$25,000 or more.

The Committee Substitute adds a requirement that rating organizations must notify the OIR of any changes to loss cost for insurance and risks within 30 days after the effective date of the change, and specifies what must be included in the notice.

The Committee Substitute specifies that the exemption from filing and review requirements for motor vehicle insurance is limited to commercial motor vehicle insurance covering a fleet of 5 or more self-propelled vehicles. The Committee Substitute reconstructs the way in which this exemption is applied by creating new s. 627.0651(14)(a)-(f), F.S., rather than amending each of the existing subsections 627.0651(1) – (9), F.S., as the original bill had.

- B. **Amendments:**

None.



877858

LEGISLATIVE ACTION

Senate

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House

GENERAL GOVERNMENT  
APPROPRIATIONS  
DATE: 4/15/10  
TIME: 4:20 p.m.

The Committee on General Government Appropriations (Lawson)  
recommended the following:

**Senate Amendment**

Delete lines 137 - 145  
and insert:

of 20 or more self-propelled vehicles is not subject to  
subsection (1), subsection (2), or subsection (9) or s.  
627.0645.

(b) The rates for insurance described in this subsection  
may not be excessive, inadequate, or unfairly discriminatory.

(c) Insurers shall establish and use rates, rating  
schedules, or rating manuals to allow the insurer a reasonable  
rate of return on commercial motor vehicle insurance written in



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13

this state covering a fleet of 20 or more self-propelled

**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 General Government Appropriations Committee

**BILL:** CS/CS/SB 1202

**INTRODUCER:** Judiciary Committee; Communications, Energy, and Public Utilities Committee; and Senator Bennett

**SUBJECT:** Prepaid Wireless Telecommunications

**DATE:** April 15, 2010

**REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	Caldwell	CU	<b>Fav/CS</b>
2.	Howes	Yeatman	CA	<b>Fav/1 amendment</b>
3.	Maclure	Maclure	JU	<b>Fav/CS</b>
4.	Fournier	McKee	FT	<b>Favorable</b>
5.	Pigott <i>DeP</i>	DeLoach <i>AD</i>	GA	<b>Pre-meeting</b>
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

This bill delays the authority to collect an E911 fee from the sale of prepaid wireless service until July 1, 2013.

The bill also increases, from 20 percent to 30 percent, the portion of funds disbursed to a county from the Emergency Communications Number E911 System Fund for capital outlay, capital improvement, or equipment replacement which the county may carry forward into the next calendar year.

The delay in the implementation of an E911 fee on prepaid wireless services until July 1, 2013, will result in a loss of revenue to counties for support of their E911 systems and may also require the state to reimburse providers who are currently participating in the collection and remittance of this fee.

This bill substantially amends sections 365.172 and 365.173, Florida Statutes.

## II. Present Situation:

### E911 System; Fees on Sale of Prepaid Wireless Service

The Wireless Emergency Communications Act<sup>1</sup> (Act) implemented a statewide E911 system for wireless telephone users. As of March 31, 2008, all 67 counties reported capability to receive a call back number and location provided for the cellular caller from the service provider.<sup>2</sup> To fund the E911 system, the Act imposed a fee, capped at \$ .50, on voice communications services. This fee funds costs incurred by local governments to install and operate 911 systems and reimburses providers for costs incurred to provide 911 or E911 services.

Section 365.172(8), F.S., requires voice communications services providers to collect the E911 fee from the subscribers of voice communications services on a service-identifier basis. The fee is imposed upon wire line services, voice services, and other services that have access to E911 service, such as Voice over Internet Protocol. The fee is imposed on wireless services, but provides that before July 1, 2009, the fee is not applied to prepaid wireless services.<sup>3</sup>

The E911 Board (board), formerly the Wireless 911 Board, helps implement and oversee the system and administers the funds derived from the fee. The primary function of the board is to make disbursements from the E911 Trust Fund to county governments and wireless providers according to s. 365.173, F.S. The board has the authority to adjust the level of the fee, within the \$.50 cap, once annually.

In 2006, the board was required<sup>4</sup> to evaluate the 911 revenues and services costs to determine the date the wireless E911 fee could be reduced to a level that still funds all counties' E911 costs, service provider costs, and board administrative costs. In its report, the board concluded that there are insufficient fee revenues collected to cover all county and service provider E911 costs.<sup>5</sup> The board report also recommended that the Legislature consider changing the provisions relating to prepaid calling services so that fees are imposed on users in a fair and consistent manner.

Florida sales tax is imposed on sales of prepaid calling arrangements. Charges for prepaid wireless services are not assessed on the communications services tax or the E911 fee.

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<sup>1</sup> Chapter 99-367, Laws of Fla., codified in s. 365.172, F.S. Today the statute is cited as the "Emergency Communications Number E911 Act." Section 365.172(1), F.S.

<sup>2</sup> Florida Dep't of Management Services, *Florida Enhanced 911*, [http://dms.myflorida.com/suncom/public\\_safety\\_bureau/florida\\_e911](http://dms.myflorida.com/suncom/public_safety_bureau/florida_e911) (last visited Mar. 29, 2010).

<sup>3</sup> Prepaid wireless service is defined as a "separately stated retail sale by advance payment of communications services that consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered and that are sold in predetermined units or dollars whose number declines with use in a known amount." Section 212.05(1)(e), F.S. See also s. 202.11(9), F.S.

<sup>4</sup> See proviso language accompany specific appropriation 2946 of the Fiscal Year 2006-07 General Appropriations Act (HB 5001).

<sup>5</sup> Florida Dep't of Management Services, E911 Board, *2006 Wireline and Wireless 911 Fee Evaluation Legislative Report* (Sept. 29, 2006).

In 2007, the Legislature required the board to conduct a study on the collection of E911 fees on the sale of prepaid wireless service.<sup>6</sup> In its study, the collection was deemed to be feasible.<sup>7</sup> The study made the following conclusions.

- It is feasible to collect E911 fees from the sale of prepaid wireless service on an equitable, competitively neutral, and nondiscriminatory basis.
- Collection of prepaid wireless fees should be as consistent with other E911 fees as can reasonably be done while feasibly collecting E911 fees from the sale of prepaid wireless service.
- Collection of fees on prepaid wireless service using the collection methods deemed feasible by the study do constitute an efficient use of public funds, given the technological and practical considerations of collecting the fee.
- Two practices evaluated in the study are deemed tentatively feasible: the Best Practice Menu Flat Fee Collection Method and the Best Practice Statewide Point of Sale Flat Fee Collection Method.
- The Best Practice Menu Flat Fee Collection Method collects prepaid wireless service E911 fees from end users on a monthly basis. This method allows for a service provider's selection of one collection method from two provided options. Under Option 1 the E911 fee is calculated by dividing the total earned prepaid revenue received by the service provider within the monthly 911 reporting period by \$50.00 and then multiplying that number by the amount of the state 911 charge<sup>8</sup> of \$.50 per month. Option 2 fee calculations would simply multiply the amount of the state 911 charge for each active prepaid account of the service provider.
- The Best Practice Statewide Point of Sale Flat Fee Collection Method collects prepaid wireless service E911 fees at the point of sale on each transaction involving sales of Florida-based prepaid wireless service by assessing a \$.25 flat fee sales tax surcharge over and beyond sales taxes otherwise due at the point of sale.

The Florida E911 Board reports<sup>9</sup> that at least one (1) prepaid wireless service provider is remitting the fee on prepaid wireless services. It appears that many prepaid wireless service providers are not remitting the fee at this time; they are waiting for the promulgation of E911 Board rules on the subject. The E911 Board has worked with telecommunications service providers, the Florida Retail Association, and other interested parties to develop a rule that would establish a process for collection and remittance of the E911 fee on prepaid wireless services. At this time, an E911 Board rule has not yet been adopted as the nine member E911 Board (comprised of four county representatives, four telecommunication industry representatives and the chair, a DMS employee) has not been able to reach consensus with the interested parties on the process of collecting the fee despite holding workshops and/or hearings on the matter.

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<sup>6</sup> Chapter 2007-78, Laws of Fla., codified as s. 365.172(8)(a), F.S.

<sup>7</sup> Florida Dep't of Management Services, E911 Board, *E911 Prepaid Wireless Fee Collection and E911 Fee Exemptions: A Feasibility Analysis*, 106 (Dec. 31, 2008), available at [http://dms.myflorida.com/suncom/public\\_safety\\_bureau/florida\\_e911/e911\\_board\\_prepaid\\_study](http://dms.myflorida.com/suncom/public_safety_bureau/florida_e911/e911_board_prepaid_study) (last visited Mar. 29, 2010).

<sup>8</sup> Section 365.172, F.S.

<sup>9</sup> March 30, 2010 email communication from Brock Meredith, Deputy Director, Legislative Affairs, Department of Management Services

### **Distribution of E911 Funds**

Funds generated from the E911 fees levied on subscribers are accounted for in the Emergency Communications Number E911 System Fund and segregated into two separate categories: wireless and nonwireless.<sup>10</sup> Sixty-seven percent of the moneys in the wireless category shall be distributed monthly to counties, based on the total number of service identifiers in each county. The county may use these funds to pay for expenditures related to establishing or providing E911 services and contracting for E911 services, as well as to pay for complying with the requirements for E911 service contained in specified Federal Communications Commission orders.<sup>11</sup> Ninety-seven percent of the moneys in the nonwireless category shall be distributed monthly to counties based on the total number of service identifiers in each county. The county may use these funds exclusively to pay for expenditures related to establishing or providing E911 services and contracting for E911 services.<sup>12</sup>

A county receiving these moneys must establish a fund to be used exclusively for the receipt and expenditure of the moneys. The county commission shall appropriate the moneys and interest in the fund and incorporate them into the county budget. A county may carry forward up to 20 percent of the moneys disbursed to the county during a calendar year for capital outlay, capital improvements, or equipment replacement, provided expenditures are made for the authorized purposes.<sup>13</sup>

### **III. Effect of Proposed Changes:**

This bill delays, until July 1, 2013, the authority to collect an E911 fee from the sale of prepaid wireless service. Currently, s. 365.172(8)(a), F.S., provides that, if the E911 Board determines that such a fee should be collected, it shall collect the fee starting July 1, 2009. In addition, the bill deletes an obsolete reference, which requires the board to conduct a study on the feasibility of collecting E911 fees for prepaid wireless services and report its findings by December 31, 2008.

The bill amends s. 365.173, F.S., to increase the percentage a county may carry forward for capital outlay, capital improvements, and equipment replacement from 20 percent to 30 percent. The bill retains the requirement that the expenditures must be made for the purposes authorized in statute.

The bill provides an effective date of July 1, 2010.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>10</sup> Section 365.173(1), F.S.

<sup>11</sup> Section 365.173(2)(a), F.S. See also s. 365.172(9), F.S.

<sup>12</sup> Section 365.173(2)(b), F.S.

<sup>13</sup> Section 365.173(2)(c), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

The delay in implementation of the E911 fee on prepaid wireless services until July 1, 2013, will result in an indeterminate negative fiscal impact to counties.

B. Private Sector Impact:

The delay in implementation of the E911 fee on prepaid wireless services until July 1, 2013, will result in an indeterminate positive fiscal impact on consumers.

C. Government Sector Impact:

The amount of revenue collected and made available to counties for E911 services will be reduced for the next three fiscal years as a result of the delayed implementation of the fee for prepaid wireless services. This may result in the state having to reimburse providers who are currently collecting and remitting these fees.

The bill provides that counties may carry forward ten percent more of the funds disbursed to them from the Emergency Communications Number E911 System Fund for capital outlay, capital improvements, or equipment replacement, which should result in a positive fiscal impact.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

**CS/CS by Judiciary on March 26, 2010:**

Rather than requiring E911 fees on prepaid wireless telecommunications service, the committee substitute delays until July 1, 2013, collection of an E911 fee from the sale of prepaid wireless service. In addition, the committee substitute adds a provision

authorizing counties to carry forward 10 percent more (30 percent rather than 20 percent under current law) of the funds disbursed to them from the Emergency Communications Number E911 System Fund for capital outlay, capital improvements, or equipment replacement.

**CS by Communications, Energy, and Public Utilities on March 4, 2010:**

The committee substitute:

- Addresses issues related to the collection of the fee by retailers. Bundled sales of products would have the 1-percent fee applied to the entire price of the sale when a prepaid wireless telecommunications service is sold with one or more products for a non-itemized price, unless the prepaid amount is separately disclosed or reasonably identifiable. Small retailers have options when remitting the prepaid fee. They may remit the prepaid fee annually, retain 25 percent of the fees during the first year to offset costs to set up their collection system, or pay the prepaid 911 fee themselves and recover it in their pricing, without separately stating it on their receipt.
- Revises newly created definitions to make them consistent with existing statutes.

B. Amendments:

None.



LEGISLATIVE ACTION

Senate	.	House
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**LATE FILED**

GENERAL GOVERNMENT  
APPROPRIATIONS  
DATE: 4/16/10  
TIME: 12:15 p.m.

The Committee on General Government Appropriations (Oelrich) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 37 - 46

and insert:

a. An E911 fee on the sale of prepaid wireless service may not be collected before July 1, 2013. ~~The board shall conduct a study to determine whether it is feasible to collect E911 fees from the sale of prepaid wireless service. If, based on the findings of the study, the board determines that a fee should not be collected from the sale of prepaid wireless service, it shall report its findings and recommendation to the Governor, the President of the Senate, and the Speaker of the House of~~



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13 ~~Representatives by December 31, 2008. If the board determines~~  
14 ~~that a fee should be collected from the sale of prepaid wireless~~  
15 ~~service, the board shall collect the fee beginning July 1, 2009.~~  
16

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

18 And the title is amended as follows:

19       Delete lines 4 - 8

20 and insert:

21       deleting an obsolete provision relating to a study of  
22       the feasibility of collecting a fee for prepaid  
23       wireless service; delaying the collection of such fee;  
24       amending s. 365.173,



one representative from each of the counties included in the basin."<sup>1</sup> The districts interpret this provision to mean that, in the absence of at least one representative from each county, the basin board would not be properly constituted. When not properly constituted, a basin board would not be able to transact official business until the Executive Office of the Governor appoints individuals to fill vacancies. While vacancies of this kind occur from time to time, if it were to coincide with the budget and tax levy process, it is possible that a basin board would not be able to establish its annual budget or to request its annual tax levy. The basin boards ensure that local concerns within the districts are addressed effectively. Each board has half of the districts' millage capacity to fund innovative projects that address water supply, flood protection, water quality and natural systems issues in its watershed. Basin board members are appointed by the Governor and must be confirmed by the Senate.

Governing Board Policy 110-8 provides that the Governing Board Chair may appoint more than one governing board member to serve as chair of a basin board, on a rotating basis. This is inconsistent with subsection 373.0693(6), F.S. Further, nothing in s. 373.0693, F.S., indicates the actual status of the basin chairs with respect to voting or the establishment of a quorum.

SB 2080, signed into law by the Governor in 2009, addresses cooperative funding programs. However, it was placed in statute so that it only applied to cooperative funding in the Southern Water Use Caution Area (SWUCA), instead of to cooperative funding programs in general. Cooperative funding is not considered a regulatory program. It is a cost-share program for local governments for projects that develop sustainable water resources, provide flood protection and enhance conservation efforts. Therefore, if a district needed to adopt rules for all of the procedures and policies in a cooperative funding program, it would be unable to adapt or modify the program as necessary.

### III. Effect of Proposed Changes:

**Section 1** amends s. 373.0693, F.S. to provide that a member of the governing board serving as chair of a basin board be a regular, voting member of the basin board and would be counted for purposes of establishing a quorum. In the event a vacancy occurs and a successor is not appointed within 180 days, the remaining members of the basin board would be able to continue to transact official business provided a quorum of the whole authorized number of members of the board is present. This will provide continuity in basin board operations, particularly during budget and tax time. The bill also provides for the appointment of more than one basin board chair from among the members of the governing board, to be consistent with governing board practice and policy.

The bill removes obsolete language referring to the annexation of the Manasota Watershed Basin of the Ridge and Lower Gulf Coast Water Management District by the SWFWMD. It also deletes reference to a procedure for tie votes that will no longer be necessary given the other revisions in this section.

This section also contains technical and conforming changes.

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<sup>1</sup> §373.0693(2), *Fla. Stat.* (2009)

**Section 2** creates a new subsection in s. 373.171, F.S., to provide that all districts' cooperative funding programs are not subject to the rule making requirements of chapter 120, F.S. However, they are subject to the provisions of s. 120.569, F.S., which allows affected individuals to challenge district decisions.

**Section 3** provides an effective date of July 1, 2010.

**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:

There will be negligible impacts to the private sector.

C. Government Sector Impact:

Additional efficiencies and continuity in the operation of the basin boards will be realized; however, the fiscal impact is indeterminate.

**VI. Technical Deficiencies:**

Section 2 makes a general reference to "cooperative funding programs," a term which exists with specificity only in ss. 373.0363(4)(b), F.S. The ch. 120, F.S., exemption in that subsection is limited to the "Facilitating Agricultural Resource Management Initiative," a subcomponent of the Southern Water Use Caution Area Recovery Strategy. That embedded exemption is not otherwise repealed as a result of this change.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

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

**CS by Environmental Preservation and Conservation on March 9, 2010:**

The purpose of the strike all amendment was to address stylistic, technical and conforming changes to make the Senate and House of Representatives bills identical. There are no substantive changes in the CS.

- B. **Amendments:**

**Barcode 363504 by Governmental Oversight and Accountability on March 23, 2010:**

Amends s. 373.1961, F.S., to permit funds deposited in the Water Protection and Sustainability Program Trust Fund to the credit of the Northwest Florida and Suwannee River Water Management districts, respectively, to be used for water projects, including the protection of springs.

**Barcode 346436 by Governmental Oversight and Accountability on March 23, 2010:**

Amends ss. 373.228 and 373.246, F.S., to provide specific legal authority to local governments for the enforcement of landscape irrigation restrictions or water shortage emergency orders that implement water management districts rules or orders.



LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/23/2010	.	
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**TRAVELING AMENDMENT**

The Committee on Governmental Oversight and Accountability  
(Sobel) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 130 and 131

insert:

Section 3. Section 373.228, Florida Statutes, is amended to  
read:

373.228 Landscape irrigation ~~design~~.—

(1) The Legislature finds that multiple areas throughout  
the state have been identified by water management districts as  
water resource caution areas, which indicates that in the near  
future water demand in those areas will exceed the current  
available ~~water~~ supply and that conservation is one of the



346436

13 mechanisms by which future water demand will be met.

14 (2) The Legislature finds that landscape irrigation  
15 comprises a significant portion of water use and that current  
16 typical landscape irrigation systems, ~~and~~ Florida-friendly  
17 landscaping designs, and landscape irrigation restrictions offer  
18 significant potential water conservation benefits.

19 (3) It is the intent of the Legislature to improve  
20 landscape irrigation water use efficiency by ensuring that  
21 landscape irrigation systems meet or exceed minimum design  
22 criteria, and that, pursuant to s. 373.609, the landscape  
23 irrigation restrictions of a water management district may be  
24 implemented by local government ordinance.

25 (4) The water management districts shall work with the  
26 Florida Nursery, Growers and Landscape Association, the Florida  
27 Native Plant Society, the Florida Chapter of the American  
28 Society of Landscape Architects, the Florida Irrigation Society,  
29 the Department of Agriculture and Consumer Services, the  
30 Institute of Food and Agricultural Sciences, the Department of  
31 Environmental Protection, the Department of Transportation, the  
32 Florida League of Cities, the Florida Association of Counties,  
33 and the Florida Association of Community Developers to develop  
34 landscape irrigation and Florida-friendly landscaping design  
35 standards for new construction which incorporate a landscape  
36 irrigation system and develop scientifically based model  
37 guidelines for urban, commercial, and residential landscape  
38 irrigation, including drip irrigation, for plants, trees, sod,  
39 and other landscaping. The standards must ~~shall~~ be based on the  
40 irrigation code defined in the Florida Building Code, Plumbing  
41 Volume, Appendix F. Local governments shall use the standards



42 and guidelines when developing landscape irrigation and Florida-  
43 friendly landscaping ordinances. By January 1, 2011, the  
44 agencies and entities specified in this subsection shall review  
45 the standards and guidelines to determine whether new research  
46 findings require a change or modification of the standards and  
47 guidelines.

48 (5) Local governments may adopt ordinances that implement  
49 landscape irrigation restrictions set forth in water management  
50 district rules or orders. In evaluating water use applications  
51 from public water suppliers, water management districts shall  
52 consider whether the applicable local government has adopted an  
53 ordinance implementing such landscape irrigation restrictions  
54 and ordinances for landscaping and irrigation systems consistent  
55 with the Florida-friendly landscaping provisions of s. 373.185.

56 Section 4. Subsection (9) is added to section 373.246,  
57 Florida Statutes, to read:

58 373.246 Declaration of water shortage or emergency.—

59 (9) Local governments may adopt ordinances that implement  
60 water shortage and emergency orders under this section and s.  
61 373.175.

62  
63 ===== T I T L E A M E N D M E N T =====

64 And the title is amended as follows:

65 Delete line 18

66 and insert:

67 from certain rulemaking requirements; amending ss.  
68 373.228 and 373.246, F.S.; authorizing local  
69 government to adopt landscape irrigation restrictions  
70 by ordinance; providing an



363504

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/23/2010	.	
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**TRAVELING AMENDMENT**

The Committee on Governmental Oversight and Accountability  
(Dean) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 130 and 131

insert:

Section 3. Paragraph (c) of subsection (3) of section  
373.1961, Florida Statutes, is amended to read:

373.1961 Water production; general powers and duties;  
identification of needs; funding criteria; economic incentives;  
reuse funding.-

(3) FUNDING.-

(c) The financial assistance for alternative water supply  
projects allocated in each district's budget as required in s.



13 373.196(6) shall be combined with the state funds and used to  
14 assist in funding the project construction costs of alternative  
15 water supply projects selected by the governing board. If the  
16 district has not completed a ~~any~~ regional water supply plan, or  
17 the regional water supply plan does not identify the need for  
18 any alternative water supply projects, funds deposited in the  
19 Water Protection and Sustainability Program Trust Fund to the  
20 credit of the Northwest Florida Water Management District and  
21 the Suwannee River Water Management District ~~that district's~~  
22 ~~trust fund~~ may be used for water resource development projects,  
23 including, but not limited to, springs protection.

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

26 And the title is amended as follows:

27 Delete line 18

28 and insert:

29 programs not subject to rulemaking; amending s.  
30 373.1961, F.S.; revising which trust fund is used to  
31 fund certain district water resource development  
32 projects; providing an

**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 General Government Appropriations Committee

**BILL:** CS/SBs 2210 & 1552

**INTRODUCER:** Regulated Industries Committee and Senators Constantine and Fasano

**SUBJECT:** Appraisers and Appraisal Management Companies

**DATE:** April 15, 2010

**REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	<b>Fav/Combined CS</b>
2.	McKay	Wilson	GO	<b>Favorable</b>
3.	Frederick	DeLoach	GA	<b>Pre-meeting</b>
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

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

**I. Summary:**

The bill provides for the regulation of appraisal management companies (AMCs) and provides additional requirements for the regulation of appraisers. Appraisal management companies are business entities that administer independent appraisers to fulfill real estate appraisal assignments on behalf of lenders. Appraisers are regulated under Part II of ch. 475, F.S., by the Florida Real Estate Appraisal Board (board) within the Department of Business and Professional Regulation (department). Appraisers are subject to application requirements, qualifications for licensure, and disciplinary actions and penalties related to performing appraisals. Appraisal management companies are not currently regulated by state law. The bill increases the membership of the board from seven members to nine members, and provides that two members of the board must represent the appraisal management industry.

The bill requires that AMCs register with the board. The bill sets forth application requirements, and provides that the application fee for registration may not exceed \$150 and the initial registration fee and renewal fees may not exceed \$150 each year. Employees of an AMC are not required to obtain a separate registration. The bill exempts an AMC from the registration requirement if no more than 10 percent of the appraisal management company is owned by

persons other than certified or licensed appraisers, or if the AMC is a financial institution, a licensed mortgage lender, or an insurer.

The application requires the disclosure of any person who possesses the authority, directly or indirectly, to direct the management or policies of the AMC, and requires that such persons submit a set of fingerprints to conduct a criminal history record check to determine if the person is statutorily qualified for registration.

The bill provides grounds for the denial of an AMC's application for registration, and for imposing a fine, suspending, or revoking an appraiser license, registration, or certification. It authorizes administrative fines against AMCs that may not exceed \$5,000 for each count or offense.

The bill also requires the board to promulgate rules for the protection and authentication of an appraiser's signature, and requires that appraisal records be maintained for five years or according to the Uniform Standards of Professional Appraisal Practice (USPAP), whichever is greater.

It is estimated by the Department Of Business and Professional Regulation that one full-time equivalent position at a cost of \$45,131 will be required to handle the increased workload in the Division of Service Operations, to process the applications and revenue associated with appraisal management company registration. The department also estimates that licensure and application fees generated as a result of the registration of appraisal management companies will be \$318,500 in Fiscal Year 2010-2011.

The bill provides an effective date of July 1, 2010.

This bill substantially amends the following sections of the Florida Statutes: 475.611, 475.613, 475.614, 475.6147, 475.624, 475.626, and 475.629.

This bill creates sections 475.6235 and 475.6245, Florida Statutes.

## **II. Present Situation:**

Individual real estate appraisers are regulated under ch. 475 (Part II), F.S., by the Florida Real Estate Appraisal Board (board) within the Department of Business and Professional Regulation (department). The board consists of seven members who are appointed by the Governor, subject to confirmation by the Senate, with four-year terms. The membership of the board is designated as follows.

- Four members must be real estate appraisers who have been engaged in the general practice of appraising real property in this state for at least five years immediately preceding appointment.
- One member must represent organizations that use appraisals for the purpose of eminent domain proceedings, financial transactions, or mortgage insurance.
- Two members must be representatives of the general public and shall not be connected in any way with the practice of real estate appraisal, real estate brokerage, or mortgage lending.

## Appraisers

Real estate appraisers specialize in estimating the value of real property. Appraisals are made when property is bought, sold, assessed, taxed, condemned, insured, or mortgaged.<sup>1</sup> Real estate appraisers perform the following functions.

- Prepare a written description of the property and make an estimate of its value.
- Obtain land values from county sources and sales information about nearby properties.
- Estimate building replacement costs using building valuation manuals and professional cost estimators.
- Verify legal descriptions of property by county records, measure the property and compare the measurements with the legal descriptions.
- Draw land diagrams and note conditions and special features of buildings.
- Analyze and evaluate the data and prepare a written report outlining methods by which the fair-market value was estimated.<sup>2</sup>

Section 475.611(1)(a), defines the term “appraisal” or “appraisal services” to include the following services provided by certified or licensed appraisers or registered trainee appraisers.

- “Appraisal assignment” denotes an engagement for which a person is employed or retained to act, or could be perceived by third parties or the public as acting, as an agent or a disinterested third party, in rendering an unbiased analysis, opinion, review, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real property.
- “Analysis assignment” denotes appraisal services that relate to the employer's or client's individual needs or investment objectives and includes specialized marketing, financing, and feasibility studies as well as analyses, opinions, and conclusions given in connection with activities such as real estate brokerage, mortgage banking, real estate counseling, or real estate consulting.
- “Appraisal review assignment” denotes an engagement for which an appraiser is employed or retained to develop and communicate an opinion about the quality of another appraiser's appraisal, appraisal report, or work. An appraisal review may or may not contain the reviewing appraiser's opinion of value.

Appraisers are classified as registered trainee real estate appraiser, licensed real estate appraiser, or a certified real estate appraiser.<sup>3</sup> Section 475.611(1)(n) , F.S., defines a registered trainee real estate appraiser to mean:

a person who is registered with the department as qualified to perform appraisal services only under the direct supervision of a licensed or certified appraiser. A registered trainee appraiser may accept appraisal

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<sup>1</sup> U.S. Department of Labor, Bureau of Labor Statistics. Occupational Outlook Handbook, 2010-11 Edition. Available at: <http://www.bls.gov/oco/ocos300.htm> (Last visited March 18, 2010).

<sup>2</sup> *Id.*

<sup>3</sup> Section 475.611(1)(f). F.S.

assignments only from her or his primary or secondary supervisory appraiser.

Section 475.611(1)(m), F.S., defines a licensed appraiser to mean:

a person who is licensed by the department as qualified to issue appraisal reports for residential real property of one to four residential units or on such real estate or real property as may be authorized by federal regulation. After July 1, 2003, the department shall not issue licenses for the category of licensed appraiser.

A certified real estate appraiser is either a “certified general appraiser” or a “certified residential appraiser.” A “certified general appraiser” is “a person who is certified by the department as qualified to issue appraisal reports for any type of real property.”<sup>4</sup>

A “certified residential appraiser” is:

a person who is certified by the department as qualified to issue appraisal reports for residential real property of one to four residential units, without regard to transaction value or complexity, or real property as may be authorized by federal regulation.

Appraisers are subject to application requirements,<sup>5</sup> including the submission of a fingerprint card and a criminal background check.

Section 475.615(6), F.S., provides qualifications for registration, certification, or licensure.<sup>6</sup> An applicant for registration, certification, or licensure shall be deemed not qualified:

If any applicant has been denied registration, licensure, or certification, or has been disbarred, or the applicant's registration, license, or certificate to practice or conduct any regulated profession, business, or vocation has been revoked or suspended by this or any other state, any nation, or any possession or district of the United States, or any court or lawful agency thereof, because of any conduct or practices which would have warranted a like result under this part, or if the applicant has been guilty of conduct or practices in this state or elsewhere which would have been grounds for disciplining her or his registration, license, or certification under this part had the applicant then been a registered trainee appraiser or a licensed or certified appraiser...

However, the applicant who is disqualified may be qualified by the board if “because of lapse of time and subsequent good conduct and reputation, or other reason deemed sufficient, it appears

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<sup>4</sup> Section 475.611(1)(h), F.S.

<sup>5</sup> Section 475.615, F.S.

<sup>6</sup> Sections 475.616, F.S., sets forth requirements to sit for appraiser certification examination, and s. 475.617, F.S., sets forth education and experience requirements.

to the board that the interest of the public is not likely to be endangered by the granting of registration or certification.”<sup>7</sup>

Sections 475.624 and 475.626, F.S., provide disciplinary standards. Individual appraisers must also comply with the Uniform Standards of Professional Appraisal Practice (USPAP).<sup>8</sup>

Typically, an appraiser receives an order from a real estate agent, lender, or mortgage broker to inspect a property. Based on an inspection of the home and comparable sales in the area, they develop an estimated value for the property.<sup>9</sup> That figure is used by banks to set the home's value as collateral for the mortgage loan. Appraisers are supposed to arrive at a value that is free from improper influence.

However, during the 2005-2007 real estate boom, pressure was placed on real estate appraisers to inflate home values which sometimes led to valuations in support of loans that were more than buyers could afford.<sup>10</sup> Unrealistically high appraisals hurt homebuyers as well as investors.<sup>11</sup>

### Home Valuation Code of Conduct

In response, the New York State Attorney General, the Federal Housing Finance Agency (FHFA), Fannie Mae, and Freddie Mac designed the Home Valuation Code of Conduct (HVCC), to provide added protections for homebuyers, mortgage investors, and the housing market.<sup>12</sup> It establishes standards for solicitation, selection, compensation, conflicts of interest and appraiser independence. The HVCC was established to insulate lenders from the appraisal process in an effort to eliminate their “influence or attempt to influence the development, reporting, result, or review of an appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, [or] bribery.”<sup>13</sup> Since the effective date of the HVCC on May 1, 2009, Freddie Mac and Fannie Mae no longer purchase mortgages from sellers that do not adopt the HVCC.<sup>14</sup>

The implementation of the HVCC and the need to ensure that appraisers remain an independent third-party in the valuation process has resulted in an outsourcing of appraisal functions by many financial institutions to appraisal management companies (AMCs).<sup>15</sup> Appraisal management companies are business entities that administer networks of independent appraisers to fulfill real

<sup>7</sup> Section 475.615(6), F.S.

<sup>8</sup> Section 475.615(5), F.S.

<sup>9</sup> U.S. Department of Labor at: <http://www.bls.gov/oco/ocos300.htm> (Last visited March 18, 2010).

<sup>10</sup> See Federal Housing Finance Agency (FHFA) “Strengthening Appraiser Independence and Improving the Valuation Process. Update on Enterprise Implementation of the Home Valuation Code of Conduct,” July 22, 2009. FHFA was created by the Housing and Economic Recovery Act of 2008. Available at: [www.fhfa.gov/webfiles/14611/hvcc\\_NOTICE\\_7-22-09F.pdf](http://www.fhfa.gov/webfiles/14611/hvcc_NOTICE_7-22-09F.pdf) (Last visited March 18, 2010).

<sup>11</sup> See Florida Real Estate Appraisal Boards disciplinary actions against individual appraisers at: <http://www.myfloridalicense.com/dbpr/re/FREABDARs.html> (Last visited March 18, 2010).

<sup>12</sup> A copy of the Home Valuation Code of Conduct (HVCC) is available at: the website of Freddie Mac located at: [http://www.freddie.mac.com/singlefamily/home\\_valuation.html](http://www.freddie.mac.com/singlefamily/home_valuation.html) (Last visited March 18, 2010).

<sup>13</sup> See s. I(B) of HVCC.

<sup>14</sup> *Id.*

<sup>15</sup> See National Association of Realtors, *National Association of Realtors Regulatory Issue Brief, Home Valuation Code of Conduct* at: [http://www.realtor.org/wps/wcm/connect/1f0951804dff1387af19bf4eb13ae60f/government\\_affairs\\_2009\\_regulatory\\_brief\\_HVCC\\_050509.pdf?MOD=AJPERES&CACHEID=1f0951804dff1387af19bf4eb13ae60f](http://www.realtor.org/wps/wcm/connect/1f0951804dff1387af19bf4eb13ae60f/government_affairs_2009_regulatory_brief_HVCC_050509.pdf?MOD=AJPERES&CACHEID=1f0951804dff1387af19bf4eb13ae60f) (Last visited March 18, 2010).

estate appraisal assignments on behalf of lenders. AMCs are not currently regulated by Florida law.

On October 8, 2009, the Appraisal Institute, a global membership association of professional real estate appraisers, proposed a model act to register and regulate AMCs.<sup>16</sup> The model was developed by the Appraisal Institute, the American Society of Appraisers, the American Society of Farm Managers and Rural Appraisers, and the National Association of Independent Fee Appraisers. According to the Appraisal Institute, laws based upon the model have recently been enacted in Arkansas, Louisiana, Nevada, California, New Mexico, and Utah.

### **The Sunrise Act**

A proposal for new regulation of a profession or occupation must meet the requirements in s. 11.62, F.S., the Sunrise Act, which sets forth the framework for the legislative review. The Sunrise Act provides the intent of the Legislature “that no profession or occupation be subject to regulation by the state unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage and that the police power of the state be exercised only to the extent necessary for that purpose.” The act also provides that no profession or occupation be regulated in a manner that unnecessarily restricts entry into the profession or occupation or adversely affects the availability of the professional or occupational services to the public.<sup>17</sup>

In determining whether to regulate a profession or occupation, s. 11.62, F.S., requires the Legislature to consider the following.

- Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote.
- Whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability.
- Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice, or who are practicing, a given profession or occupation to find employment.
- Whether the public is or can be effectively protected by other means.
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

Section 11.62, F.S., requires the proponents of regulation to submit information, which is structured as a sunrise questionnaire to document that the regulation meets these criteria.<sup>18</sup> A response to a sunrise questionnaire was prepared by the Appraisal Institute, which is a proponent

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<sup>16</sup> See [www.appraisalinstitute.org/newsadvocacy/downloads/modelprovisionsAMC.pdf](http://www.appraisalinstitute.org/newsadvocacy/downloads/modelprovisionsAMC.pdf) (Last visited March 18, 2010).

<sup>17</sup> Section 11.62(2), F.S.

<sup>18</sup> Section 11.62(4), F.S.

of the regulation of AMCs, to assist the Legislature in determining the need for regulation.<sup>19</sup> In pertinent part, the response submitted by the Appraisal Institute provides:

The most important public protection issue is the degradation in the quality of appraisals as a result of the involvement of AMCs. Because of the reduced fees that are paid to appraisers, only the least qualified and least competent appraisers are asked to complete assignments on behalf of AMCs. The lower quality appraisals have resulted in lenders making poor underwriting decisions (i.e. putting people in homes that they cannot afford). In addition, the real estate and home building industries have reported that poor quality appraisals have resulted in deals being killed. This is having an impact on economic recovery efforts.

The response also provides the following.

- The Appraiser Institute stated that there have been reported instances of appraisers with a prior appraiser license revocation forming an appraisal management company. The Appraisal Institute notes at least one of these cases occurred in Florida.
- Appraisal Management Companies do not require specialized skill or training, but the regulatory program in the bill does not include any specific training or examination requirements.
- The regulation of appraisal management companies would not place unreasonable restrictions on appraisers that work for AMCs or members of the public that work in a direct capacity for the AMCs.
- The AMCs operations would be minimally impacted by the registration requirements and compliance costs.
- It is not likely that there will be a direct increase for consumers in cost for an appraisal.

According to the Appraisal Institute, there are approximately 300 AMCs operating in the United States, and approximately 100 to 150 of those entities do business in Florida.

The board has not provided comment on the proposed regulation of AMCs. According to the department, it could not find any reported incidences of a consumer being harmed by an AMC. The department stressed that it can take action against a licensed appraiser, and it doesn't matter whether the appraiser works for a bank, AMC, realtor or other entity. The licensee is responsible for the work performed and signs the appraisal. The department believes that it has the appropriate authority to discipline if there is a violation, and does not see any additional benefit to more regulation.

### **III. Effect of Proposed Changes:**

The bill provides for the regulation of the practice of appraisal management by the board.

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<sup>19</sup> A copy of the Appraisal Institute's response to the Sunrise Questionnaire is on file with the Senate Committee on Regulated Industries.

## Definitions

**Section 1** amends s. 475.611, F.S., to define the terms “appraisal management company,” “appraisal management services,” “appraisal panel,” “client,” and “signature.”

“Appraisal management company,” is defined in s.475.611(1)(c), F.S., to mean a person<sup>20</sup> who performs appraisal management services.

The term “appraisal management services” is defined in s.475.611(1)(d), F.S., to mean the coordination or management of appraisal services for compensation by:

- Employing, contracting with, or otherwise retaining one or more appraisers to perform appraisal services for a client.
- Acting as a broker or intermediary between a client and one or more appraisers to facilitate the client’s employing, contracting with, or otherwise retaining the appraisers.

“Appraisal panel,” is defined in s.475.611(1)(i), F.S., to mean “a group of appraisers selected by an appraisal management company to perform appraisal services for clients on behalf of the company.”

“Client,” is defined in s.475.611(1)(m), F.S., to mean “a person who contracts with an appraiser or appraisal management company for the performance of appraisal services.”

“Signature” is defined in s.475.611(1)(s), F.S., to mean “personalized evidence indicating authentication of work performed by an appraiser and the acceptance of responsibility for the content of an appraisal, appraisal review, or appraisal consulting service or conclusions in an appraisal report.”

## Florida Real Estate Appraisal Board

**Section 2** amends s. 475.613(1), F.S., to increase the membership of the board from seven members to nine members, and to require that two members of the board must represent the appraisal management industry.

## Protection of an Appraiser’s Signature

**Section 3** creates subsection (2) of s. 475.614, F.S., to require the board to promulgate rules regarding how an appraiser’s signature is to be affixed to an appraisal report or other work performed by the appraiser in order to ensure the protection and authentication of the appraiser’s signature.

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<sup>20</sup> Section 1.01(3), F.S., defines the word “person” to include “individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.”

## Fees

**Section 4** amends s. 475.6147, F.S., to set forth the fees for the registration of AMCs. The bill provides that the application fee may not exceed \$150.00 and the initial registration and renewal fees may not exceed \$150.00 each year.

## Registration of Appraisal Management Company and Exemptions

**Section 5** creates s. 475.6235, F.S., to provide requirements for the registration of AMCs and to provide exemptions. Section 475.6235(1), F.S., provides that a person may not engage in appraisal services for compensation or advertise themselves as an appraisal management company or similar title unless first registered with the department. Employees of the AMC are not required to obtain a separate registration.

### *Exemption*

Section 475.6235(1)(b), F.S., exempts an AMC from the registration requirement if:

- No more than 10 percent of the appraisal management company is owned by persons other than certified or licensed appraisers.
- The AMC is a financial institution as defined in s. 655.005, F.S.,<sup>21</sup> a mortgage lender licensed under s. 494.0061, F.S., or an insurer as defined in s. 624.03, F.S.<sup>22</sup>

### *Application Requirements*

The application must be submitted in a format designed by the department. Section 475.6235(2), F.S., requires that the application must, at a minimum, include the following.

- The firm or business name.
- The mailing address, street address, and telephone number of the AMCs principal location.
- The AMCs federal employer identification number.
- The AMCs type of business organization: corporation, partnership, limited liability company, or sole proprietorship.
- If the AMC is incorporated, a statement indicating whether the AMC is foreign or domestic, date of incorporation, state incorporated, charter number, and if the AMC is a foreign corporation, the date that the corporation first registered with the Department of State to conduct business in this state.
- The full name, street address, telephone number, corporate title, social security number or federal employer identification number of any person who possesses the authority, directly or

<sup>21</sup> Section 655.005(1)(h), F.S., defines a “financial institution” as:  
a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking organization, international branch, international representative office, international administrative office, or credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.

<sup>22</sup> Section 624.03, F.S., defines “insurer” to include “every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance or of annuity.”

indirectly, to direct the management or policies of the AMC, including but not limited to the following.

- Each officer or director if the AMC is a corporation.
- Each general partner if the AMC is a partnership.
- Each manager or managing member if the AMC is a limited liability company.
- The owner if the AMC is a sole proprietorship.
- Each person who, directly or indirectly, owns or controls 10% or more of an ownership interest in the AMC;
- The name of any firm or business under which any of the listed above conducted business as an AMC within the 5 years preceding the date of application.
- The AMCs registered agent for service of process in this state.

The AMC must notify the department of any changes to the required information within 10 days of the change.

In addition to the appropriate fees, s. 475.6235(3), F.S., requires that the application include a set of fingerprints for each person listed in the application. The fingerprint must be forwarded to the Division of Criminal Justice Information Systems within the Florida Department of Law Enforcement (FDLE), and to the Federal Bureau of Investigation (FBI), to determine whether the person has a criminal history record and is statutorily qualified for registration. According to the FDLE, the bill's reference to fingerprints would not permit the electronic submission of fingerprints.

Section 475.6235(4), F.S., requires that each person listed on the application as a person who possesses the authority, directly or indirectly, to direct the management or policies of the AMC must also:

- Sign a pledge to comply with the Uniform Standards of Professional Appraisal Practice upon registration.
- Indicate in writing that she or he understands the types of misconduct for which disciplinary proceedings may be initiated.

Section 475.6235(4), F.S., also provides that the application shall expire 1 year after the date received. The effect or purpose of this provision is unclear. It not clear whether the effect of this provision is to require the annual resubmission of an application for registration, or whether the application must expire if not approved within 1 year. Regarding the later interpretation, s. 120.60(1), F.S., requires that every application for a license must be approved or denied within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law. If not approved or denied with the 90-day period, the application is deemed approved.

Section 475.6235(5), F.S., requires that each person listed in the application be competent and qualified to engage in appraisal management services. The bill provides that any person listed will not be qualified if:

- The person has been denied registration, licensure, or certification as an appraiser.
- The person has been disbarred.

- The person's registration, license, or certificate to practice or conduct any regulated profession, business, or vocation has been revoked or suspended by this or any other state, nation, possession, or district of the US, or any court or lawful agency thereof because of any conduct or practices that would have warranted a like result.
- The person has been guilty of conduct or practices in this state or elsewhere that would have been grounds for disciplining his/her registration, license, or certification as a registered trainee appraiser or a licensed or certified appraiser.

Any person disqualified for the above listed reasons can be found qualified if the board determines that because of lapse of time, subsequent good conduct and reputation, or any other reason deemed sufficient, the granting of the registration is not likely to endanger the public interest.

Section 475.6235(6), F.S., provides that an appraisal management company registration application may not be rejected solely by virtue of membership or lack of membership of any person or any employee of the company in any particular appraisal organization.

#### *Non-Florida Residents*

Section 475.6235(7), F.S., provides for the registration of applicants who are not Florida residents. The bill requires that any applicant who is not a Florida resident must file an irrevocable consent that suits and actions may be commenced in any county in Florida that the plaintiff resides and that service of any process or pleadings may be made by delivering the process or pleading to the director of the Division of Real Estate<sup>23</sup> by certified mail, return receipt requested. Service of process must also be delivered by registered mail to the AMC's principal business location or to the AMC's registered agent if the AMC's principal business location is within Florida.

The bill specifies that the service must be taken and held by all the courts as valid and binding upon the AMC as if made upon the company in Florida within the jurisdiction of the court in which the suit or action is filed. The bill further specifies that the irrevocable consent must be in a form designated by the department and signed before a notary.

#### *Renewal of Registrations*

Section 475.6235(8), F.S., provides that the department must renew the registration of an AMC upon receipt of the renewal application and designated fee. It also provides that, at least every 4 years, the department shall adopt rules establishing a procedure for renewal of an AMC registration.

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<sup>23</sup> Section 20.165(2)(h), F.S., creates the Division of Real Estate within the Department of Business and Professional Regulation.

### **Discipline of Appraisers**

**Section 6** amends the discipline provisions in s. 475.624, F.S., which authorize the board to deny an application or fine, suspend, or revoke a license, registration, or certification under part II of ch. 475, F.S., to limit the application of the section to licensed, registered, or certified appraisers.

It also amends s. 475.624, F.S., to reference an appraiser registered, licensed, or certified instead of an appraiser registrant, licensee, or certificateholder.

### **Discipline of Appraisers**

**Section 7** creates s. 475.6245, F.S., to provide grounds for the denial of an application for AMC registration; investigate actions; reprimands or imposing an administrative fine. The bill provides that a administrative fine may not to exceed \$5,000 for each count. It authorizes the board to conditionally or unconditionally revoke or suspend an AMC registration for a period of not more than 10 years, or to place an AMC on probation if the board finds that the AMC or any person listed in s. 475.6235(2)(f) has:

- Violated any provisions of this part or s. 455.227(1), F.S., however AMCs are exempt from s. 455.227(1)(i), F.S.<sup>24</sup>
- Been found guilty of fraud, misrepresentation, concealment, false promises, false pretenses, dishonest conduct, culpable negligence, or breach of trust in any business transaction.
- Violated a contractual duty in an appraisal assignment.
- Aided, assisted, or conspired with another person to engage in such appraisal misconduct.
- Formed an intent, design, or scheme to engage in such appraisal misconduct and committed an overt act in furtherance of such intent, design, or scheme.
- Advertised services in a fraudulent, false, deceptive or misleading manner.
- Violated any lawful order issued under this part or chapter 455.
- Been convicted, or pled guilty or non contendere to a crime which directly relates to the activities of an AMC, moral turpitude, or fraudulent or dishonest conduct.
- Had a registration, license, or certification as an appraiser or AMC revoked, suspended, or acted against.
- Had her or his registration, license, or certificate or application for such to practice or conduct any regulated profession, business, or vocation revoked or suspended.
- Become temporarily incapacitated from acting as an AMC with safety to those in a fiduciary relationship with her/him because of drunkenness, drug use, or temporary mental derangement.
- Lost the ability to be entrusted to safely deal with the public or in a confidential capacity due to mental disease or deterioration or confinement in a county jail, state or federal prison, or mental institution.

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<sup>24</sup> Section 455.227(1), F.S., sets forth the disciplinary provisions, including prohibited conduct and authorized penalties, for the professions regulated by the Department of Business and Professional Regulation. Section 455.227(1)(i), F.S., authorizes disciplinary action for failing “to report to the department any person who the licensee knows is in violation of this chapter, the chapter regulating the alleged violator, or the rules of the department or the board.” An identical exemption to s. 455.227(1)(i), F.S., is also provided in s. 475.624, F.S., for appraisers.

- Failed to inform the board in writing within 30 days after pleading guilty or nolo contendere to or being convicted or found guilty of, any felony.
- Been found guilty, for a second time, of any misconduct that warrants disciplinary action.
- Been found guilty of conduct or practice which shows that she/he is incompetent, negligent, dishonest, or untruthful to an extent that no person may safely sustain a confidential relationship with him/her.
- Made or filed a report or record with the AMC knows to be false, willfully failed to file a required report or record, or has willfully impeded or obstructed such filing.
- Obtained or attempted to obtain an AMC registration by fraud, misrepresentation, or deceit.
- Paid money or valuable consideration, except as required by this section, to any member or employee of the board to obtain a registration.
- Instructed an appraiser to violate any standard or provision of the USPAP.
- Engaged in the development of an appraisal or the preparation of an appraisal report.
- Failed to communicate an appraisal without good cause.
- Accepted an appraisal assignment if the employment itself is contingent upon the AMC reporting a predetermined result, analysis, or opinion, or if the fee to be paid for the performance is contingent upon the opinion, conclusion, or valuation reached.
- Failed to timely notify the department of any change in principal business location.
- Influenced or attempted to influence the development, reporting, or review of an appraisal through coercion, extortion, collusion, compensation, instruction, inducement, intimidation, bribery, or any other means, including, but not limited to, the following:
  - Withholding or threatening to withhold timely payment for an appraisal, if the nonpayment is based on the specific quality or other service issues that constitute noncompliance with the appraisal engagement agreement.
  - Withholding or threatening to withhold future business from an appraiser.
  - Expressly or impliedly promising future business, promotions, or increased compensation for an appraiser.
  - Conditioning a request for appraisal services or the payment of an appraisal fee, salary, bonus upon the opinion, conclusion, or valuation to be reached or upon a preliminary estimate or opinion requested from an appraiser.
  - Requesting that an appraiser provide an estimated, predetermined, or desired valuation in an appraisal report or provide estimated values or comparable sales at any time before the appraiser's completion of appraisal services.
  - Providing an appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that at copy of the sales contract for purchase transactions may be provided.
  - Providing an appraiser or relative to the appraiser stock or other financial or nonfinancial benefits.
  - Allowing the removal of an appraiser from an appraiser panel without prior written notice to the appraiser.
  - Obtaining, using, or paying for a second or subsequent appraisal or ordering an automated valuation model in connection with a mortgage financing transaction unless there is a reasonable basis to believe that the initial appraisal was flawed or tainted and such basis is clearly and appropriately noted in the loan file, or unless such appraisal or automated valuation model is issued pursuant to a bona fide prefunding or postfunding appraisal review or quality control process.

- Any other act that impairs or attempts to impair an appraiser's independence, objectivity, or impartiality.
- Has altered, modified, or otherwise changed a completed appraisal report.
- Has employed, contracted with, or otherwise retained an appraiser whose registration, license, or certification is suspended or revoked to perform appraisal services or appraisal management services.

Section 475.624(2), F.S., authorizes the board to reprimand, conditionally or unconditionally suspend, or revoke any registration, or impose administrative fines not to exceed \$5,000 for each count or offense against an AMC, if the board determines that the AMC is attempting to perform, has performed, or has attempted to perform any of the following acts.

- Committing any act in violation of this part II of ch. 475, F.S.
- Violating of any rule adopted by the board under part II of ch. 475, F.S.
- Obtaining an AMC registration by fraud, misrepresentation, or deceit.

Section 475.624(3), F.S., provides that an AMC is not prohibited from requesting that an appraiser provide additional information about the basis of a valuation, or that the appraiser correct objective factual errors in an appraisal report.

### **Violations and Penalties**

**Section 8** amends s. 475.626, F.S., which sets forth additional practices and conduct that appraisers are prohibited from committing and provides penalties, to include AMCs.

The bill amends s. 475.626(1)(c), F.S., relating to the prohibition against any conduct or practice set forth in s. 475.624, F.S., to limit this provision to registered trainee appraisers, or a licensed or certified appraisers.

The bill also creates a new paragraph (d) in s. 475.626(1), F.S., to prohibit AMCs from committing any conduct or practice set forth in s. 475.6245, F.S.

### **Retention of Records**

**Section 9** amends s. 475.629, F.S., which sets forth records retention requirements for appraisers, to include AMCs. Current law requires that appraisal records be retained for a period of 5 years. The bill requires that appraisal records be maintained for 5 years or according to the Uniform Standards of Professional Appraisal Practice (USPAP), whichever is greater.

The bill provides that the department may not inspect or copy the records of an AMC except in connection with a pending investigation or complaint.

The bill further specifies that the period for retention of the records runs from the date of the submission of the appraisal report to the client, except as otherwise specified in the USPAP.

**Effective Date**

Section 10 provides an effective date of July 1, 2010.

**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:**

Article II, section 3 of the Florida Constitution creates the three branches of Florida's government, and prohibits one branch from exercising the powers of another branch. This separation of powers doctrine includes a prohibition on one branch delegating its constitutionally assigned powers to another branch.<sup>25</sup> Therefore, statutes granting power to the executive branch "must clearly announce adequate standards to guide ... in the execution of the powers delegated. The statute must so clearly define the power delegated that the [executive] is precluded from acting through whim, showing favoritism, or exercising unbridled discretion."<sup>26</sup>

This bill grants authority to the Florida Real Estate Appraisal Board to adopt rules that include requirements for protecting the security of an appraiser's signature and prohibiting practices that may discredit the use of an appraiser's signature to authenticate" the appraisers work. Though it is unclear what "practices" may be prohibited by the board, if the "practices" are within the kinds of actions related to affixing a signature, there should not be a constitutional problem with this delegated authority.

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

The department estimates that licensure and application fees generated as a result of the registration of appraisal management companies will be \$318,500 in Fiscal Year 2010-2011.

<sup>25</sup> *Chiles v. Children A, B, C, D, E & F*, 589 So.2d 260, 264 (Fla.1991)

<sup>26</sup> *Fla. Dep't of State, Div. of Elections v. Martin*, 916 So.2d 769, 770 (Fla. 2005), citing *Lewis v. Bank of Pasco County*, 346 So.2d 53, 55-56 (Fla.1976)

**B. Private Sector Impact:**

The department estimates that 700 appraisal management companies will apply and be registered under the bill. The bill requires that appraisal management companies applying for registration to submit an application with an application fee capped at \$150, and pay an initial registration fee capped at \$150. Annual renewal fees are also capped at \$150 per year. The department will establish a two-year registration period, which is consistent with other licensed professions. Therefore, the required initial registration for the first two year period would be \$300, and \$300 would be required for renewal every two years. Applicants will pay fees which will result in increased revenue to the Professional Regulation Trust Fund within the department by \$318,500. Applicants for registration are also required to pay a special fee of \$5.00 for the enforcement of unlicensed activity.<sup>27</sup>

Persons who must be identified on an AMC registration application because they possess the authority, directly or indirectly, to direct the management or policies of the AMC would be required to submit their fingerprints for a criminal history record check to determine if they are statutorily qualified. According to the Florida Department of Law Enforcement (FDLE), the cost of obtaining fingerprints for an application submission is \$43.25. Applicants are responsible

**C. Government Sector Impact:**

The bill requires that appraisal management companies applying for registration to submit an application with an application fee capped at \$150, and pay an initial registration fee capped at \$150. Annual renewal fees are also capped at \$150 per year. It is estimated by the department that 700 AMC's will seek application. The department will establish a two-year registration period, which is consistent with other licensed professions. The department estimates that there will be negative net revenue every other year. The negative net revenue years will be off-set by the positive net revenue years. However, when initial licensing fees and renewal fees are viewed on an annual basis, the net revenue in the first year would be approximately \$151,158 because of revenue from initial license fees and license applications. In subsequent years, the annual revenue would be about \$56,497 because the department does not expect additional initial license applications, just license renewals.

The department estimates that one additional full-time equivalent position at a total cost of \$45,131 will be needed to handle the increased workload in the Division of Service Operations to process the applications and revenue associated with appraisal management companies registration.

**VI. Technical Deficiencies:**

None.

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<sup>27</sup> See s. 455.2281(1), F.S.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

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

**CS by Regulated Industries on April 7, 2010:**

The committee substitute (CS) combines SB 2210 and SB 1552. The bills are substantively similar. The CS differs from SB 2210 and SB 1552 as follows:

- It amends s. 475.613(1), F.S., to increase the membership of the Florida Real Estate Appraisal Board (board) from seven members to nine members and to require that two members of the board must represent the appraisal management industry.
- It does not provide a registration exemption for certain appraisal management companies (AMCs) as specified in s. 475.3235(1)(b), F.S., of the bills;
- It amends the fingerprints requirement in s. 475.6235(3), F.S., to reference “a complete set of fingerprints” and “fingerprints” instead of “fingerprint card;”
- It amends s. 475.6235(7), F.S., to provide for service of process or pleading to the AMCs registered agent if the company’s principal business location is in Florida;
- It amends s. 475.624, F.S., to limit the discipline provisions in this section to appraisers by deleting references to AMCs;
- It also amends s. 475.624, F.S., to reference an appraiser registered, licensed, or certified instead of an appraiser registrant, licensee, or certificateholder.
- It creates s. 475.6245, F.S., to provide for the discipline of appraisal management companies and for the denial of an AMC registration application. It includes additional grounds for discipline and denial of a registration application in paragraphs (b) through (q) of s. 475.6245(1), F.S. Paragraphs (r) through (u) of s. 475.6245(1), F.S., and subsections (2) and (3) of s. 475.6245, F.S., of the CS are substantively similar to paragraphs (s) through (v) of s. 475.624(1), F.S., and s. 475.624(2), F.S., in the bills, except that the CS limits the application of these disciplinary provisions to AMCs, except that:
  - It does not prohibit an AMC from demoting, terminating, or threatening to demote or terminate an appraiser, as provided in s. 475.624(1)(t)3., F.S., of the bills; and
  - Section s. 475.6245(1)(s)1., F.S., of the CS differs from s. 475.624(1)(t)2., F.S., of the bills by permitting an AMC to withhold or threaten timely payment for an appraisal if the nonpayment is based on the specific quality or other service issues that constitute noncompliance with the appraisal engagement agreement;
- Section 475.626(1)(a), F.S., of the CS does not cross-reference the registration exemptions in s. 475.6235(1)(b), F.S., which are provided in the bills but not in the CS;
- It amends s. 475.626(1)(c), F.S., relating to the prohibition against any conduct or practice set forth in s. 475.624, F.S., to limit this provision to registered trainee appraisers, or a licensed or certified appraisers.
  - It creates a new paragraph (d) in s. 475.626(1), F.S., to prohibit AMCs from committing any conduct or practice set forth in s. 475.6245, F.S.

- It amends the retention of records provisions in s. 475.629, F.S., to provide that the department may not inspect or copy the records of an AMC except in connection with a pending investigation or complaint.

**B. Amendments:**

None.

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

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**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 General Government Appropriations Committee

BILL: CS/CS/SB 2086

INTRODUCER: Commerce Committee, Banking and Insurance Committee, and Senator Richter

SUBJECT: Consumer Debt Collection

DATE: April 15, 2010

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Johnson	Burgess	BI	<b>Fav/CS</b>
2. Hrdlicka	Cooper	CM	<b>Fav/CS</b>
3. Frederick	DeLoach	GA	<b>Pre-meeting</b>
4. _____	_____	RC	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

Part VI of chapter 559, Florida Statutes, governs the regulation of consumer debt collection agencies. The Office of Financial Regulation (OFR) is responsible for the registration and regulation of consumer debt collection agencies. The Attorney General is authorized to initiate actions in any federal court against out-of-state consumer collection agencies for violations of this part. This bill provides the following regulatory and enforcement changes.

- Streamlines the existing statutory authority for the regulation of consumer debt collection agencies into one agency, by transferring duties related to the registry and referral of complaints from the Department of Financial Services to the OFR.
- Provides that a violation of Part VI, ch. 559, F.S., is actionable by the Attorney General, including consumer complaints.
- Increases administrative fines for violations, currently capped at \$1,000, to \$10,000. It would allow the OFR to impose significant economic sanctions on unscrupulous consumer collection agencies.
- Provides the OFR with broad, discretionary authority in promptly investigating the books and records of a consumer collection agency. Investigations would be based on the nature and

severity of an alleged violation rather than the accumulation of five unresolved sworn complaints.

The bill substantially amends the following sections of the Florida Statutes: 559.565, 559.715, 559.72, 559.725, 559.730, and 559.77.

The bill creates sections 559.5556, 559.726, and 559.727, Florida Statutes.

## **II. Present Situation:**

### **Consumer Debt Collection Agencies**

Part VI of ch. 559, F.S., regulates consumer collection agencies and protects consumers from certain debt collection practices that involve fraud, harassment, threats, and other unscrupulous activities. Section 559.725, F.S., designates the Department of Financial Services (DFS) as the registry for consumer complaints. Once the DFS receives a sworn complaint against an entity, the DFS refers the complaints to the appropriate regulatory authority or the Florida Bar, if appropriate. However, in January 2008, the OFR and the DFS mutually agreed to delegate the registry to the OFR.

The OFR is responsible for the registration of consumer collection agencies. A consumer collection agency must meet minimal requirements to register with the OFR. The applicant is required to submit an application and pay a registration fee. Information required on the application includes submission of business and trade names; the location of the business; statements identifying information as to owners, officers, directors and resident agents; and statements identifying and explaining any occasion on which a professional or occupational license held by the registrant or principal was the subject of any suspension or revocation proceeding.<sup>1</sup>

The OFR has limited investigative and enforcement powers and duties. Any out-of-state debt collector who collects or attempts to collect consumer debt, prior to registration is subject to an administrative fine, not to exceed \$1,000.<sup>2</sup> Section 559.72, F.S., outlines prohibited practices as they relate to the collection of consumer debts. Such practices range from prohibitions against persons impersonating a law enforcement officer or government agent to using threats of force or violence. Section 559.725, F.S., authorizes the OFR to investigate with the accused collection agency by means of written communication. However, the OFR has no authority in examining the actual books and records of a consumer collection agency in determining the factual basis of a complaint. Before the OFR takes action, there must be at least five unresolved, sworn complaints filed by five different consumers within a 12-month period against a consumer collection agency.

The OFR is required to notify the appropriate state attorney or the Attorney General for cases pertaining to out-of-state consumer debt collectors, of any determination by the OFR of a violation of the requirements of this part.<sup>3</sup> State attorneys may apply to a court of competent

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<sup>1</sup> Section 559.555, F.S.

<sup>2</sup> Section 559.565, F.S.

<sup>3</sup> Section 559.725, F.S.

jurisdiction upon the sworn affidavit of any person alleging a violation of any of the provisions of this part.<sup>4</sup>

### **Regulatory and enforcement powers**

Currently, there are 1,313 consumer collection agencies registered with the OFR. Since January 2008, the OFR has not levied any fines, nor has it suspended or revoked any registrations because it has not documented five unresolved complaints by five different consumers against one specific consumer collection agency. The current statutory framework prevents the OFR from initiating disciplinary action against a debt collector until the OFR receives at least five unresolved, sworn complaints from five different consumers within a 12-month period, regardless of the severity of the alleged violation. The OFR does not have the statutory authority to examine or investigate the books or records of a debt collector to determine the legitimacy of the complaint.

The OFR's authority to discipline registrants is limited. For example, the OFR may not revoke or suspend a registration if the collection agency can show by a preponderance of the evidence that the violations were not intentional and resulting from a bona fide error.<sup>5</sup> The OFR must also consider the registrant's volume of business when deciding whether to suspend or revoke a registration. The law allows the OFR to fine a registrant, not to exceed \$1,000, for a violation of the prohibited practices provisions. However, any action by the OFR to revoke, suspend, or issue an administrative fine must be taken within 2 years of the date of the last violation upon which the action is founded. The OFR does not have the authority to impose significant administrative sanctions against a consumer collection agency that fails to register. Rather, the act provides it is a first-degree misdemeanor to operate a consumer collection agency without first registering with the office, unless the entity is exempt.<sup>6</sup>

### **Fair Debt Collection Practices Act**

The federal version of Florida's Consumer Collection Agency Act is known as the Fair Debt Collection Practices Act (FDCPA). Many of the provisions of the federal act are similar to the Florida Consumer Collection Agency Act. However, there are some key consumer and regulatory provisions in the FDCPA that are not included under Florida's law: provisions pertaining to communications in connection with debt collection; acquisition of location information; false or misleading representations; unfair practices; validation of debts; and the furnishing of deceptive forms.

### **III. Effect of Proposed Changes:**

The bill includes the following provisions.

- Authorizes the OFR to investigate any person whom they believe has violated any provision of Part VI of ch. 559, F.S. (Section 8). Under current law, there must be at least five, unresolved, sworn complaints filed by five different consumers within a 12-month period

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<sup>4</sup> Section 559.78, F.S.

<sup>5</sup> Section 559.730, F.S.

<sup>6</sup> Section 559.785, F.S.

against a consumer collection agency prior to the OFR initiating action to investigate a complaint.

- Requires a registered consumer collection agency to respond in writing within 45 days after receipt of a written request from the OFR, concerning a consumer complaint.
- Requires registrants to maintain specified books and records for 3 years and allows the OFR access to such books and records (Section 1).
- Increases maximum administrative fines from \$1,000 to \$10,000 for violations of the prohibited acts delineated in s. 559.72, F.S. (Section 8).
- Increases the maximum administrative fine from \$1,000 to \$10,000 for a consumer collection agency that collects or attempts to collect debt in Florida prior to registering with the OFR (Section 2). The collection agency is also currently subject to reasonable attorney fees and court costs in any successful action by the state to collect such fines.
- Authorizes the OFR to revoke or suspend the registration of a registrant for violating the prohibited acts provisions under s. 559.72, F.S. (Section 8). Under current law, the OFR may take action if a registrant has engaged in repeated violations, establishing a clear pattern of abuse of prohibited acts under this section.
- Authorizes the OFR to issue subpoenas and cease and desist orders (Sections 6 and 7).
- Provides that a violation of Part VI, ch. 559, F.S., is actionable by the Attorney General (Section 2), and permits the Attorney General to take action against any person against whom a complaint has been made that the person committed a prohibited act (Section 5).
- Modifies the required notice related to the assignment of a debt, such that the notice must be given to the debtor at least 30 days before any action is taken to collect the debt (Section 3). Current law requires the notice to be given to the debtor within 30 days after the assignment is made.
- Requires complainants, subject to penalties of perjury, to certify their complaints on a form approved by the Financial Services Commission (Section 5).

This bill provides an effective date of October 1, 2010.

#### **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 expedites the complaint process required under ch. 559, F.S., for consumers by eliminating the requirement of a sworn complaint. A sworn complaint imposes a chilling effect on persons seeking the resolution of a complaint. However, the complaint must be certified and is subject to penalty of perjury.

The bill provides greater protections for consumers by increasing regulatory oversight and enforcement authority by the OFR and the Attorney General. The OFR would have broad, discretionary authority to promptly investigate the books and records of a consumer collection agency. The bill increases administrative fines, currently capped at \$1,000, to \$10,000, and allows the OFR to impose significant economic sanctions on unscrupulous consumer collection agencies. The bill also provides that any violation of Part VI, ch. 559, F.S., is actionable by the Attorney General.

**C. Government Sector Impact:**

The OFR anticipates that implementation of the bill's provisions to remove barriers to filing consumer debt collection agency complaints and obstacles to enforcement, will increase the workload of the department. However, because of the uncertainty of the level of workload increases for the upcoming fiscal year, the Office will absorb any additional increases within current resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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

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

**CS by the Commerce Committee on April 13, 2010:**

This CS differs from CS/SB 2086 in the following ways:

- Restores definitions currently in law, and does not specifically exempt attorneys from the definition of debt collectors (this is preserved in current law, which the CS does not strike) or set forth definitions for terms not utilized in the committee substitute. The provisions of the CS apply to original creditors.
- Does not create new statutory sections which would specifically set forth the powers and duties of OFR, and rulemaking authority, in part related to registration restrictions (including permanent bars for applicants or registrants who commit certain financial-related felonies).

- Restores current law related to registration of consumer collection agencies, and does not require a background check or fingerprinting for registration or renewal, and does not increase the registration fee (currently \$200 annually).
- Does not revise the entities that are exempt from registration, which would have conformed Florida law to federal law.
- Does not require a surety bond.
- Shortens the time required to maintain books and records from 5 years to 3 years.
- Restores current law and reduces the fine on out of state consumer collection agencies for failing to register from \$25,000 to \$10,000 (this is an increase from \$1,000 which is in current law). Further, by restoring current law it does not specifically authorize the Attorney General to take action against an out-of-state debt collector for violations of the Florida Deceptive and Unfair Trade Practices Act, and recover attorney's fees and costs.
- Does not codify the provisions of the federal Fair Debt Collection Act related to communications by debt collectors, but does include two provisions related to presumptions that may be made by someone attempting to collect on a debt when making telephone calls in the prohibited acts.
- Modifies the required notice related to the assignment of a debt such that the notice must be given to the debtor at least 30 days before any action is taken to collect the debt (current law requires the notice to be given to the debtor within 30 days after the assignment is made).
- Restores current law related to prohibited practices, and in doing so such prohibited practices apply to any person and the CS does not codify the provisions of the federal Fair Debt Collection Act related to prohibited practices by debt collectors. The CS does include the two communications presumptions discussed above, and permits a person to contact a debtor whom the person knows is represented by an attorney if the attorney does not respond within 30 days (this is more specific than current law which requires that the unresponsiveness be for "a reasonable period of time").
- Permits the Attorney General to take action against any person that has had a complaint filed against them which alleges that the person committed a prohibited act.
- Requires complainants, subject to penalty of perjury, to certify their complaints to OFR.
- Reduces the maximum administrative fine for a consumer collection agency's failure to respond to a request for information regarding a complaint from \$2,500 to \$250 per day, and increases the time to respond from 20 days to 45 days.
- Reduces the maximum administrative fine that OFR may impose for committing a prohibited act from \$25,000 to \$10,000.
- Restores current law that permits a debtor to bring a civil action against any person who commits a prohibited act.
- Restores current law which permits state attorneys to seek suspensions or revocations of licenses.
- Restores current law which provides that failure to register is a 1<sup>st</sup> degree misdemeanor, instead of a 3<sup>rd</sup> degree felony.
- Provides an effective date of October 1, 2010.

**CS by Banking and Insurance on March 24, 2010:**

Streamlines the existing statutory authority for the regulation of consumer debt collection agencies into one agency, by transferring duties related to the registry and referral of complaints from the Department of Financial Services to the OFR.

- Strengthens registration requirements by authorizing the adoption of rules by the Financial Services Commission that oversees the OFR and establishes the following time period during which an applicant is barred from the initial registration or renewal:
  - A permanent bar from registration for felonies involving money laundering, breach of trust, dishonesty, embezzlement, fraud, fraudulent conversion, misappropriation of property, racketeering, or theft;
  - A 15-year disqualifying period for felonies involving moral turpitude;
  - A 7-year disqualifying period for all other felonies; and
  - A 5-year disqualifying period for misdemeanors involving fraud, dishonesty, or any other act of moral turpitude.
- Provides that any violation of Part VI, ch. 559, F.S., is actionable by the Attorney General as a violation of the Florida Deceptive and Unfair Trade Practices Act and such violation is subject to the enforcement remedies and penalties under Part II of ch. 501, F.S.
- Increases administrative fines for violations, currently capped at \$1,000 to \$25,000. It would allow the OFR to impose significant economic sanctions on unscrupulous consumer collection agencies.
- Provides the OFR with broad, discretionary authority in promptly investigating the books and records of a consumer collection agency.
- Increases the registration fee from \$200 to \$600 to fund the additional positions that will be necessary to provide the enhanced regulation and enforcement.

**B. Amendments:**

None.



LEGISLATIVE ACTION

Senate	.	House
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**LATE FILED**

GENERAL GOVERNMENT  
APPROPRIATIONS  
DATE: 4/16/10  
TIME: 12:35 p.m.

The Committee on General Government Appropriations (Baker)  
recommended the following:

**Senate Amendment**

Delete lines 89 - 90  
and insert:  
debtor written notice of such assignment as soon as practical  
after the assignment is made but at least within 30 days before  
any action to collect the debt after the assignment. The

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the General Government Appropriations Committee

BILL: CS/CS/SB 570

INTRODUCER: Community Affairs Committee, Environmental Preservation and Conservation Committee, and Senator Constantine

SUBJECT: Environmental Protection

DATE: April 16, 2010 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiggins	Kiger	EP	<b>Fav/CS</b>
2.	Wolfgang	Yeatman	CA	<b>Fav/CS</b>
3.	Pigott	DeLoach	GA	<b>Pre-meeting</b>
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

This bill deletes a provision in current law concerning an air registry that emitters have previously used, which is now unnecessary because federal regulations specify reporting requirements. The bill amends section 403.7032, F. S., to require all cities, county, state entities, and public schools to report to their county their recycling rates on all recyclable materials. Businesses are encouraged to report. The bill directs the Department of Management Services (DMS) to modify their procurement system to track the state's purchases of green and recycled materials. The bill revises section 288.9015, Florida Statutes, and directs the Department of Environmental Protection (DEP) to create the Recycling Business Assistance Center to coordinate between state agencies and the private sector to develop new markets for recyclable materials.

The bill deletes an obsolete requirement that the DEP appoint a technical advisory committee to assist in developing rules governing the regulation of recovered materials. The bill amends section 403.705, Florida Statutes, to require the DEP to report to the Legislature the state's recycling rates every two years. The bill outlines the state's incremental recycling goals and specific benchmarks that must be reached by 2020. The bill also outlines state recycling goals for

construction and demolition debris and commercial and multi-family dwellings. If the state does not reach its recycling benchmarks by specified dates, the bill tasks the DEP with investigating and reporting to the Legislature programmatic changes that could assist in achieving the recycling goal.

The bill details that solid waste for the production of renewable energy can count toward the recycling goals if the county in which a waste to energy facility is located has a program that is designed to recycle at least forty percent of the municipal solid waste by means other than gasification or combustion. The bill specifies that local governments may enact ordinances to require multi-family dwellings and apartment complexes to allot space and receptacles for the separation of recyclable materials.

The bill revises section 403.7145, Florida Statutes, to replace the terms “aluminum” and “cans” with “beverage containers”. The Capitol building must report its recycling rates to Leon County and those rates will be posted on the DEP’s website. The bill requires all public airports to collect recyclables from airlines and businesses operating at the airport.

The bill establishes recycling benchmarks in addition to the requirement that all construction and demolition debris be processed prior to disposal.

Finally, the bill repeals section 288.1185, Florida Statutes, the Recycling Markets Advisory Committee in the Office of Tourism, Trade, and Economic Development.

The bill substantially amends the following sections of the Florida Statutes: 403.44, 403.7032, 288.9015, 403.7046, 403.705, 403.706, 403.7061, 403.707, 403.7095, 403.7145, 553.77, and 403.7049.

The bill repeals section 288.1185, Florida Statutes.

## **II. Present Situation:**

In 1988, the Florida Legislature passed the Solid Waste Management Act (SWMA) which included a 30 percent recycling goal. According to the DEP, as of 2007 Florida generates more than 32 million tons of municipal solid waste annually, and the state’s average recycling rate is 28 percent.

The Energy, Climate Change and Economic Security Act of 2008 described the long term goals for state and local governments, companies, and the general public to reduce the amount of recyclable solid waste disposed of by a statewide average of at least 75 percent by 2020. The bill directed the DEP to conduct public hearings and submit a report, by January 1, 2010, with recommendations on how to reach the goal. The DEP’s report to the Legislature included the following recommendations.

- Each state agency report to the DMS its total expenditures on materials with recycled content.
- An increase in recycling education opportunities in K-12 public schools.

- Development of statewide recognition programs to reward citizens, schools, cities and municipalities recycling efforts.
- The Legislature direct the DEP to review in five years the number of local governments that have implemented pay as you throw (PAYT) to determine if additional measures are needed to increase the adoption of PAYT.
- The Legislature require all construction and demolition (C&D) be processed at a materials recovery facility prior to disposal.
- The Legislature require commercial recycling in counties with over a 100,000 population and cities with over 50,000 population.
- The Legislature should consider the creation of a landfill disposal fee.
- The Legislature consider enacting a bottle bill to increase recycling of beverage containers.
- The Legislature allow the DEP to reduce or modify the composting goal.
- The Legislature create a Recycling Business Assistance Center to promote markets for the entire spectrum of recyclable municipal solid waste materials.
- Encourage the flow of materials such as food waste, yard trash, and paper to organic recycling centers, etc.

### **Composting Requirements**

Currently, local governments have been directed to develop and implement a plan to achieve a goal to compost organic materials that would otherwise be disposed of in a landfill. The goals provide that up to 10 percent and no less than five percent of organic materials would be composted within the county. The DEP can reduce the counties compost goal if the county can demonstrate that due to their unique demographics or other factors they have an inability to separate compostable materials.

### **Recyclable Materials Markets**

According to the DEP's report, of the 32.3 million tons of municipal solid waste (MSW) generated in Florida, approximately 40 percent is organic materials such as food waste, yard trash and paper. The recycling rate for food waste is 1.4 percent, 37 percent for yard trash, and 27 percent for paper. Florida's counties play a crucial role in organics recycling because they handle large amounts of organic wastes from all sources. State regulations, market conditions, and other economic circumstances all affect the potential success of organics recycling in Florida. State programs can stimulate technological advances and new uses through the market development and procurement policies. While existing school recycling programs generally address paper, aluminum cans and sometimes plastic bottles, the composting of food wastes at schools could allow students to increase the recycling rate, provide high quality soil to the school grounds, and present a real world learning opportunity for teachers.

Another aspect of market development that can be fine tuned to fit the needs of each region is the material recovery facilities. The cost associated with materials recovery facilities vary according to geographic location and the needs of the community. A north Florida facility processing 500 tons per day of construction and demolition debris reports an estimated capital cost of \$7.5 million to become operational, while a South Florida facility that processes 2,500 tons per day or more reports an estimated capital cost of \$13.6 million.

## **Solid Waste Management**

Section 403.7046, F.S., directed the DEP to create a technical advisory committee to include representatives from local waste management and recycling communities to develop rules and to elicit comment of the types of recovered materials handled at the disposal sites and waste facilities. The DEP has stated that this committee has already fulfilled its requirements and the technical advisory committee has disbanded.

According to the DEP's report, recycling operations at Florida's 12 WTE facilities could account for roughly 12 percent of the 75 percent goal. Through the mass combustion of MSW (Municipal solid waste) and refuse-derived fuel, Florida's WTE facilities generate 3.25 million megawatts of energy per year, which is enough electricity to fuel 300,000 households in Duval County for one year. Currently, the law allows renewable energy from solid waste to count toward the 75 percent goal. However, according to the DEP's report, measuring the contribution of the waste to energy facilities is challenging. The DEP stated that they intend to appoint an advisory group to address what methodology needs to be utilized to calculate and credit WTE's production.

The commercial sector generates 67 percent of the MSW which is twice what is generated by single-family residents. The commercial sector has a current recycling rate of 30 percent. However, during the public hearings conducted by the DEP, recycling input from a variety of commercial entities indicates that their commercial rates are much higher. The commercial sector is not required to disclose their recycling rates to the DEP, so it is difficult to determine the commercial sector's recycling rate. The DEP recommends requiring the reporting of commercial recycling for those businesses in counties with a population greater than 100,000 and cities with a population greater than 50,000. This approach could cover approximately 95 percent of Florida's population and if the recycling rate in the commercial sector was at least 75 percent, the MSW recycling rate in Florida, according to the DEP, would bump from 28 percent to 59 percent.

Commercial buildings and multi-family dwellings offer recycling but the options vary from city to city and building to building. In some cases, a business would have to arrange for recycling pick up or in smaller rural communities the items would have to be hauled to a recycling center. Depending on the volume of recyclable materials the businesses generates, it may make it cost prohibitive for smaller businesses and rural communities to recycle when economically practical options are not made available. In some commercial buildings and multi-family dwellings like apartment complexes, the recycling options can depend on dumpster space limitations and parking space requirements. During the DEP's public hearings on recycling, it was suggested that commercial buildings and multi-family dwellings need guidance from the state and their respective cities to secure recycling options in these locations. Rural communities are encouraged to regionally pool their resources together in order to make recycling options a reality. Many large facilities, such as schools and correctional facilities have recycling options in place but there was public testimony that due to employee complacency, sham recycling, and a lack of education, many recycling campaigns have fizzled out. Based on the reporting void and volume of recyclable materials in a concentrated building or area, the commercial sector has the potential of being an example of a significant underutilized recycling market.

Construction and Demolition (C&D) debris consists of materials that are generated from residential and commercial buildings, renovations and various types of demolition. C&D materials include wood, steel, glass, brick, concrete, asphalt, wallboard, rock, soils, tree remains, and other vegetative matter. Only non-water soluble and non-hazardous materials are considered C&D. C&D constitutes 25 percent of Florida's MSW waste stream. Currently only 27 percent or 2.1 million tons of Florida's C&D is recycled. According to the DEP, the recycling potential of C&D remains a significant untapped resource. As evidenced by an April of 2005 study conducted by the Boston Society of Architects, Associated General Contractors of Massachusetts, and the Massachusetts Department of Environmental Protection which found that from almost any job site, 90 to 95 percent of all waste materials can be recycled<sup>1</sup>. In an effort to increase recycling of C&D other states such as Massachusetts, California, and Vermont have banned disposing of most C&D debris in landfills. Further, these states have established comprehensive recycling guides and have imposed penalties to ensure these recyclable materials are not placed in landfills and to preserve virgin materials whenever possible. Some cities have chosen to establish benchmarks to address their state's ban on placing C&D in the landfill. For example, Northbrook, Illinois, has specified the following: between January 1, 2009, and December 31, 2010, at least 50 percent of the construction and demolition debris must be recycled.

In order to help states increase their recycling efforts, the United States Environmental Protection Agency has detailed guidelines and definitions that outline what C&D materials can be recycled. The site describes commonly recovered materials including asphalt paving, land clearing residuals (trees, brush, and soil), wood, gypsum wallboard, metal, concrete, roofing, asphalt shingles, brick, etc.<sup>2</sup> The site showcases cities that are utilizing zero waste policies in their C&D projects and outlines the importance of having a plan in place before demolition begins. Further it outlines the cost savings benefits and how much waste can be diverted from the landfill.

Florida has 83 landfills and 75 C&D disposal sites where C&D material can be disposed. Most C&D disposal sites are unlined and are not required to have daily cover like permitted landfills. The DEP has indicated that unlined C&D landfills are environmentally problematic. There was public testimony at the recycling public hearings expressing concern about possible water contamination by unlined construction and demolition landfills.

### **Bottle Bill Option**

Eleven states have beverage container deposits, also known as bottle bills. A bottle bill can be designed to increase recycling and use unredeemed deposits to fund various recycling programs at the state and local level. The DEP, in their report to the Legislature, stated that if Florida had a bottle bill with a 10 cent deposit, unredeemed deposits could amount to approximately \$35 million annually. Proponents of a bottle bill suggest that recycling on the whole will increase as the consumers becomes more conscientious when they collect and redeem their bottles. As a result, the awareness towards all recyclable materials will become heightened.

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<sup>1</sup> Recycling Construction and Demolition Wastes Guidebook, Massachusetts Department of Environmental Protection.

<sup>2</sup> <http://www.epa.gov/epawaste/conserves/rrr/imr/cdm/bytype.htm> (last visited 3/7/010)

### **Landfill Disposal Surcharge**

Approximately 35 of the 50 states have enacted landfill disposal surcharges. Based on 2007 data from Florida counties a surcharge of \$1 per ton on waste disposed at landfills would result in approximately \$23 million in revenue annually. If the surcharge would also apply to WTE plants, that would mean an additional \$4 million in revenue annually. Proponents of a landfill disposal surcharge maintain that a surcharge could potentially increase commercial recycling as businesses look for ways to reduce the cost of hauling waste to the landfill.

### **Retail Bag Report**

Section 403.7033, F.S., states that no state or local retail bag regulation can be enacted until the Florida Legislature takes action. The DEP presented their report to the Legislature on February 1, 2010. The DEP recommended an education program to inform the public of the environmental problems that plastic bags cause and to continue to encourage retailers to provide incentives for customers to reduce the use of plastic bags. Some retailers provide a store credit if you bring in a reusable bag or will sell you a reusable bag for a fee. Further, most large retailers offer recycling receptacles for plastic bags and have agreed to accept all plastic bags even if they are not from their store.

### **EPA Greenhouse Gas Reporting Rules**

In 2009, the Environmental Protection Agency promulgated rules outlining emissions reporting requirements in detail.<sup>3</sup> These federal laws would likely preempt the Florida reporting requirements, thereby making them obsolete.

## **III. Effect of Proposed Changes:**

**Section 1** deletes s. 403.44(3) and (4), F.S. These subsections relate to reporting emissions to the Climate Registry.

**Section 2** revises s. 403.7032, F.S., to:

- Delete a provision that allows solid waste used for the production of renewable energy to count toward the section's long-term recycling goal.
- Require all cities, counties, state entities, and public schools to report all recycled materials to the county.
- Encourage businesses to report to their county their recycling rates on all recyclable materials collected.
- Specify that a business that fails to report their recycling rates will be reported as 0 percent;
- Direct the Department of Management Services to modify their online procurement system to track the state's purchases of green and recycled materials.
- Direct the DEP to create the Recycling Business Assistance Center to serve as the coordinator between state agencies and the private sector in order to develop new markets for recyclable materials, evaluate specific materials suitable for concentrated market-

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<sup>3</sup> 40 C.F.R. 98.

development efforts, develop incentive proposals for targeted materials, and provide guidance for a variety of recycling issues.

- Create a definition of “source-reduced” and tasks the Recycling Business Assistance Center with evaluating source-reduced products as they relate to state procurement policy.
- Task the center with evaluating grants and providing below-market financing for companies that use recycled materials.
- Require that the Recycling Business Assistance Center maintain an online directory of entities dealing with recycled materials and provide informational materials about recycled materials.
- Specify that the Recycling Business Assistance Center coordinate with the Agency for Workforce Innovation to provide job placement and job training services to job seekers.

**Section 3** revises s. 288.9015, F.S., to require Enterprise Florida, Inc. to provide technical assistance to the DEP in the creation of the Recycling Business Assistance Center.

**Section 4** revises s. 403.7046, F.S., to delete an obsolete technical advisory committee. The bill requires recovered materials dealers to annually report to the DEP and to all of the counties from which it receives materials.

**Section 5** amends s. 403.705, F.S. to require the Department to report to the Legislature the state’s recycling rates every two years.

**Section 6** revises s. 403.706, F.S., to provide incremental recycling goals and specific benchmarks that must be reached by December 31, 2020.

The bill also outlines state recycling goals for construction and demolition debris, and commercial and multi-family dwellings. The bill requires that each county implement (1) a program to recycle and (2) a program that will reduce construction and demolition debris. Under each program, waste should be reduced by: forty percent by December 31, 2012; fifty percent by December 31, 2014; sixty percent by December 31, 2016; seventy percent by December 31, 2018; and seventy-five percent by December 31, 2020. Further all property for commercial and multi-family residential use that receives a certificate of occupancy on or after January 1, 2011, must provide designated space and an adequate receptacle for recycling.

The bill also specifies that if by January 1, of 2013, 2015, 2017, 2019, 2021, a county has not reached the previous year’s recycling goals, the DEP may direct the county to develop a plan to expand recycling programs to existing commercial and multi-family dwellings. Finally, if the state’s recycling rate is below forty percent in 2010, fifty percent in 2015, 60 percent in 2017, or seventy percent by 2021, the DEP shall provide a report to the Legislature to identify the changes needed to correct this failure. The DEP shall adopt rules establishing the method and criteria used by a county in calculating the recycling rates.

The bill deletes a requirement that all counties develop a goal to compost at least 5 percent of their organic materials. The bill deletes a provision in existing law that states that a county’s solid waste management and recycling programs shall be designed to meet goals for the reduction of municipal solid waste prior to the disposal of such waste. A county may receive credit for one-half of its recycling goal from contributing wood/paper waste to programs that

produce alternative clean-burning fuel. The bill specifies that a county may utilize the waste to energy facilities toward their goal as long as the county maintains a program that is designed to recycle forty percent of its municipal solid waste by means other than combustion or gasification. The bill specifies that all state entities and businesses that are required to report must utilize the DEP's reporting format and the recycling rates will be posted on the DEP's website annually. The bill provides that local governments may enact ordinances to require multi-family dwellings and apartment complexes to recycle.

**Section 7** amends s. 403.7061, F.S., to require applicants for new waste-to-energy facilities to provide assurances that they are within a county that has a program designed to reduce recyclable solid waste by at least 40 percent by 2013. This requirement does not apply to counties having populations of 100,000 or fewer.

**Section 8** amends s. 403.707(9), F.S., to require liners at disposal units and lateral expansions of existing disposal units, that have not received a department permit authorizing construction or operation prior to July 1, 2010. The bill requires disposal facilities to report the amount of construction and demolition debris recycled prior to disposal. The DEP shall establish rules to govern these reporting requirements. The rules shall also provide that, to the extent economically feasible, all construction and demolition debris must be processed prior to disposal unless they have already been source separated and offered for recycling. The bill deletes language in existing law requiring the DEP to establish criteria and guidelines that encourage recycling.

**Section 9** amends s. 403.7095, F.S., to delete an outdated solid waste management grant program. The funds available from the grant programs under s. 403.709(1)(e), F.S., are redistributed to provide 50 percent to the consolidated grant program and 50 percent to the waste tire grant program.

**Section 10** revises s. 403.7145, F.S. to replace the terms "aluminum" and "cans" with "beverage container". The bill also creates a requirement that the Capitol complex report recycling rates to Leon County and that these rates be posted on the DEP's website. The DEP will also post the recycling rates of each state owned facility that is a part of the DMS's pool facility. The term "DMS pool facility" refers to the majority of state owned buildings that are a part of the Capitol complex and the Southwood office complexes located in Tallahassee, FL. The DEP is also provided authority to conduct a pilot program to test the effectiveness of innovative recycling practices and technologies.

The bill requires each airport and entities conducting business at the airport, to whenever possible, collect and recycle aluminum beverage cans and recyclable plastic. The airport may utilize any proceeds received from recycling to offset the costs of the recycling program.

**Section 11** amends s. 553.77, F.S., to require the building commission to develop recommendations that increase residential and commercial recycling and composting, and encourages use of recycled materials.

**Section 12** amends s. 403.7049, F.S., to conform a cross reference.

**Section 13** repeals s. 288.1185, F.S., the Recycling Markets Advisory Committee in the Office of Tourism, Trade, and Economic Development.

**Section 14** provides an effective date of July, 1, 2010.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Because local governments will have to expend funds for recycling purposes, this bill falls under subsection (a) of section 18 of Article VII, Florida Constitution. Subsection (a) provides that counties and municipalities are not bound by general laws that require them to spend funds or to take action that requires the expenditure of funds unless certain exemptions or exceptions are met.

As for applicable specified constitutional exceptions, the bill requires similar expenditures by all similarly situated persons (i.e. the state, local governments, and private businesses); therefore, the only additional requirement necessary to remove the bill from the purview of this constitutional provision is a finding that the Legislature fulfills an important state interest.

##### **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:**

All new C&D landfills must be lined. Existing C&D landfills do not have to be retrofitted and will not incur any additional costs. Based on discussions with industry, construction of a new C&D landfill is recommended to be at least 40 acres. The cost is approximately \$150,000 per lined acre.

According to the DEP, for privately owned landfills, the more materials recycled, means fewer materials disposed, which means less revenue for landfills. Also, requiring all C&D to be processed at a materials recovery facility or other similar facility will necessitate some capital costs if there is not a facility currently operational.

There may be some initial costs for businesses at airports to establish a collection infrastructure (bins and carts) if there isn't a system already in place. Also, there may be ongoing costs for a recyclables collection service in those areas where such services are

provided. The bill does provide that these entities may retain and use any proceeds they receive from the sale of recyclable materials to offset their costs.

**C. Government Sector Impact:**

The smaller counties may have difficulty meeting the increased recycling goal as they tend to rely on the state to supplement their MSW budget and may be fiscally constrained from expanding their current efforts.

Modifying the DMS online procurement system to report on green and recycled product procurement will require minimal costs, which the DMS indicates can be absorbed within existing resources.

Based on discussions with the DEP and the Agency for Workforce Innovation, the creation of the Recycling Business Assistance Center can be accomplished with current resources.

The mandate that all public facilities and airports shall be required to recycle may potentially have some fiscal impact. The impact is indeterminate and will be based on those changes that are needed to waste services currently being provided. It is anticipated that most public buildings and airports already practice some form of recycling and that only an increase in employee education will be needed.

The cost of implementing the new recycling goals is difficult to determine. The bill establishes a series of recycling benchmarks but provides no mandates for how they are to be met or any consequences for a failure to achieve them. The cost factor will be dependent on the changes needed to current waste management practices. If markets are available, businesses may seek entry into the marketplace; however, a lack of markets for the materials may impede a public entity from contracting with recyclers and thus their ability to deal with materials that should not be land filled.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

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

**CS by Community Affairs on April 14, 2010:**

- Deletes a provision in current law concerning an air registry that emitters have previously used, which is now unnecessary because federal regulations specify reporting requirements.

- Modifies recycling reporting requirements for businesses to make them voluntary and expands them to allow all businesses to report. A provision allowing procurement bonuses is eliminated.
- Clarifies that the DEP will be the lead in developing the recycling business assistance center.
- Drops specific mention of recycling practices to be evaluated.
- Provides rulemaking to the DEP for the development of the methods used to determine the state's recycling rate.
- Removes an exemption for fiscally constrained counties as it relates to how they count WTE in their recycling rate. (This was determined to be duplicative of existing law.)
- Drops from 50 percent to 40 percent the recycling rate that a program must be designed to achieve prior to including WTE data.
- Expands to include cities those that may be granted a waiver for use of WTE's due to fiscal issues, such as bonds.
- Increases from 30 percent to 40 percent the recycling goal that county programs must be designed to achieve before the expansion of or building of a WTE.
- Provides additional clarification regarding a requirement that C&D landfills have liners.
- Drops the facility specific recycling goals for those that deal with C&D and replaces with provision that directs they do it to the extent economically feasible.
- Drops a requirement for annual un-announced inspections of WTEs.
- Grants authority to the building commission to develop recommendations for expansion of recycling for construction, such as composting systems.

**CS by Environmental Preservation and Conservation on March 17, 2010:**

The CS broadens the Proposed Committee Substitute by requiring airports and entities conducting business at airports to, whenever possible, collect and recycle aluminum, glass, and plastic containers. The airport may utilize any proceeds received from recycling to offset the costs of the recycling program.

B. Amendments:

None.



LEGISLATIVE ACTION

Senate	.	House
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	.	

GENERAL GOVERNMENT  
APPROPRIATIONS  
DATE: 4/16/10  
TIME: 10:28 a.m.

The Committee on General Government Appropriations (Oelrich) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 771 and 772

insert:

Section 9. Paragraph (c) of subsection (12) of section 403.708, Florida Statutes, is amended to read:

403.708 Prohibition; penalty.—

(12) A person who knows or should know of the nature of the following types of solid waste may not dispose of such solid waste in landfills:

(c) Yard trash in lined landfills classified by department rule as Class I landfills, unless the landfill uses an active



13 gas-collection system to collect landfill gas generated at the  
14 disposal facility and provides or arranges for a beneficial  
15 reuse of the gas. Yard trash that is source separated from solid  
16 waste may be accepted at a solid waste disposal area if ~~where~~  
17 separate yard trash composting facilities are provided and  
18 maintained. The department recognizes that incidental amounts of  
19 yard trash may be disposed of in Class I landfills. In any  
20 enforcement action taken pursuant to this paragraph, the  
21 department shall consider the difficulty of removing incidental  
22 amounts of yard trash from a mixed solid waste stream.

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

25 And the title is amended as follows:

26 Delete line 54

27 and insert:

28 requirements; providing an exemption; amending s.  
29 403.708, F.S.; authorizing the disposal of yard trash  
30 at a Class I landfill if the landfill has a system for  
31 collecting landfill gas and arranges for the reuse of  
32 the gas; amending s.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the General Government Appropriations Committee

**BILL:** CS/SB 640  
**INTRODUCER:** Regulated Industries Committee and Senator Jones  
**SUBJECT:** Pari-mutuel Wagering  
**DATE:** April 16, 2010      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harrington	Imhof	RI	Fav/CS
2.		McKee	FT	
3.	Frederick	DeLoach	GA	Pre-meeting
4.			RC	
5.				
6.				

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

This bill reduces the number of live games required to constitute a full schedule of live racing or games for specified jai alai frontons. The bill requires a harness horse facility to enter into an agreement governing purses with the Florida Standardbred Breeders and Owners Association before a slot license can be issued or renewed.

The bill also eliminates the tax on handle and cardroom tax payable by non-slot pari-mutuel facilities. If the tax amount paid from slot machine revenues is below the slot machine revenue paid in 2008-2009 threshold plus the amount of taxes that was eliminated in the given year for the tax on handle and cardroom tax, the non-slot pari-mutuels will have to pay a surcharge. The bill requires non-slot pari-mutuel facilities to pay six percent of the gross cardroom receipts for purses and awards instead of four percent.

The Revenue Estimating Conference met on April 16, 2010, and estimated that the bill will have a negative total fiscal impact of \$18 million, as follows.

- \$12 million decrease to the General Revenue Fund.

- \$5 million decrease to the Pari-Mutuel Wagering Trust Fund within the Department of Business and Professional Regulation (department). These funds are utilized to provide for the regulatory operations of the Division of Pari-Mutuel Wagering (division).
- \$1 million decrease in cardroom revenues distributed to local governments.
- The bill provides an effective date of July 1, 2010.

This bill amends the following sections of the Florida Statutes: 550.002, 550.0951, 551.104, and 849.086.

## II. Present Situation:

### Pari-mutuel Wagering

Pari-mutuel wagering is a:

system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes.<sup>1</sup>

The regulation of the pari-mutuel industry is governed by ch. 550, F.S., and is administered by the Division of Pari-mutuel Wagering within the Department of Business and Professional Regulation.

### Types of Pari-mutuels

The pari-mutuel industry in Florida is made up of greyhound racing, different types of horseracing, and jai alai.<sup>2</sup> There are twenty-seven pari-mutuel facilities currently in operation. The industry consists of sixteen greyhound tracks, six jai alai frontons, three thoroughbred tracks, one harness track, and one quarter horse track. Twenty-three of the facilities have cardrooms<sup>3</sup> and five facilities have slot machines.<sup>4</sup>

### Jai Alai

Jai alai is a game originating from the Basque region in Spain,<sup>5</sup> that is played in a fronton,<sup>6</sup> and in which a ball is hurled through a three-walled court and points are assessed based on legal throws and catches. The ball is caught and thrown with a “cesta,” a long, curved wicker scoop

<sup>1</sup> Section 550.002(22), F.S.

<sup>2</sup> “Jai alai” or “pelota” means a ball game of Spanish origin played on a court with three walls. *See*, s. 550.002(18), F.S.

<sup>3</sup> *See* <http://www.myflorida.com/dbpr/pmw/track.html> (Last visited March 5, 2010).

<sup>4</sup> Gulfstream Park, Mardi Gras Racetrack and Gaming Center, Flagler Dog Track and Magic City Casino, Calder/Tropical, and The Isle Casino and Racing at Pompano Park have slot machine gaming. *See* <http://www.myflorida.com/dbpr/pmw/track.html> (Last visited March 5, 2010).

<sup>5</sup> “The game is called “pelota vasca” in Spain but the Western Hemisphere name of jai alai, which is Basque for “merry festival”, was given when it was introduced in Cuba. This was due to the fact that this game was played at festivals or fiestas in Spain's Pyrenees Mountains for hundreds of years. The game was then played in the open air with the walls of churches being used to bounce the ball on.” *See*, <http://www.jai-alai.info/> and <http://www.fla-gaming.com/history.htm> (Last visited March 8, 2010).

<sup>6</sup> “A building or enclosure that contains a playing court with three walls designed and constructed for playing the sport of jai alai or pelota.” *See*, s.550.002(10), F.S.

strapped to one arm. “Jai-alai came to Cuba from Spain in 1898, and was successfully introduced as a professional game at the Miami Fronton in 1926<sup>7</sup>.” Jai alai was first permitted in Florida in 1935 and it is the only state where the game is currently played. Though the birthplace of jai alai is the Basque Country of Spain, there are more jai-alai frontons in Florida than any place in the world.<sup>8</sup>

**Harness Racing**

Harness racing uses standardbred horses, which are a “. . . pacing or trotting horse . . . that has been registered as a standardbred by the United States Trotting Association” (USTA) or by a foreign registry whose stud book is recognized by the USTA.<sup>9</sup> Currently, only the Pompano Park facility in Florida has a permit for harness racing.

**Full Schedule of Live Racing**

Section 550.002(11), F.S., defines what constitutes a full schedule of live racing. Depending upon the permit type, there may be a different requirement for a full schedule of live racing. Typically, a full schedule of live racing or games requires the conduct of a combination of evening or matinee “performances,” which is defined to mean “a series of events, races, or games performed consecutively under a single admission charge.”<sup>10</sup> A live performance must consist of no fewer than eight races or games conducted live for each of a minimum of three performances each week at the permit holder’s facility.<sup>11</sup>

FULL SCHEDULE OF LIVE RACING OR GAMES	
Type of Facility	Full Schedule Means:
Greyhound Racing	100 live evening or matinee performances
Jai Alai	100 live evening or matinee performances
Harness Racing	100 live regular wagering performances
Thoroughbred Racing	40 live regular wagering performances
Quarter horse Racing	40 live regular wagering performances

Generally a jai alai fronton must conduct 100 performances to constitute a full schedule of games. However, two exceptions exist: (1) For a jai alai permit holder who does not operate slot machines in its pari-mutuel facility, who has conducted at least 100 performances per year for at least 10 years after December 31, 1992, and whose handle on live jai alai games conducted at its facility has been less than \$4 million per state fiscal year for at least 2 consecutive years after June 30, 1992, the conduct of at least 40 live evening or matinee performances constitutes a full schedule of live games; and (2) If the fronton operates slot machines in its facility, then the conduct of at least 150 performances constitutes a full schedule. Hamilton Jai Alai and Poker does not qualify for the reduced racing schedule of 40 performances.

<sup>7</sup> See <http://www.fla-gaming.com/history.htm> (Last visited March 8, 2010).

<sup>8</sup> *Id.*

<sup>9</sup> Section 550.002(33), F.S.

<sup>10</sup> Section 550.002(25), F.S.

<sup>11</sup> Section 550.002(11), F.S.

## Slot Machines

During the 2004 General Election, the electors approved Amendment 4 to the State Constitution, codified as s. 23, Art. X, Florida Constitution, which authorized slot machines at existing pari-mutuel facilities in Miami-Dade and Broward Counties upon an affirmative vote of the electors in those counties. Both Miami-Dade and Broward Counties held referenda elections on March 8, 2005. The electors approved slot machines at the pari-mutuel facilities in Broward County, but the measure was defeated in Miami-Dade County. Under the provisions of the amendment, four pari-mutuel facilities are eligible to conduct slot machine gaming in Broward County:

- Gulfstream Park Racing Association, a thoroughbred permit holder;
- The Isle Casino and Racing at Pompano Park, a harness racing permit holder;
- Dania Jai Alai, a jai alai permit holder; and,
- Mardi Gras Race Track and Gaming Center, a greyhound permit holder.

Legislation was passed during the 2005 Special Session B, HB 1B, ch. 2005-362, L.O.F., that implemented Amendment 4. The division is charged with regulating the operation of slot machines in the affected counties. Of the four eligible in Broward County, all are operating slot machines except Dania Jai Alai.

On January 29, 2008, another referendum was held in which slot machines in Miami-Dade County were approved. Under the provisions of Amendment 4, three pari-mutuel facilities are now eligible to conduct slot machine gaming in Miami-Dade County:

- Miami Jai-Alai, a jai-alai permit holder;
- Flagler Greyhound Track, a greyhound permit holder; and,
- Calder Race Course, a thoroughbred permit holder.

Of the three eligible in Miami-Dade County, Calder and Flagler are operating slot machines.

## Cardrooms

Pari-mutuel facilities within the state are allowed to operate poker cardrooms under s. 849.086, F.S. A cardroom may be operated only at the location specified on the cardroom license issued by the division and such location may be only where the permit holder is authorized to conduct pari-mutuel wagering activities subject to its pari-mutuel permit. Section 849.086(2)(c), F.S., defines “cardroom” to mean a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charges a fee for participation by the operator of such facility. Authorized games and cardrooms do not constitute casino gaming operations. Instead, such games are played in a non-banking matter, i.e., where the facility has no stake in the outcome. Such activity is regulated by the department and must be approved by ordinance of the county commission where the pari-mutuel facility is located.

In order to renew a cardroom operator license, the applicant must have requested, as part of its pari-mutuel annual license application, to conduct at least 90 percent of the total number of live performances conducted by such permit holder during either the state fiscal year in which its

initial cardroom license was issued or the state fiscal year immediately prior to the application. If the application is for a harness permit holder, the applicant must have requested authorization to conduct a minimum of 140 live performances during the state fiscal year immediately prior to the application. If more than one permit holder is operating at a facility, each permit holder must have applied for a license to conduct a full schedule of live racing.<sup>12</sup> Chapter 2009-170, L.O.F., changed the above requirement to mandate the performance of at least 90 percent of the total number of live races in the initial issuance year or the year prior if the cardroom operator ran a full schedule of live racing in that prior year. That change is not in current law but is before the 2010 Legislature.<sup>13</sup>

### **Taxes**

The division collects taxes on both pari-mutuel wagering activities and on monthly gross receipts from licensed cardrooms.<sup>14</sup> Specifically, each cardroom operator pays a tax to the state of 10 percent of the cardroom operation's monthly gross receipts.<sup>15</sup> The amount of tax payable on pari-mutuel wagering activities depends on the location of the track, type of pari-mutuel wagering license, and specific type of wagering conducted. In addition to the tax on handle<sup>16</sup>, pari-mutuel facilities are also subject to daily license fees, admission taxes, and taxes on breaks.<sup>17</sup> To further complicate the equation, some facilities are eligible for credits and tax exemptions.

### **III. Effect of Proposed Changes:**

The bill amends the definition of full schedule of live racing or games for jai alai frontons who have conducted at least 100 performances per year and who have a handle less than \$4 million per year. Instead of requiring 100 performances for 10 years after December 31, 1992, the bill reduces that requirement to 100 performances for 3 consecutive years plus the handle requirements in order for a jai alai fronton to qualify for the reduced schedule of 40 performances instead of 100 performances.

According to the division, Hamilton Jai Alai and Poker would qualify for the reduction in performances. However, if ch. 2009-170, L.O.F., becomes law, Hamilton has to conduct 90 percent of its games based upon the 100 live performance standard to continue to operate a licensed cardroom.

The bill requires a harness horse facility to enter into an agreement governing purses with the Florida Standardbred Breeders and Owners Association before a slot license can be issued or renewed.

The bill eliminates the tax on handle and cardroom tax payable by non-slot pari-mutuel facilities. If the tax amount paid from slot machine revenues is below the slot machine revenue paid in

<sup>12</sup> Section 849.086(5)(b), F.S.

<sup>13</sup> See, Senate Bill 622.

<sup>14</sup> See, ss. 550.0951 and 849.086(13)(a), F.S.

<sup>15</sup> Section 849.086(13)(a), F.S.

<sup>16</sup> Handle means the aggregate contributions to a pari-mutuel pool. Section 550.002(13), F.S.

<sup>17</sup> Breaks means the portion of a pari-mutuel pool which is computed by rounding down to the nearest multiple of 10 cents and is not distributed to the contributors or withheld by the permit holder as takeout. Section 550.002(1), F.S.

2008-2009 threshold plus the amount of taxes that were eliminated in the given year for the tax on handle and cardroom tax, the non-slot pari-mutuels will have to pay a surcharge. The surcharge cannot be greater than \$15 million and will be divided among the non-slot facilities, with each facility paying its pro rata share. The bill provides that the division is authorized to collect a fee for each pari-mutuel permit holder that does not operate slot machines to cover the cost of regulation if the taxes and fees collected do not cover that cost.<sup>18</sup>

The bill also requires non-slot pari-mutuel facilities to pay six percent of the gross cardroom receipts for purses and awards instead of four percent.

The bill shall take effect on July 1, 2010.

**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 reduces handle and cardroom taxes for all pari-mutuels that do not operate slot machines.

B. Private Sector Impact:

The pari-mutuels that do not operate slot machines would receive a tax reduction of approximately \$18 million.

C. Government Sector Impact:

The Revenue Estimating Conference (REC) met on April 16, 2010, and adopted the estimate below for the impact on the provisions in the bill.

	FY 2010-11 Cash	FY 2010-11 Annualized	FY 2011-12 Cash	FY 2012-13 Cash	FY 2013-14 Cash
General Revenue	(12.0)	(12.0)	(11.7)	(11.6)	(11.5)

<sup>18</sup> The division estimates that the cost of regulation is between \$10 and \$11 million per year.

State Trust	(5.0)	0	0	0	0
Total State Impact	(17.0)	(12.0)	(11.7)	(11.6)	(11.5)
Total Local Impact	(1.0)	(1.0)	(1.0)	(1.0)	(1.0)
<b>Total Impact</b>	<b>(18.0)</b>	<b>(13.0)</b>	<b>(12.7)</b>	<b>(12.6)</b>	<b>(12.5)</b>

The division’s annual operating cost is \$11 million. Based on the REC results, the potential deficit in the division’s Pari-mutuel Wagering Trust Fund is \$5 million.

According to the division, the provision in the bill which establishes rule authority for a regulatory fee to make up the shortfall is problematic due to the lengthy rule making process, as well as potential administrative challenges. This could create a revenue stream that is unreliable to meet the regulatory costs of the division.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

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

**CS by Regulated Industries on April 13, 2010:**

The committee substitute replaces the legislative intent to revise the laws relating to pari-mutuel wagering. (Refer to Effect of Proposed Changes section of this analysis.)

- B. **Amendments:**

None.



Committee:  
**GENERAL GOVERNMENT  
APPROPRIATIONS**

Senator Baker, Chair  
Senator Lawson, Vice Chair

**Supplemental Meeting Packet**  
**Late-filed Amendments**

Monday, April 19, 2010  
10:30 p.m. – 11:30 p.m.

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



LEGISLATIVE ACTION

Senate	.	House
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**LATE FILED**

GENERAL GOVERNMENT  
APPROPRIATIONS  
DATE: 4/16/10  
TIME: 8:40 a.m.

The Committee on General Government Appropriations (Dean)  
recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraph (c) of subsection (3) of section  
373.1961, Florida Statutes, is amended to read:

373.1961 Water production; general powers and duties;  
identification of needs; funding criteria; economic incentives;  
reuse funding.—

(3) FUNDING.—

(c) The financial assistance for alternative water supply  
projects allocated in each district's budget as required in s.



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13 373.196(6) shall be combined with the state funds and used to  
14 assist in funding the project construction costs of alternative  
15 water supply projects selected by the governing board. ~~If the~~  
16 ~~district has not completed any regional water supply plan, or~~  
17 ~~the regional water supply plan does not identify the need for~~  
18 ~~any alternative water supply projects,~~ Funds deposited in the  
19 Water Protection and Sustainability Program Trust Fund to the  
20 credit of the Northwest Florida Water Management District and  
21 the Suwannee River Water Management District ~~that district's~~  
22 ~~trust fund~~ may also be used for regional water supply planning,  
23 water resource development, and water resource projects,  
24 including, but not limited to, springs protection.

25 Section 2. Subsections (1) through (6) of section 373.0693,  
26 Florida Statutes, are amended to read:

27 373.0693 Basins; basin boards.-

28 (1)(a) Any areas within a district may be designated by the  
29 district governing board as subdistricts or basins. The  
30 designations ~~of such basins~~ shall be made by resolution of the  
31 district governing board ~~by resolutions thereof~~. The governing  
32 board ~~of the district~~ may change the boundaries of such basins,  
33 or create new basins, by resolution.

34 (b) The designation of a ~~No~~ subdistrict or basin in the St.  
35 Johns River Water Management District, other than established by  
36 this act, is not ~~shall become~~ effective until approved by the  
37 Legislature.

38 (2) Each basin shall be under the control of a basin board  
39 ~~which shall be~~ composed of at least ~~not less than~~ three members,  
40 including one or more representatives ~~but shall include one~~  
41 representative from each of the counties included in the basin.



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42           (3) Except for a member of the district governing board  
43 serving on a basin board pursuant to subsection (6), each member  
44 of a ~~the various~~ basin ~~board boards~~ shall ~~be appointed~~ serve for  
45 a ~~period of~~ 3 years or until a successor is appointed, but not  
46 more than 180 days after the end of the term., ~~except that~~ The  
47 ~~board~~ membership of each new basin board shall be divided into  
48 three groups as equally as possible, with members in such groups  
49 ~~to be~~ appointed for 1, 2, and 3 years, respectively. Each basin  
50 board shall choose a vice chair and a secretary to serve for a  
51 ~~period of~~ 1 year. The term of office of a basin board member  
52 shall ~~be construed to~~ commence on March 2 preceding the date of  
53 appointment and ~~to~~ terminate March 1 of the year of the end of a  
54 term or ~~may continue~~ until a successor is appointed, but not  
55 more than 180 days after the end of the expired term. A member  
56 of the district governing board serving on a basin board  
57 pursuant to subsection (6) shall serve for a period commensurate  
58 with his or her term on the governing board.

59           (4) Except for a member of the district governing board  
60 serving on a basin board pursuant to subsection (6), members of  
61 a basin ~~board boards~~ shall be appointed by the Governor, subject  
62 to confirmation by the Senate at the next regular session of the  
63 Legislature., ~~and~~ The refusal or failure of the Senate to  
64 confirm an appointment shall create a vacancy in the office to  
65 which the appointment was made.

66           (5) Basin board members shall serve without ~~receive no~~  
67 compensation for services as such, but are entitled to  
68 reimbursement for per diem and travel expenses as provided in s.  
69 112.061, while officially on work for the district, they shall  
70 receive their actual travel expenses between their respective



71 ~~places of residence and the place where official district~~  
72 ~~business is conducted, subsistence, lodging, and other expenses~~  
73 ~~in the amount actually incurred. These expenses may not exceed~~  
74 ~~the statutory amount allowed state officers and employees. This~~  
75 subsection applies retroactively to the effective date of the  
76 creation of each of the five separate water management  
77 districts.

78 (6) (a) Notwithstanding any other provision of the  
79 ~~provisions of any other~~ general or special law ~~to the contrary,~~  
80 a member of the district governing board ~~of the district~~  
81 residing in the basin, or, if no member resides in the basin, a  
82 member of the district governing board designated by the chair  
83 of the district governing board, shall be a voting member of the  
84 basin board and counted for purposes of establishing a quorum.

85 (b) A governing board member shall serve as the chair of  
86 the basin board. If more than one governing board member is  
87 designated to a basin board, each shall rotate as co-chair of  
88 the basin board. The chair or co-chair shall preside at all  
89 meetings of the basin board, except that the vice chair may  
90 preside in the his or her absence of the chair and co-chair. The  
91 chair shall be the liaison officer of the district in all  
92 affairs in the basin and shall be kept informed of all such  
93 affairs.

94 (c) ~~(b)~~ Basin boards within the Southwest Florida Water  
95 Management District shall meet regularly as determined by a  
96 majority vote of the basin board members. Subject to notice  
97 requirements of chapter 120, special meetings, both emergency  
98 and nonemergency, may be called ~~either~~ by the chair or the  
99 elected vice chair ~~of the basin board~~ or upon request of two



LEGISLATIVE ACTION

Senate	.	House
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**LATE FILED**

GENERAL GOVERNMENT  
APPROPRIATIONS  
DATE: 4/16/10  
TIME: 8:40 a.m.

The Committee on General Government Appropriations (Lawson) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 780 and 781

insert:

Section 10. The sums of \$1,939 in nonrecurring funds and \$43,192 in recurring funds from the Administrative Trust Fund are appropriated and one full-time equivalent position and associated salary rate is authorized to the Department of Business and Professional Regulation to implement the provisions of this act relating to the licensure and regulation of appraisal management companies.



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

14 And the title is amended as follows:

15 Delete line 30

16 and insert:

17 companies to follow such requirements; providing for  
18 the appropriation of nonrecurring and recurring funds  
19 from the Administrative Trust Fund and one full-time  
20 equivalent position and associated salary rate to the  
21 Department of Business and Professional Regulation;  
22 providing an



LEGISLATIVE ACTION

Senate	.	House
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**LATE FILED**

COMMITTEE AMENDMENT  
 APPROPRIATIONS  
 DATE: 4/19/10  
 TIME: 3:00 a.m.

The Committee on General Government Appropriations (Dean)  
recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 85 - 306

and insert:

Section 2. Paragraphs (a) and (c) of subsection (10) of  
section 551.104, Florida Statutes, as amended by section 20 of  
chapter 2009-170, Laws of Florida, are amended to read:

551.104 License to conduct slot machine gaming.-

(10)(a)1. No slot machine license or renewal thereof shall  
be issued to an applicant holding a permit under chapter 550 to  
conduct pari-mutuel wagering meets of thoroughbred racing unless  
the applicant has on file with the division a binding written



13 agreement between the applicant and the Florida Horsemen's  
14 Benevolent and Protective Association, Inc., governing the  
15 payment of purses on live thoroughbred races conducted at the  
16 licensee's pari-mutuel facility. In addition, no slot machine  
17 license or renewal thereof shall be issued to such an applicant  
18 unless the applicant has on file with the division a binding  
19 written agreement between the applicant and the Florida  
20 Thoroughbred Breeders' Association, Inc., governing the payment  
21 of breeders', stallion, and special racing awards on live  
22 thoroughbred races conducted at the licensee's pari-mutuel  
23 facility. The agreement governing purses and the agreement  
24 governing awards may direct the payment of such purses and  
25 awards from revenues generated by any wagering or gaming the  
26 applicant is authorized to conduct under Florida law. All purses  
27 and awards shall be subject to the terms of chapter 550. All  
28 sums for breeders', stallion, and special racing awards shall be  
29 remitted monthly to the Florida Thoroughbred Breeders'  
30 Association, Inc., for the payment of awards subject to the  
31 administrative fee authorized in s. 550.2625(3).

32 2. No slot machine license or renewal thereof shall be  
33 issued to an applicant holding a permit under chapter 550 to  
34 conduct pari-mutuel wagering meets of quarter horse racing  
35 unless the applicant has on file with the division a binding  
36 written agreement between the applicant and the Florida Quarter  
37 Horse Racing Association or the association representing a  
38 majority of the horse owners and trainers at the applicant's  
39 eligible facility, governing the payment of purses on live  
40 quarter horse races conducted at the licensee's pari-mutuel  
41 facility. The agreement governing purses may direct the payment



42 of such purses from revenues generated by any wagering or gaming  
43 the applicant is authorized to conduct under Florida law. All  
44 purses shall be subject to the terms of chapter 550.

45 3. No slot machine license or renewal thereof shall be  
46 issued to an applicant holding a permit under chapter 550 to  
47 conduct pari-mutuel wagering meets of standardbred horse racing  
48 unless the applicant has on file with the division a binding  
49 written agreement between the applicant and the Florida  
50 Standardbred Breeders and Owners Association governing the  
51 payment of purses on live standardbred horse races conducted at  
52 the licensee's pari-mutuel facility. The agreement governing  
53 purses may direct the payment of such purses from revenues  
54 generated by any wagering or gaming that the applicant is  
55 authorized to conduct under Florida law. All purses shall be  
56 subject to the terms of chapter 550.

57 (b) The division shall suspend a slot machine license if  
58 one or more of the agreements required under paragraph (a) are  
59 terminated or otherwise cease to operate or if the division  
60 determines that the licensee is materially failing to comply  
61 with the terms of such an agreement. Any such suspension shall  
62 take place in accordance with chapter 120.

63 (c)1. If an agreement required under paragraph (a) cannot  
64 be reached prior to the initial issuance of the slot machine  
65 license, either party may request arbitration or, in the case of  
66 a renewal, if an agreement required under paragraph (a) is not  
67 in place 120 days prior to the scheduled expiration date of the  
68 slot machine license, the applicant shall immediately ask the  
69 American Arbitration Association to furnish a list of 11  
70 arbitrators, each of whom shall have at least 5 years of



71 commercial arbitration experience and no financial interest in  
72 or prior relationship with any of the parties or their  
73 affiliated or related entities or principals. Each required  
74 party to the agreement shall select a single arbitrator from the  
75 list provided by the American Arbitration Association within 10  
76 days of receipt, and the individuals so selected shall choose  
77 one additional arbitrator from the list within the next 10 days.

78 2. If an agreement required under paragraph (a) is not in  
79 place 60 days after the request under subparagraph 1. in the  
80 case of an initial slot machine license or, in the case of a  
81 renewal, 60 days prior to the scheduled expiration date of the  
82 slot machine license, the matter shall be immediately submitted  
83 to mandatory binding arbitration to resolve the disagreement  
84 between the parties. The three arbitrators selected pursuant to  
85 subparagraph 1. shall constitute the panel that shall arbitrate  
86 the dispute between the parties pursuant to the American  
87 Arbitration Association Commercial Arbitration Rules and chapter  
88 682.

89 3. At the conclusion of the proceedings, which shall be no  
90 later than 90 days after the request under subparagraph 1. in  
91 the case of an initial slot machine license or, in the case of a  
92 renewal, 30 days prior to the scheduled expiration date of the  
93 slot machine license, the arbitration panel shall present to the  
94 parties a proposed agreement that the majority of the panel  
95 believes equitably balances the rights, interests, obligations,  
96 and reasonable expectations of the parties. The parties shall  
97 immediately enter into such agreement, which shall satisfy the  
98 requirements of paragraph (a) and permit issuance of the pending  
99 annual slot machine license or renewal. The agreement produced



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100 by the arbitration panel under this subparagraph shall be  
101 effective until the last day of the license or renewal period or  
102 until the parties enter into a different agreement. Each party  
103 shall pay its respective costs of arbitration and shall pay one-  
104 half of the costs of the arbitration panel, unless the parties  
105 otherwise agree. If the agreement produced by the arbitration  
106 panel under this subparagraph remains in place 120 days prior to  
107 the scheduled issuance of the next annual license renewal, then  
108 the arbitration process established in this paragraph will begin  
109 again.

110 4. In the event that ~~neither of the agreements required~~  
111 ~~under paragraph (a) subparagraph (a)1. or the agreement required~~  
112 ~~under subparagraph (a)2.~~ are not in place by the deadlines  
113 established in this paragraph, arbitration regarding each  
114 agreement will proceed independently, with separate lists of  
115 arbitrators, arbitration panels, arbitration proceedings, and  
116 resulting agreements.

117 5. With respect to the agreements required under paragraph  
118 (a) governing the payment of purses, the arbitration and  
119 resulting agreement called for under this paragraph shall be  
120 limited to the payment of purses from slot machine revenues  
121 only.

122 (d) If any provision of this subsection or its application  
123 to any person or circumstance is held invalid, the invalidity  
124 does not affect other provisions or applications of this  
125 subsection or chapter which can be given effect without the  
126 invalid provision or application, and to this end the provisions  
127 of this subsection are severable.

128 Section 3. Paragraphs (a), (c) and (d) of subsection (13) of



129 section 849.086, Florida Statutes, as amended by section 24 of  
130 chapter 2009-170, Laws of Florida, are amended to read:

131 849.086 Cardrooms authorized.—

132 (13) TAXES AND OTHER PAYMENTS.—

133 (a) Each cardroom operator shall pay a tax to the state of  
134 10 percent of the cardroom operation's monthly gross receipts.  
135 However, a pari-mutuel facility that does not operate slot  
136 machines is exempt from the tax under this paragraph.

137 (c) Payment of the admission tax and gross receipts tax  
138 imposed by this section shall be paid to the division. The  
139 division shall deposit these sums with the Chief Financial  
140 Officer, ~~one-half being~~ credited to the Pari-mutuel Wagering  
141 Trust Fund ~~and one-half being credited to the General Revenue~~  
142 ~~Fund~~. The cardroom licensee shall remit to the division payment  
143 for the admission tax, the gross receipts tax, and the licensee  
144 fees. Such payments shall be remitted to the division on the  
145 fifth day of each calendar month for taxes and fees imposed for  
146 the preceding month's cardroom activities. Licensees shall file  
147 a report under oath by the fifth day of each calendar month for  
148 all taxes remitted during the preceding calendar month. Such  
149 report shall, under oath, indicate the total of all admissions,  
150 the cardroom activities for the preceding calendar month, and  
151 such other information as may be prescribed by the division.

152 (d)1. Each greyhound and jai alai permitholder that  
153 operates a cardroom facility and slot machines shall use at  
154 least 4 percent of such permitholder's cardroom monthly gross  
155 receipts to supplement greyhound purses or jai alai prize money,  
156 respectively, during the permitholder's next ensuing pari-mutuel  
157 meet. Each greyhound and jai alai permitholder that operates a



158 cardroom facility but does not operate slot machines shall use  
159 at least 6 percent of such permitholder's cardroom monthly gross  
160 receipts to supplement greyhound purses or jai alai prize money,  
161 respectively, during the permitholder's next ensuing pari-mutuel  
162 meet.

163         2. Each thoroughbred and harness horse racing permitholder  
164 that operates a cardroom facility shall use at least 50 percent  
165 of such permitholder's cardroom monthly net proceeds as follows:  
166 47 percent to supplement purses and 3 percent to supplement  
167 breeders' awards during the permitholder's next ensuing racing  
168 meet.

169         3. No cardroom license or renewal thereof shall be issued  
170 to an applicant holding a permit under chapter 550 to conduct  
171 pari-mutuel wagering meets of quarter horse racing unless the  
172 applicant has on file with the division a binding written  
173 agreement between the applicant and the Florida Quarter Horse  
174 Racing Association or the association representing a majority of  
175 the horse owners and trainers at the applicant's eligible  
176 facility, governing the payment of purses on live quarter horse  
177 races conducted at the licensee's pari-mutuel facility. The  
178 agreement governing purses may direct the payment of such purses  
179 from revenues generated by any wagering or gaming the applicant  
180 is authorized to conduct under Florida law. All purses shall be  
181 subject to the terms of chapter 550.

182  
183

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

185 And the title is amended as follows:

186         Delete lines 6 - 27



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187 and insert:  
188       their pari-mutuel facilities; amending s. 551.104,  
189       F.S.; revising slot machine license requirements;  
190       requiring a written agreement as a condition of  
191       license issuance or renewal; amending s. 849.086,  
192       F.S.; exempting a pari-mutuel facility that operates a  
193       cardroom but does not operate slot machines from the  
194       tax on the gross receipts of the cardroom operations;  
195       providing for the deposit of taxes into the Pari-  
196       mutuel Wagering Trust Fund; revising the amounts that  
197       greyhound and jai alai permitholders that operate  
198       cardrooms must use to supplement greyhound purses or  
199       jai alai prize money; revising the amounts that are  
200       distributed to local governments that approve  
201       cardrooms; providing an effective