Economic Expansion & Infrastructure Council

Meeting Packet

March 29, 2007
9:00 am – 12:30 pm
404 House Office Building

Marco Rubio
Speaker

Rep. Dean Cannon
Chair

The Florida House of Representatives

Economic Expansion & Infrastructure Council

Marco Rubio
Speaker

Dean Cannon
Chair

AGENDA
March 29, 2007
9:00 am – 12:30 pm
404 HOB

1. **Welcome, call to order and roll call – Chair Dean Cannon**

2. **Consideration of the following bills:**
   HB 129 Community Contribution Tax Credits by Precourt
   HB 243 Limited Liability Companies by McKeel
   HB 251 Regional Transportation Facilities by Galvano
   HB 545 Motor Vehicles by Patterson
   HB 815 Motor Vehicle Dealers by McKeel
   HB 841 Economic Development Incentives by Flores
   HB 851 Historic Preservation by Proctor
   HB 853 Pub. Rec./St. Augustine Historic Preservation Donors by Proctor
   HB 979 Use of the Term "Chamber of Commerce" by Gardiner
   HB 1003 Law Enforcement Vehicles by Pickens
   HB 1049 False, Deceptive, or Misleading Advertising by Davis, M.
   HB 1305 Notaries Public by Thompson, N.
   HB 1457 Recreational Vehicle Dealers and Manufacturers by Gardiner

3. **Consideration of the following proposed council bills:**
   PCB EEIC 07-09 -- Florida Transportation Commission
   PCB EEIC 07-10 -- Motor Vehicle Dealers/Deceptive & Unfair Trade Practices

4. **Closing remarks – Chair Cannon**

5. **Adjournment**

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 129 Community Contribution Tax Credits
SPONSOR(S): Precourt and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 840

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Economic Expansion & Infrastructure Council		Peterson	Tinker TBT
2) Policy & Budget Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill increases the amount of tax credits authorized for the Community Contribution Tax Credit Program from $10.5 million to $15 million for donations made to eligible sponsors for projects that provide homeownership opportunities for low-income and very-low-income households.

The Revenue Estimating Conference estimates that the bill will result in a loss of $4.1 million in state revenues and a loss of $0.4 million in local revenues in FY 2007-08.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes: The bill will provide an increased amount of tax credits for persons who donate to eligible sponsors for projects that provide homeownership opportunities for low-income and very-low income households under the Community Contribution Tax Credit Program.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

In 1980, the Florida Legislature established the Community Contribution Tax Credit Program to encourage private sector participation in revitalization and housing projects. The program offers tax credits, in the form of a refund, to persons who donate to sponsors who have been approved to participate in the program. Eligible project sponsors under the program include a wide variety of community organizations, housing organizations, historic preservation organizations, units of state and local government, and regional workforce boards. Eligible projects include the construction, improvement or rehabilitation of housing, commercial, industrial or public facilities, and projects that promote entrepreneurial or job development opportunities for low-income persons.

The Office of Tourism, Trade, and Economic Development (OTTED) is responsible for marketing the program in consultation with the Department of Community Affairs and other housing and financial intermediaries. OTTED is also responsible for administering the program by reviewing sponsor project proposals and tax credit applications. After the taxpayer receives approval for community contribution tax credits, it must claim the credit from the Department of Revenue (DOR).

The tax credits are equal to 50 percent of the amount donated up to $200,000 annually. The tax credit may be applied toward the donor's sales and use, corporate, or insurance premium tax obligations. The taxpayer may only apply the credits toward one tax obligation. Unused credits against corporate income taxes and insurance premium taxes may be carried forward for five years. Unused credits against sales taxes may be carried forward for three years.

The Florida Legislature has amended the dollar cap and the expiration date of the program on numerous occasions. The expiration of the program has been extended from 2005 to June 30, 2015. The program began with an annual $3 million cap and it is currently $14 million. Legislation passed during the 2006 Legislative Session revised the allocations granted under the Community Contribution Tax Credit Program by:

1) Removing the requirement that OTTED reserve specific amounts during the first six months of the fiscal year for particular project donations. In its place, requiring that $10.5 million of the tax credits be reserved for donations made to projects that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28),F.S., and $3.5 million be reserved for all other projects.

2) Eliminating the requirement that OTTED work in consultation with the Florida Housing Finance Corporation to market the Community Contribution Tax Credit Program.

Effect of Proposed Changes

The bill increases the total amount of credits allocated under the Community Contribution Tax Credit Program from $10.5 million to $15 million annually for projects that provide homeownership opportunities for low-income or very-low income households.

It amends ss. 212.08, 220.183 and 624.5105, F.S., respectively, in a substantially identical fashion, to increase the total amount of tax credit which may be granted for projects that provide homeownership opportunities for low-income or very-low income households.

C. SECTION DIRECTORY:

Section 1: Amends s. 212.08, F.S., relating to tax on sales, use and other transactions, to increase the amount of available tax credits which may be granted under the Community Contribution Tax Credit Program for projects that provide homeownership opportunities for low-income or very-low-income households.

Section 2: Amends s. 220.183, F.S., relating to income tax code, to increase the amount of available tax credits which may be granted under the Community Contribution Tax Credit Program for projects that provide homeownership opportunities for low-income or very-low-income households; corrects a cross reference.

Section 3: Amends s. 624.5105, F.S., relating to insurance code, to increase the amount of available tax credits which may be granted under the Community Contribution Tax Credit Program for projects that provide homeownership opportunities for low-income or very-low-income households; corrects a cross reference.

Section 4: Provides that the bill take effect July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	FY 2007-08
General Revenue	
Sales Tax	($3.5)m
Corporate Income Tax	($0.6)m
State Trust	(Insignificant)
Total State Impact	($4.1)m

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

	FY 2007-2008
Local Revenues	
Revenue Sharing	($0.1)m
Local Gov't Half Cent	($0.3)m
Total Local Impact	(0.4)m

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive impact on the number of low-income homes and other projects that are built and conducted each year.

D. FISCAL COMMENTS:

The table below shows the tax credits granted for housing projects and for other community development projects since 1996. There were significant tax credits unused for the first two years after the cap was increased to $10 million. Subsequently, the entire allocation has been used.

Community Contribution Tax Credit Program
Tax Credit Summary FY 1996 – FY 2008

Fiscal Year	Housing	Community Development	Allocation	% Housing
FY 1996	$465,542	$1,472,255	$2,000,000	24.02%
FY 1997	$1,043,256	$1,018,947	$2,000,000	50.59%
FY 1998	$1,348,500	$651,500	$2,000,000	67.43%
FY 1999	$2,720,441	$2,279,559	$5,000,000	54.41%
FY 2000	$3,764,283	$1,302,178	$10,000,000	74.30%
FY 2001	$5,320,890	$744,365	$10,000,000	87.73%
FY 2002	$9,484,489	$515,464	$10,000,000	94.85%
FY 2003	$8,914,456	$1,085,544	$10,000,000	89.14%
FY 2004	$8,622,769	$1,377,231	$10,000,000	86.23%
FY 2005	$8,051,618	$1,948,382	$10,000,000	80.52%
FY 2006	$9,558,883	$2,441,117	$12,000,000	79.66%
FY 2007	$10,500,000	$3,450,000	$14,000,000	75.27%
FY 2008	$15,000,000	$3,500,000	$18,500,000	81.08%

Source: Revenue Estimating Impact Conference, January 19,2007

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not reduce the percentage of state tax shared with municipalities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

A bill to be entitled

An act relating to community contribution tax credits; amending ss. 212.08, 220.183, and 624.5105, F.S.; increasing the total amount of tax credits authorized for community contribution tax credit programs; providing an effective date.

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

Section 1. Paragraph (p) of subsection (5) of section 212.08, Florida Statutes, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.--The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(5) EXEMPTIONS; ACCOUNT OF USE.--

(p) Community contribution tax credit for donations.--

1. Authorization.--Persons who are registered with the department under s. 212.18 to collect or remit sales or use tax and who make donations to eligible sponsors are eligible for tax credits against their state sales and use tax liabilities as provided in this paragraph:

a. The credit shall be computed as 50 percent of the person's approved annual community contribution.

b. The credit shall be granted as a refund against state sales and use taxes reported on returns and remitted in the 12

months preceding the date of application to the department for the credit as required in sub-subparagraph 3.c. If the annual credit is not fully used through such refund because of insufficient tax payments during the applicable 12-month period, the unused amount may be included in an application for a refund made pursuant to sub-subparagraph 3.c. in subsequent years against the total tax payments made for such year. Carryover credits may be applied for a 3-year period without regard to any time limitation that would otherwise apply under s. 215.26.

c. A person may not receive more than $200,000 in annual tax credits for all approved community contributions made in any one year.

d. All proposals for the granting of the tax credit require the prior approval of the Office of Tourism, Trade, and Economic Development.

e. The total amount of tax credits which may be granted for all programs approved under this paragraph and ss.~~, s.~~ 220.183~~,~~ and ~~s.~~ 624.5105 is $15 ~~$10.5~~ million annually for projects that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28) and $3.5 million annually for all other projects.

f. A person who is eligible to receive the credit provided for in this paragraph, s. 220.183, or s. 624.5105 may receive the credit only under the one section of the person's choice.

2. Eligibility requirements.--

a. A community contribution by a person must be in the following form:

(I) Cash or other liquid assets;

(II) Real property;

(III) Goods or inventory; or

(IV) Other physical resources as identified by the Office of Tourism, Trade, and Economic Development.

b. All community contributions must be reserved exclusively for use in a project. As used in this sub-subparagraph, the term "project" means any activity undertaken by an eligible sponsor which is designed to construct, improve, or substantially rehabilitate housing that is affordable to low-income or very-low-income households as defined in s. 420.9071(19) and (28); designed to provide commercial, industrial, or public resources and facilities; or designed to improve entrepreneurial and job-development opportunities for low-income persons. A project may be the investment necessary to increase access to high-speed broadband capability in rural communities with enterprise zones, including projects that result in improvements to communications assets that are owned by a business. A project may include the provision of museum educational programs and materials that are directly related to any project approved between January 1, 1996, and December 31, 1999, and located in an enterprise zone designated pursuant to s. 290.0065. This paragraph does not preclude projects that propose to construct or rehabilitate housing for low-income or very-low-income households on scattered sites. With respect to housing, contributions may be used to pay the following eligible low-income and very-low-income housing-related activities:

(I) Project development impact and management fees for low-income or very-low-income housing projects;

(II) Down payment and closing costs for eligible persons, as defined in s. 420.9071(19) and (28);

(III) Administrative costs, including housing counseling and marketing fees, not to exceed 10 percent of the community contribution, directly related to low-income or very-low-income projects; and

(IV) Removal of liens recorded against residential property by municipal, county, or special district local governments when satisfaction of the lien is a necessary precedent to the transfer of the property to an eligible person, as defined in s. 420.9071(19) and (28), for the purpose of promoting home ownership. Contributions for lien removal must be received from a nonrelated third party.

c. The project must be undertaken by an "eligible sponsor," which includes:

(I) A community action program;

(II) A nonprofit community-based development organization whose mission is the provision of housing for low-income or very-low-income households or increasing entrepreneurial and job-development opportunities for low-income persons;

(III) A neighborhood housing services corporation;

(IV) A local housing authority created under chapter 421;

(V) A community redevelopment agency created under s. 163.356;

(VI) The Florida Industrial Development Corporation;

(VII) A historic preservation district agency or organization;

(VIII) A regional workforce board;

(IX) A direct-support organization as provided in s. 1009.983;

(X) An enterprise zone development agency created under s. 290.0056;

(XI) A community-based organization incorporated under chapter 617 which is recognized as educational, charitable, or scientific pursuant to s. 501(c)(3) of the Internal Revenue Code and whose bylaws and articles of incorporation include affordable housing, economic development, or community development as the primary mission of the corporation;

(XII) Units of local government;

(XIII) Units of state government; or

(XIV) Any other agency that the Office of Tourism, Trade, and Economic Development designates by rule.

In no event may a contributing person have a financial interest in the eligible sponsor.

d. The project must be located in an area designated an enterprise zone or a Front Porch Florida Community pursuant to s. 20.18(6), unless the project increases access to high-speed broadband capability for rural communities with enterprise zones but is physically located outside the designated rural zone boundaries. Any project designed to construct or rehabilitate housing for low-income or very-low-income households as defined in s. 420.0971(19) and (28) is exempt from the area requirement of this sub-subparagraph.

e.(I) If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects that

provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28) are received for less than the annual tax credits available for those projects, the Office of Tourism, Trade, and Economic Development shall grant tax credits for those applications and shall grant remaining tax credits on a first-come, first-served basis for any subsequent eligible applications received before the end of the state fiscal year. If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28) are received for more than the annual tax credits available for those projects, the office shall grant the tax credits for those applications as follows:

(A) If tax credit applications submitted for approved projects of an eligible sponsor do not exceed $200,000 in total, the credits shall be granted in full if the tax credit applications are approved.

(B) If tax credit applications submitted for approved projects of an eligible sponsor exceed $200,000 in total, the amount of tax credits granted pursuant to sub-sub-sub-subparagraph (A) shall be subtracted from the amount of available tax credits, and the remaining credits shall be granted to each approved tax credit application on a pro rata basis.

(II) If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects other than those that provide homeownership opportunities for low-

income or very-low-income households as defined in s. 420.9071(19) and (28) are received for less than the annual tax credits available for those projects, the office shall grant tax credits for those applications and shall grant remaining tax credits on a first-come, first-served basis for any subsequent eligible applications received before the end of the state fiscal year. If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects other than those that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28) are received for more than the annual tax credits available for those projects, the office shall grant the tax credits for those applications on a pro rata basis.

3. Application requirements.--

a. Any eligible sponsor seeking to participate in this program must submit a proposal to the Office of Tourism, Trade, and Economic Development which sets forth the name of the sponsor, a description of the project, and the area in which the project is located, together with such supporting information as is prescribed by rule. The proposal must also contain a resolution from the local governmental unit in which the project is located certifying that the project is consistent with local plans and regulations.

b. Any person seeking to participate in this program must submit an application for tax credit to the office which sets forth the name of the sponsor, a description of the project, and the type, value, and purpose of the contribution. The sponsor shall verify the terms of the application and indicate its

receipt of the contribution, which verification must be in writing and accompany the application for tax credit. The person must submit a separate tax credit application to the office for each individual contribution that it makes to each individual project.

c. Any person who has received notification from the office that a tax credit has been approved must apply to the department to receive the refund. Application must be made on the form prescribed for claiming refunds of sales and use taxes and be accompanied by a copy of the notification. A person may submit only one application for refund to the department within any 12-month period.

4. Administration.--

a. The Office of Tourism, Trade, and Economic Development may adopt rules pursuant to ss. 120.536(1) and 120.54 necessary to administer this paragraph, including rules for the approval or disapproval of proposals by a person.

b. The decision of the office must be in writing, and, if approved, the notification shall state the maximum credit allowable to the person. Upon approval, the office shall transmit a copy of the decision to the Department of Revenue.

c. The office shall periodically monitor all projects in a manner consistent with available resources to ensure that resources are used in accordance with this paragraph; however, each project must be reviewed at least once every 2 years.

d. The office shall, in consultation with the Department of Community Affairs and the statewide and regional housing and financial intermediaries, market the availability of the

community contribution tax credit program to community-based organizations.

5. Expiration.--This paragraph expires June 30, 2015; however, any accrued credit carryover that is unused on that date may be used until the expiration of the 3-year carryover period for such credit.

Section 2. Paragraph (c) of subsection (1) of section 220.183, Florida Statutes, is amended to read:

220.183 Community contribution tax credit.--

(1) AUTHORIZATION TO GRANT COMMUNITY CONTRIBUTION TAX CREDITS; LIMITATIONS ON INDIVIDUAL CREDITS AND PROGRAM SPENDING.--

(c) The total amount of tax credit which may be granted for all programs approved under this section and ss. ~~, s.~~ 212.08(5)(p) ~~(q),~~ and ~~s.~~ 624.5105 is $15 ~~$10.5~~ million annually for projects that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28) and $3.5 million annually for all other projects.

Section 3. Paragraph (c) of subsection (1) of section 624.5105, Florida Statutes, is amended to read:

624.5105 Community contribution tax credit; authorization; limitations; eligibility and application requirements; administration; definitions; expiration.--

(1) AUTHORIZATION TO GRANT TAX CREDITS; LIMITATIONS.--

(c) The total amount of tax credit which may be granted for all programs approved under this section and ss. 212.08(5)(p) ~~(q)~~ and 220.183 is $15 ~~$10.5~~ million annually for

projects that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28) and $3.5 million annually for all other projects.

Section 4. This act shall take effect July 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 243 Limited Liability Companies
SPONSOR(S): McKeel
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Tourism & Trade	6 Y, 0 N	Vogt	Hoagland
2) Economic Expansion & Infrastructure Council		Vogt	Tinker
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

HB 243 requires limited liability companies (LLC) registered with the Department of State (DOS) to be distinguishable on the databases maintained by the Division of Corporations within the DOS. The bill revises the requirements regarding the name of LLC's and will no longer permit the department to record duplicate names. The bill includes a provision that prohibits the recording of an LLC whose name is deemed immoral, scandalous, or deceptive in nature.

This bill takes effect on July 1, 2007.

This bill does not appear to have a fiscal impact on state or local governments.

On March 19, 2007, the Committee on Tourism and Trade adopted a "strike-all" amendment by the bill sponsor that does the following:

- Eliminates the reference to "limited company" and the abbreviation "L.C".
- Removes the prohibition that an LLC's name may not contain immoral, scandalous, or deceptive matter.
- Provides a provision that an LLC filed prior to July 1, 2007, does not need to meet the duplicative name standard.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government- This bill creates additional authority for the Department of State to review and approve names for LLCs.

Safeguard individual liberty- The bill restricts the naming options for newly formed LLC's.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

A limited liability company (LLC) is a type of business ownership combining several features of corporations and partnership business structures. Owners are called members as opposed to partners or shareholders and the LLC exists as a separate business entity, therefore members cannot be personally liable for debts. The LLC business structure does not require corporate meetings or resolutions and unlike corporations, an LLC is dissolved when a member dies or undergoes bankruptcy.

Chapter 608, F.S, is named the "Florida Limited Liability Company Act." Listed within this chapter is the definition of a limited liability company (LLC), the filing requirements for an LLC, the powers of an LLC and the requirement that the Department of State record filings and keep a record of all LLCs. Section 608.406, F.S, specifically deals with the naming of a limited liability company and the requirements for it to be filed with the state. A limited liability company name must contain the words "limited liability company" or "limited company," the section also provides acceptable abbreviations. An LLC may not contain language stating or implying that the limited liability company is organized for a purpose other than that permitted in chapter 608 and its articles of organization. An LLC may not contain language stating or implying that the limited liability company is connected with a state or federal government agency or a corporation or other entity chartered under the laws of the United States. The name of the limited liability company shall be filed with the Department of State for public notice only and shall not alone create any presumption of ownership beyond that which is created under the common law. The Department of State shall record the name without regard to any other name recorded.

Over the past five years the number of LLCs filed has steadily risen. In DOS's 2002 filings, 38,639 LLCs were listed, in 2004 the filings rose to 100,070, and in 2006 LLC filings amounted to 130,251. The statutory limitation on DOS that it "shall record the name without regard to any other name recorded" has led to 16,433 active corporations, limited liability companies, and limited partnerships with duplicate names. DOS currently receives 850-1,500 complaints a year about duplicate names being issued. The majority of complaints come from corporations and other limited liability companies.

Proposed Changes

The bill requires that the name of a limited liability company must be distinguishable on the databases of the Division of Corporations within DOS. The bill amends s. 608.406, F.S, deleting the provision that DOS record the name without regard for any other name recorded. The bill also amends s. 608.407, F.S, relating to the articles of organization requiring that the name of the LLC must satisfy the requirements of s. 608.406, F.S. These changes are intended to alleviate the confusion associated from duplicate names registered.

The bill also seeks to require that all LLC names registered with the state not be comprised of, contain, or include immoral, deceptive, or scandalous matter. These terms are currently undefined in statute and

the bill provides no definitions. The Department of State would be responsible for deeming what names are considered immoral, deceptive, or scandalous. This provision is similar to the standard used for personalized license plates reviewed by Highway Safety and Motor Vehicles. Section 320.0805 (4), F.S., authorizes the department to reject requests deemed by it to be objectionable, and the department is further authorized to recall, during a registration period, any issued personalized license plate determined by it to be obscene or otherwise objectionable. Applications for personalized license plates are reviewed on a regular basis by a review board comprised of employees of the Department of Highway Safety and Motor Vehicles. The review board relies on the statutory definition of obscene and department criteria of a combination of letters and/or numbers found to be offensive to morality or decency, indecent, lewd, abominable, disgusting, a slur, profanity or description of body parts. Objectionable is deemed a combination of letters and/or numbers that provide a feeling or expression of disapproval, dislike, hatred, violence, method of violence or threat toward a person or group.

According to the Department of State, the change in requirements will only apply to newly formed LLCs and will not affect existing LLCs.

B. SECTION DIRECTORY:

Section 1. Amends 608.406, F.S.: Deletes the provision that requires DOS to record the name of an LLC without regard to any other name recorded. Sets requirements that the name of a limited liability company be distinguishable on the database of the Division of Corporations and that it may not be comprised of, contain, or include immoral, deceptive, or scandalous matter.

Section 2. Amends 608.407, F.S.: Requires that the name of a limited liability company must satisfy the requirements of s. 608.406.

Section 3. Provides the bill will take effect July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The department's database may provide a greater value to lending institutions and may reduce their research costs when conducting business with LLCs.

D. FISCAL COMMENTS:

The bill does not appear to have a fiscal impact on state or local governments. DOS does not see any additional costs in fulfilling these new requirements.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None

None

D. STATEMENT OF THE SPONSOR

No statement provided.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 19, 2007, the Committee on Tourism and Trade adopted a "strike-all" amendment by the bill sponsor that does the following:

- Eliminates the reference to "limited company" and the abbreviation "L.C".
- Removes the prohibition that an LLC's name may not contain immoral, scandalous, or deceptive matter.
- Provides a provision that an LLC filed prior to July 1, 2007, does not need to meet the duplicative name standard.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 243**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Tourism & Trade

Representative(s) McKeel offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 608.406, Florida Statutes, is amended to read:

608.406 Limited liability company name.--

(1) A limited liability company name:

(a) Must contain the words "limited liability company" ~~or "limited company,"~~ or the abbreviation~~s~~ "L.L.C." ~~or "L.C.,"~~ or the designation~~s~~ "LLC" ~~or "LC"~~ as the last words of the name of every limited liability company formed under the provisions of this chapter. The word "limited" may be abbreviated as "Ltd.," and the word "company" may be abbreviated as "Co." Omission of the words "limited liability company" ~~or "limited company,"~~ the abbreviation~~s~~ "L.L.C." ~~or "L.C.,"~~ or the designations "LLC" ~~or "LC"~~ in the use of the name of the limited liability company shall render any person who knowingly participates in the omission, or knowingly acquiesces in the omission, liable for any indebtedness, damage, or liability caused by the omission.

(b) May not contain language stating or implying that the limited liability company is organized for a purpose other than that permitted in this chapter and its articles of organization.

(c) May not contain language stating or implying that the limited liability company is connected with a state or federal government agency or a corporation or other entity chartered under the laws of the United States.

(2) The name of the limited liability company must be distinguishable on the records of the Division of Corporations of the Department of State, except for fictitious name registrations filed pursuant to s. 865.09, and general partnership registrations filed pursuant to s. 620.8105. Except as stated above, a limited liability company may register under a name which is not otherwise distinguishable on the records of the Division of Corporations with written consent of the owner entity provided the consent is filed with the Division of Corporations at the time of registration of such name.

(3) ~~(2)~~ The name of the limited liability company shall be filed with the Department of State for public notice only and shall not alone create any presumption of ownership beyond that which is created under the common law. ~~The Department of State shall record the name without regard to any other name recorded.~~

(4) In the case of any limited liability company in existence prior to July 1, 2007 and registered with the Divisions of Corporations, the requirement in this section that the name of the entity be distinguishable from the names of other entities and filings shall not apply except when the limited liability company files documents on or after July 1, 2007, which would otherwise have affected its name.

Section 2. Paragraph (a) of subsection (1) of section 608.407, Florida Statutes, is amended to read:

Amendment No. (for drafter's use only)

608.407 Articles of organization.--

(1) In order to form a limited liability company, articles of organization of a limited liability company shall be filed with the Department of State by one or more members or authorized representatives of the limited liability company. The articles of organization shall set forth:

(a) The name of the limited liability company, which must satisfy the requirements of s. 608.406.

Section 3. This act shall take effect July 1, 2007.

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

Remove lines 3-5 and insert:

s.608.406, F.S.; eliminating the words "limited company", or the abbreviation "L.C." or the designation "L.C." requiring a limited liability company

A bill to be entitled

An act relating to limited liability companies; amending s. 608.406, F.S.; prohibiting the use of immoral, scandalous, or deceptive matter in the name of a limited liability company; requiring a limited liability company name to be distinguishable on databases maintained by the Division of Corporations of the Department of State; providing an exception; deleting a name-recording requirement for the department; amending s. 608.407, F.S.; requiring the name of a limited liability company in the company's articles of organization to satisfy certain requirements; providing an effective date.

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

Section 1. Section 608.406, Florida Statutes, is amended to read:

608.406 Limited liability company name.--

(1) A limited liability company name:

(a) Must contain the words "limited liability company" or "limited company," or the abbreviations "L.L.C." or "L.C.," or the designations "LLC" or "LC" as the last words of the name of every limited liability company formed under the provisions of this chapter. The word "limited" may be abbreviated as "Ltd.," and the word "company" may be abbreviated as "Co." Omission of the words "limited liability company" or "limited company," the abbreviations "L.L.C." or "L.C.," or the designations "LLC" or "LC" in the use of the name of the limited liability company

shall render any person who knowingly participates in the omission, or knowingly acquiesces in the omission, liable for any indebtedness, damage, or liability caused by the omission.

(b) May not contain language stating or implying that the limited liability company is organized for a purpose other than that permitted in this chapter and its articles of organization.

(c) May not contain language stating or implying that the limited liability company is connected with a state or federal government agency or a corporation or other entity chartered under the laws of the United States.

(d) May not be comprised of, contain, or include immoral, deceptive, or scandalous matter.

(2) The name of the limited liability company must be distinguishable on the databases of the Division of Corporations of the Department of State, except for fictitious name registrations filed pursuant to s. 865.09.

(3) ~~(2)~~ The name of the limited liability company shall be filed with the Department of State for public notice only and shall not alone create any presumption of ownership beyond that which is created under the common law. ~~The Department of State shall record the name without regard to any other name recorded.~~

Section 2. Paragraph (a) of subsection (1) of section 608.407, Florida Statutes, is amended to read:

608.407 Articles of organization.--

(1) In order to form a limited liability company, articles of organization of a limited liability company shall be filed with the Department of State by one or more members or

authorized representatives of the limited liability company. The articles of organization shall set forth:

(a) The name of the limited liability company, which must satisfy the requirements of s. 608.406.

Section 3. This act shall take effect July 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 251 Regional Transportation Facilities
SPONSOR(S): Galvano
TIED BILLS: **IDEN./SIM. BILLS:** SB 0506

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Infrastructure	9 Y, 0 N	Creamer	Miller
2) Economic Expansion & Infrastructure Council		Creamer JC	Tinker TBT
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

HB 251 creates the Bay Area Regional Transportation Authority comprised of Citrus, Hernando, Hillsborough, Manatee, Pasco, Pinellas, and Sarasota counties. The Authority is established to improve mobility and expand multi-modal transportation options for passengers and freight within the seven-county region.

The bill specifies the composition and various powers and duties that are granted and assigned to the authority, including authorization to issue bonds and to secure payment of such bonds by a pledge of any or all of its revenues. The bill authorizes the Authority to enter into contractual agreements with various entities within the seven-county Bay Area Region.

The fiscal impacts to Local Governments and DOT, including tolls, fees and other charges, are unknown at this time as no projects or contractual agreements have been identified. Unless operational and maintenance expenses necessary to the authority are funded by local governments or from other sources, DOT may be requested to fund these costs from the State Transportation Trust Fund (STTF).

The bill is effective July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- Provisions in HB 251 implicate this principle by creating a new regional transportation authority with the authority to issue revenue bonds and to impose tolls.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Currently, there are four regional transportation authorities; the South Florida Regional Transportation Authority; the Central Florida Regional Transportation Authority; the Tampa Bay Commuter Transit Authority; and the Northwest Florida Regional Transportation Corridor Authority created in chapter 343, F.S., and one local transportation authority, the Jacksonville Transportation Authority, created in chapter 349, F.S. These five authorities have various membership structures, and powers and duties. All have some form of bond financing authority to carry out their individual transportation missions.

Proposed Changes

HB 251 creates Part V of chapter 343, F.S., "Bay Area Regional Transportation Authority", encompassing Citrus, Hernando, Hillsborough, Manatee, Pasco, Pinellas, and Sarasota counties. The Authority is established to improve mobility and expand multi-modal transportation options for passengers and freight within the seven-county region.

1) Membership and Organization

HB 251 contains provisions addressing the membership and organization of the Bay Area Regional Transportation Authority. Specifically the bill:

- Provides that the governing board shall be composed of fifteen voting members and one non-voting, ex-officio member to include:
    - One elected official from Citrus, Hernando, Hillsborough, Manatee, Pasco, Pinellas, and Sarasota counties who will serve 2-year terms for not more than three consecutive terms by any person;
    - The West Central Florida Metropolitan Planning Organization's (MPO) Chairs' Coordinating Committee appointee, who must be a chair of one of the six MPOs within this region and will serve 2-year terms for not more than three consecutive terms by any person;
    - The Mayor or Mayor's designee from each of the largest municipalities in the region of the Pinellas Suncoast Authority and the Hillsborough Area Regional Transit Authority who will serve 2-year terms for not more than three consecutive terms by any person;
    - One membership shall rotate every two years between the largest municipality in Manatee County and the largest municipality in Sarasota County. The Mayor or Mayor's designee from Manatee County shall serve the first 2-year term.
    - Four Governor appointees from the business sector who are not elected officials shall serve 3-year terms for not more than two consecutive terms by any person; and
    - One non-voting, ex-officio member shall be appointed by DOT and must be the District Secretary, or designee, from one of the department districts (Districts One or Seven) serving the region.

- Provides that board members would serve without compensation, but be eligible to receive per diem and other travel expenses pursuant to s. 112.061, F.S.

- Requires the board to comply with financial disclosure requirements set forth in ss. 112.3145, 112.3148 and 112.3149 F.S.

- Provides that the board shall appoint from its members a chair and vice-chair and a secretary-treasurer.

- Directs the board to establish:

    - A Citizen's Advisory Committee comprised of 16 members from each county and transit provider within the seven-county region; and
    - A Transit Management Committee comprised of the executive directors or general managers (or their designees) from each of the existing transit providers within the seven-county region.

- Provides that the board *may* also establish planning, policy, finance, and technical advisory committees to provide guidance to the board.

- Provides that the appointed committee members shall serve without compensation, but be eligible to receive per diem and other travel expenses pursuant to s. 112.061, F.S.

2) Powers and Duties

The powers and duties of the Bay Area Regional Transportation Authority are established by HB 251. In this regard, the bill:

- Allows the Authority to establish compensation and determine requirements to employ an executive director, an executive secretary, legal council and legal staff, technical experts, engineers, and other temporary or permanent staff as necessary to carry out the responsibilities of the authority;

- Directs the Authority to coordinate with local governments and the DOT to adopt a master plan by July 1, 2009, that identifies regionally integrated multi-modal transportation systems. The Authority shall present the master plan to governing bodies of the counties within the seven-county region and to legislative delegations for these counties within 90 days after adoption. The Authority must also update the master plan every 2 years.

- Directs the Authority to coordinate project planning, development, and implementation with the applicable comprehensive plans of local governments.

- Allows the Authority to set, collect and enforce tolls, fees, and other charges;

- Allows the Authority to acquire land by purchase, donation, or eminent domain;

- Allows the Authority to issue bonds; to borrow money; to sue and be sued; and to enter into contracts, agreements, and partnerships;

- Allows the Authority to adopt bylaws to conduct business;

- Allows the Authority to lease, rent, or contract for the operation or management of any portion of a transportation facility built by the Authority;

- Allows the Authority to enter into lease-purchase agreements with DOT. DOT also may be appointed by the Authority as its agent to oversee construction of the system's components.

- Allows the Authority to enter into public-private partnerships to construct, operate, own, or finance transportation facilities that are part of the system;

3) Bond Financing

HB 251 authorizes the Bay Area Regional Transportation Authority to finance system projects through the issuance of revenue bonds. The bond financing provisions of the bill

- Allows the Authority to issue revenue bonds, either on its own or through the state Division of Bond Finance for construction of or improvements to commuter rail systems, transit systems, ferry systems, highways, bridges, toll collection facilities, interchanges, and any other transportation facilities necessary to the system;

- Provides bonds issued by the Authority or through the state Division of Bond Finance must conform to the State Bond Act requirements and that terms of the bonds shall not exceed 40 years;

- Provides the bonds shall not be pledges against the credit of the State of Florida;

- Provides for rights and remedies of bondholders to take action upon default by the Authority or DOT to comply with provisions of any bond agreement.

4) Effects on Other Government Entities

HB 251 clarifies that the Bay Area Regional Transportation Authority's powers do not encroach on any existing laws relating to other governmental entities. The bill:

- Does not repeal, rescind, or modify any existing laws related to the State Board of Administration; the DOT; the Tampa-Hillsborough County Expressway Authority; or the Division of Bond Finance.

- Does not preclude DOT from developing and producing projects in its five-year work program, which are on the state highway system in the same geographical area as the Bay Area Regional Transportation Authority.

The bill also requires the Authority to coordinate plans and projects with the West Central Florida M.P.O. Chairs' Coordinating Committee and participate in the regional M.P.O. planning process to ensure regional comprehension of the authority's mission, goals, and objectives.

C. SECTION DIRECTORY:

Section 1. creates Part V of chapter 343, F.S. to include:

- s. 343.90, to provide for short title of the Bay Area Regional Transportation Authority Act.
- s. 343.91 to establish definitions.
- s. 343.92 to provide for the governing board of the authority.
- s. 343.922 to define powers and duties of the authority.
- s. 343.94 to define bond financing ability for the authority.
- s. 343.943 to provide for the newly created authorities bond covenant.
- s. 343.944 to provide for bondholder's rights and remedies.

- s. 343.945 to provide for enforcement actions for covenants and agreements between bondholders and the authority.
- s. 343.946 to authorize the authority to enter into lease-purchase agreements with DOT.
- s. 343.95 to authorize the authority to acquire private or public property and property rights.
- s. 343.96 to authorize any political subdivision, board, commission, or individual in or of the state to make and enter into contracts, conveyances, leases, partnerships, or other agreements with the authority.
- s. 343.962 to establish that the authority may solicit and/or receive proposals to enter into public-private partnerships.
- s. 343.97 to provide the authority with specific tax exemptions.
- s. 343.973 to provide investment security to the authority.
- s. 343.975 to clarify the authority's powers conferred by this new statute.

Section 2. Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See D. Fiscal Comments, below.

2. Expenditures:

   See D. Fiscal Comments, below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See D. Fiscal Comments, below.

2. Expenditures:

   See D. Fiscal Comments, below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Economic impact to the private sector is unknown at this time, as no projects (or project details) have been identified. Tolls, fees or other charges to be collected by the Authority cannot be determined until projects are identified.

D. FISCAL COMMENTS:

The fiscal impacts to Local Governments and DOT, including tolls, fees and other charges, are unknown at this time as no projects or contractual agreements have been identified. Unless operational and maintenance expenses necessary to the authority are funded by local governments or from other sources, DOT may be requested to fund these costs from the State Transportation Trust Fund (STTF).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This mandates provision is not applicable to HB 251 because the legislation does not require counties or municipalities to expend local funds or to raise local funds, nor does it reduce their state revenue-sharing.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill creates s. 343.962(8), F.S., which gives the Authority rule-making powers to implement public-private partnerships.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

The establishment of a Regional Transportation Authority in the Tampa Bay Area will help our citizens address the transportation needs of the region as well as allow for innovative programs. The idea of multimodal transportation is vital to Florida's future, while the idea of public-private transportation partnerships is supported by idea # 47 of the 100 great ideas for Florida.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 15, 2007, this bill was considered by the Committee on Infrastructure.

Amendment No. 1, a technical amendment, was adopted.

Amendment No. 2 was adopted to revise the board membership to require one nonvoting, ex officio member of the board to be appointed by the secretary of DOT, who is district secretary for one of the department districts within the seven-county area of the authority.

Amendment No. 3 was adopted that revised the requirements of transportation projects related to local government comprehensive plans. This amendment requires projects to be consistent, to the maximum extent practicable, with the adopted local government comprehensive plans at the time they are funded for construction.

An Amendment to Amendment 3 was adopted which deleted the phrase "to the maximum extent practicable". This amendment strengthens the requirements for these transportation projects in relation to local government comprehensive plans.

The bill was reported favorably with four amendments.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1(for drafter's use only)

Bill No. **251**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Economic Expansion & Infrastructure

The Committee on Infrastructure offered the following:

Amendment

Remove line 234 and insert:

representatives who are not elected officials, one, but no more than two, ~~two~~ of which ~~whom~~ shall

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CA_Am_to_HB251(1).doc

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2(for drafter's use only)

Bill No. **251**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Economic Expansion & Infrastructure

The Committee on Infrastructure offered the following:

Amendment

Remove line(s) 177-182 and insert:

16 members.

(a) There shall be one nonvoting, ex officio member of the board who shall be appointed by the secretary of the department, but who must be the district secretary for one of the department districts within the seven-county area of the authority, at the discretion of the secretary of the department.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 3(for drafter's use only)

Bill No. **251**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Economic Expansion & Infrastructure

The Committee on Infrastructure offered the following:

Amendment

Remove line 373 and insert:

potential inconsistencies between plans. The authority's projects which are transportation oriented and are not subject to the definitions of development pursuant to F.S. 380.04 shall be consistent with the adopted local government comprehensive plans at the time they are funded for construction. Authority projects which are not transportation oriented and meet the definition of development pursuant to F.S. 380.04 shall be consistent with the local comprehensive plans. In carrying out its

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A bill to be entitled

An act relating to regional transportation facilities; creating part V of chapter 343, F.S.; creating s. 343.90, F.S.; providing a short title; creating s. 343.91, F.S.; providing definitions; creating s. 343.92, F.S.; creating the Bay Area Regional Transportation Authority, comprising Citrus, Hernando, Hillsborough, Manatee, Pasco, Pinellas, and Sarasota Counties; providing for organization and membership; providing for reimbursement of travel expenses and per diem; requiring members to comply with specified financial disclosure provisions; providing for employees and advisory committees; creating s. 343.922, F.S.; specifying purposes of the authority; providing for rights, powers, and duties of the authority; authorizing the authority to construct, operate, and maintain certain multimodal transportation systems; authorizing the authority to collect fares and tolls on its transportation facilities; requiring the authority to develop and adopt a regional multimodal transportation master plan by a date certain; providing for content, updates, and use of the plan; authorizing the authority to request funding and technical assistance; authorizing the authority to borrow money, enter into partnerships and other agreements, enter into and make lease-purchase agreements, and make contracts for certain purposes; specifying that the authority does not have power to pledge the credit or taxing power of the state; creating s. 343.94, F.S.; providing legislative approval of bond financing by the

authority for its projects; providing for issuance of the bonds by the authority or the Division of Bond Finance; providing for contract with bondholders; authorizing the authority to employ fiscal agents; authorizing the State Board of Administration to act as fiscal agent; creating s. 343.941, F.S.; providing that the authority's bonds are not debts or pledges of faith and credit of the state; creating s. 343.943, F.S.; providing a state covenant with bondholders; creating s. 343.944, F.S.; providing certain rights and remedies for bondholders; creating s. 343.945, F.S.; providing for enforcement by bondholders of pledges to the authority from the department; creating s. 343.946, F.S.; providing for lease-purchase agreements between the authority and the department; creating s. 343.947, F.S.; providing for the department to act as an agent for the authority for the purposes of constructing and completing the authority's projects; creating s. 343.95, F.S.; providing for the authority to purchase property and property rights; creating s. 343.96, F.S.; providing for the authority to enter into cooperative agreements with other entities and persons; creating s. 343.962, F.S.; providing for the authority to enter into certain public-private agreements under certain conditions; providing procedures for proposals for public-private multimodal transportation projects; authorizing the public-private entity to impose certain tolls or fares for use of the systems; providing criteria for the constructed systems; authorizing the authority to use certain powers to

facilitate project development, construction, and operation; providing intent relating to governmental entities; authorizing the authority to adopt certain rules and establish an application fee; creating s. 343.97, F.S.; exempting the authority from certain taxation; creating s. 343.973, F.S.; specifying that bonds or other obligations issued by the authority are legal investments constituting securities for certain purposes; creating s. 343.975, F.S.; providing for application and effect of specified provisions; providing an effective date.

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

Section 1. Part V of chapter 343, Florida Statutes, consisting of sections 343.90, 343.91, 343.92, 343.922, 343.94, 343.941, 343.943, 343.944, 343.945, 343.946, 343.947, 343.95, 343.96, 343.962, 343.97, 343.973, and 343.975, is created to read:

343.90 Short title.--This part may be cited as the "Bay Area Regional Transportation Authority Act."

343.91 Definitions.--

(1) The following terms, whenever used or referred to in this part, shall have the following meanings, except in those instances where the context clearly indicates otherwise:

(a) "Authority" means the Bay Area Regional Transportation Authority, the body politic and corporate and agency of the state created by this part, covering the seven-county area comprised of Citrus, Hernando, Hillsborough, Pasco, Pinellas,

Manatee, and Sarasota Counties.

(b) "Board" means the governing body of the authority.

(c) "Bonds" means the notes, bonds, refunding bonds, or other evidences of indebtedness or obligations, in either temporary or definitive form, which the authority is authorized to issue under this part.

(d)1. "Bus rapid transit" means a type of limited-stop bus service that relies on technology to help expedite service through priority for transit, rapid and convenient fare collection, and integration with land use to substantially upgrade performance of buses operating on exclusive, high-occupancy-vehicle lanes, expressways, or ordinary streets.

2. "Express bus" means a type of bus service designed to expedite longer trips, especially in major metropolitan areas during heavily patronized peak commuting hours, by operating over long distances without stopping on freeways or partially controlled access roadway facilities.

(e)1. "Commuter rail" means a complete system of tracks, guideways, stations, and rolling stock necessary to effectuate medium-distance to long-distance passenger rail service to, from, or within the municipalities within the authority's designated seven-county region.

2. "Heavy rail transit" means a complete rail system operating on an electric railway with the capacity for a heavy volume of traffic, characterized by high-speed and rapid-acceleration passenger rail cars operating singly or in multicar trains on fixed rails in separate rights-of-way from which all other vehicular and pedestrian traffic are excluded. "Heavy rail

transit" includes metro, subway, elevated, rapid transit, and rapid rail systems.

3. "Light rail transit" means a complete system of tracks, overhead catenaries, stations, and platforms with lightweight passenger rail cars operating singly or in short, multicar trains on fixed rails in rights-of-way that are not separated from other traffic for much of the way.

(f) "Consultation" means that one party confers with another identified party in accordance with an established process and, prior to taking action, considers that party's views and periodically informs that party about actions taken.

(g) "Coordination" means the comparison of the transportation plans, programs, and schedules of one agency with related plans, programs, and schedules of other agencies or entities with legal standing and adjustment of plans, programs, and schedules to achieve general consistency to the extent practicable.

(h) "Department" means the Florida Department of Transportation.

(i) "Lease-purchase agreement" means a lease-purchase agreement that the authority is authorized under this part to enter into with the department.

(j) "Limited access expressway" or "expressway" means a street or highway especially designed for through traffic and over, from, or to which a person does not have the right of easement, use, or access except in accordance with the rules adopted and established by the authority for the use of such facility.

(k) "Members" means the individuals constituting the governing body of the authority.

(l) "Multimodal transportation system" means a well-connected network of transportation modes reflecting a high level of accessibility between modes and proximity to supportive land use patterns.

(m) "Park-and-ride lot" means a transit station stop or a carpool or vanpool waiting area to which patrons may drive private vehicles for parking before gaining access to transit, commuter rail, or heavy rail systems or taking carpool or vanpool vehicles to their destinations.

(n) "State Board of Administration" means the body corporate existing under the provisions of s. 9, Art. XII of the State Constitution, or any successor thereto.

(o) "Transit-oriented development" means a mixed-use residential or commercial area designed to maximize access to public transportation and often incorporates features to encourage transit ridership. A transit-oriented development neighborhood typically has a center with a train station, tram stop, or bus station surrounded by relatively high-density development with progressively lower-density development spreading outward from the center, typically within 1/2 mile of the stop or station.

(p) "Transit station" means a public transportation passenger facility that is accessible either at street level or on above-grade platforms and often surrounded by pedestrian-friendly, higher-density development or park-and-ride lots.

(2) Terms importing singular number include the plural

number in each case and vice versa, and terms importing persons include firms and corporations.

343.92 Bay Area Regional Transportation Authority.--

(1) There is created and established a body politic and corporate, an agency of the state, to be known as the Bay Area Regional Transportation Authority, hereinafter referred to as the authority.

(2) The governing board of the authority shall consist of 17 members.

(a) There shall be two nonvoting, ex officio members of the board who shall be appointed by the secretary of the department but must be the district secretary, or his or her designee, for each department district within the seven-county area of the authority.

(b) There shall be 15 voting members of the board as follows:

1. The county commissions of Citrus, Hernando, Hillsborough, Pasco, Pinellas, Manatee, and Sarasota Counties shall each appoint one elected official to the board. Members appointed under this subparagraph shall serve 2-year terms with not more than three consecutive terms being served by any person. If a member under this subparagraph leaves elected office, a vacancy exists on the board to be filled as provided in this subparagraph.

2. The West Central Florida M.P.O. Chairs Coordinating Committee shall appoint one member to the board who must be a chair of one of the six metropolitan planning organizations in the region. The member appointed under this subparagraph shall

serve a 2-year term with not more than three consecutive terms being served by any person.

3.a. Two members of the board shall be the mayor, or the mayor's designee, of the largest municipality within the service area of each of the following independent transit agencies or their legislatively created successor agencies: Pinellas Suncoast Transit Authority and Hillsborough Area Regional Transit Authority. The largest municipality is that municipality with the largest population as determined by the most recent United States Decennial Census.

b. Should a mayor choose not to serve, his or her designee must be an elected official selected by the mayor from that largest municipality's city council or city commission. A mayor or his or her designee shall serve a 2-year term with not more than three consecutive terms being served by any person.

c. A designee's term ends if the mayor leaves office for any reason. If a designee leaves elected office on the city council or commission, a vacancy exists on the board to be filled by the mayor of that municipality as provided in sub-subparagraph a.

d. A mayor who has served three consecutive terms on the board must designate an elected official from that largest municipality's city council or city commission to serve on the board for at least one term.

4.a. One membership on the board shall rotate every 2 years between the mayor, or his or her designee, of the largest municipality within Manatee County and the mayor, or his or her designee, of the largest municipality within Sarasota County.

The mayor, or his or her designee, from the largest municipality within Manatee County shall serve the first 2-year term. The largest municipality is that municipality with the largest population as determined by the most recent United States Decennial Census.

b. Should a mayor choose not to serve, his or her designee must be an elected official selected by the mayor from that municipality's city council or city commission.

5. The Governor shall appoint to the board four business representatives who are not elected officials, two of whom shall represent counties within the federally designated Tampa Bay Transportation Management Area. Members appointed by the Governor shall serve 3-year terms with not more than two consecutive terms being served by any person.

(c) Appointments may be staggered to avoid mass turnover at the end of any 2-year or 4-year period. A vacancy during a term shall be filled by the respective appointing authority within 90 days in the same manner as the original appointment and only for the remainder of the unexpired term.

(3) The members of the board shall serve without compensation but shall be entitled to receive from the authority reimbursement for travel expenses and per diem actually incurred in connection with the business of the authority as provided in s. 112.061.

(4) Members of the board shall comply with the applicable financial disclosure requirements of ss. 112.3145, 112.3148, and 112.3149.

(5) The board shall appoint from among its members a

chair, a vice chair, and a secretary-treasurer, who shall each serve a term of 1 year and who may be reappointed by the board.

(6) The board may establish committees for the following areas:

(a) Planning.

(b) Policy.

(c) Finance.

(7) The authority may employ an executive director, an executive secretary, its own legal counsel and legal staff, technical experts, engineers, and such employees, permanent or temporary, as it may require. The authority shall determine the qualifications and fix the compensation of such persons, firms, or corporations and may employ a fiscal agent or agents; however, the authority shall solicit sealed proposals from at least three persons, firms, or corporations for the performance of any services as fiscal agents. The authority may delegate, as it shall deem necessary, its power to one or more of its agents or employees to carry out the purposes of this part, subject always to the supervision and control of the authority.

(8)(a) The authority shall establish a Transit Management Committee comprised of the executive directors or general managers, or their designees, of each of the existing transit providers and Bay Area commuter services.

(b) The authority shall establish a Citizens Advisory Committee comprised of appointed citizen committee members from each county and transit provider in the region, not to exceed 16 members.

(c) The authority may establish technical advisory

committees to provide guidance and advice on regional transportation issues. The authority shall establish the size, composition, and focus of any technical advisory committee created.

(d) Persons appointed to a committee shall serve without compensation but may be entitled to per diem or travel expenses as provided in s. 112.061.

343.922 Powers and duties.--

(1) The express purposes of the authority are to improve mobility and expand multimodal transportation options for passengers and freight throughout the seven-county Bay Area region.

(2)(a) The authority has the right to plan, develop, finance, construct, own, purchase, operate, maintain, relocate, equip, repair, and manage those public transportation projects, such as express bus services; bus rapid transit services; light rail, commuter rail, heavy rail, or other transit services; ferry services; transit stations; park-and-ride lots; transit-oriented development nodes; or feeder roads, reliever roads, connector roads, bypasses, or appurtenant facilities, that are intended to address critical transportation needs or concerns in the Bay Area region as identified by the authority by July 1, 2009. These projects may also include all necessary approaches, roads, bridges, and avenues of access that are desirable and proper with the concurrence of the department, as applicable, if the project is to be part of the State Highway System.

(b) Any transportation facilities constructed by the authority may be tolled. Fare payment methods for public

transportation projects shall promote seamless integration between regional and local transit systems. Tolling technologies shall be consistent with the systems used by the Florida Turnpike Enterprise for the purpose of allowing the use of a single transponder or a similar electronic tolling device for all facilities of the authority and the Florida Turnpike Enterprise.

(c) The authority shall coordinate and consult with local governments on transit or commuter rail station area plans that provide for compact, mixed-use, transit-oriented development that will support transit investments and provide a variety of workforce housing choices, recognizing the need for housing alternatives for a variety of income ranges.

(3)(a) No later than July 1, 2009, the authority shall develop and adopt a regional transportation master plan that provides a vision for a regionally integrated multimodal transportation system. The goals and objectives of the master plan are to identify areas of the Bay Area region where multimodal mobility, traffic safety, freight mobility, and efficient emergency evacuation alternatives need to be improved; identify areas of the region where multimodal transportation systems would be most beneficial to enhance mobility and economic development; develop methods of building partnerships with local governments, existing transit providers, expressway authorities, seaports, airports, and other local, state, and federal entities; develop methods of building partnerships with CSX Corporation and CSX Transportation, Inc., to craft mutually beneficial solutions to achieve the authority's objectives, and

with other private-sector business community entities that may further the authority's mission, and engage the public in support of regional multimodal transportation improvements; identify projects that will accomplish these goals and objectives, including, without limitation, the creation of express bus and bus rapid transit services, light rail, commuter rail, and heavy rail transit services, ferry services, freight services, and any other multimodal transportation system projects that address critical transportation needs or concerns, pursuant to subsection (2); and identify the costs of the proposed projects and revenue sources that could be used to pay those costs. The adoption of the master plan by the authority is not a rule subject to the rulemaking procedures of chapter 120.

(b) The authority shall consult with the department to further the goals and objectives of the Strategic Regional Transit Needs Assessment completed by the department.

(c) After its adoption, the master plan shall be updated every 2 years before July 1.

(d) The authority shall present the original master plan and updates to the governing bodies of the counties within the seven-county region, to the West Central Florida M.P.O. Chairs Coordinating Committee, and to the legislative delegation members representing those counties within 90 days after adoption.

(e) The authority shall coordinate plans and projects with the West Central Florida M.P.O. Chairs Coordinating Committee, to the extent practicable, and participate in the regional M.P.O. planning process to ensure regional comprehension of the

authority's mission, goals, and objectives.

(4) The authority may undertake projects or other improvements in the master plan in phases as particular projects or segments become feasible, as determined by the authority. The authority shall coordinate project planning, development, and implementation with the applicable adopted comprehensive plans of local governments within whose jurisdictions the projects or improvements will be located to define and resolve potential inconsistencies between plans. In carrying out its purposes and powers, the authority may request funding and technical assistance from the department and appropriate federal and local agencies, including, but not limited to, state infrastructure bank loans, advances from the Toll Facilities Revolving Trust Fund, and funding and technical assistance from any other source.

(5) The authority is granted and may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of the aforesaid purposes, including, but not limited to, the following rights and powers:

(a) To sue and be sued, implead and be impleaded, and complain and defend in all courts in its own name.

(b) To adopt and use a corporate seal.

(c) To have the power of eminent domain, including the procedural powers granted under chapters 73 and 74.

(d) To acquire by donation or otherwise, purchase, hold, construct, maintain, improve, operate, own, lease as a lessee, and use any franchise or property, real, personal, or mixed, tangible or intangible, or any option thereof in its own name or

in conjunction with others, or any interest therein, necessary or desirable for carrying out the purposes of the authority.

(e) To sell, convey, exchange, lease as a lessor, transfer, or otherwise dispose of any real or personal property, or interest therein, acquired by the authority, including air rights.

(f) To fix, alter, establish, and collect rates, fares, fees, rentals, tolls, and other charges for the services and use of any light rail, commuter rail, heavy rail, bus rapid transit, or express bus services, ferry services, highways, feeder roads, bridges, or other transportation facilities owned or operated by the authority. These rates, fares, fees, rentals, tolls, and other charges shall always be sufficient to comply with any covenants made with the holders of any bonds issued pursuant to this part; however, such right and power may be assigned or delegated by the authority to the department.

(g) To borrow money and to make and issue negotiable notes, bonds, refunding bonds, and other evidences of indebtedness or obligations, either in temporary or definitive form, hereinafter in this chapter sometimes called "revenue bonds" of the authority, for the purpose of financing all or part of the mobility improvements within the Bay Area region, as well as the appurtenant facilities, including all approaches, streets, roads, bridges, and avenues of access authorized by this part, the bonds to mature not exceeding 40 years after the date of the issuance thereof, and to secure the payment of such bonds or any part thereof by a pledge of any or all of its revenues, rates, fees, rentals, or other charges.

(h) To adopt bylaws for the regulation of the affairs and the conduct of the business of the authority. The bylaws shall provide for quorum and voting requirements, maintenance of minutes and other official records, and preparation and adoption of an annual budget.

(i) To lease, rent, or contract for the operation or management of any part of a transportation system facility built by the authority. In awarding any contract, the authority shall consider, but is not limited to, the following:

1. The qualifications of each applicant.

2. The level or quality of service.

3. The efficiency, cost, and anticipated revenue.

4. The construction, operation, and management plan.

5. The financial ability to provide reliable service.

6. The impact on other transportation modes, including the ability to interface with other transportation modes and facilities.

(j) To enforce collection of rates, fees, tolls, and charges and to establish and enforce fines and penalties for violations of any rules.

(k) To advertise, market, and promote regional transit services and facilities, freight mobility plans and projects, and the general activities of the authority.

(l) To cooperate with other governmental entities and to contract with other governmental agencies, including the Federal Government, the department, counties, transit authorities or agencies, municipalities, and expressway and bridge authorities.

(m) To enter into joint development agreements,

partnerships, and other agreements with public and private entities respecting ownership and revenue participation in order to facilitate financing and constructing any project or portions thereof.

(n) To accept grants and other funds from other governmental sources and to accept private donations. However, the authority shall not be directly eligible for Transportation Regional Incentive Program funds allocated pursuant to s. 339.2819, except through interlocal agreement with an eligible recipient.

(o) To purchase directly from local, national, or international insurance companies liability insurance that the authority is contractually and legally obligated to provide, notwithstanding the requirements of s. 287.022(1).

(p) To enter into and make lease-purchase agreements with the department for terms not exceeding 40 years or until any bonds secured by a pledge of rentals thereunder, and any refundings thereof, are fully paid as to both principal and interest, whichever is longer.

(q) To make contracts of every name and nature, including, but not limited to, partnerships providing for participation in ownership and revenues, and to execute all instruments necessary or convenient for the carrying on of its business.

(r) To do all acts and things necessary or convenient for the conduct of its business and the general welfare of the authority in order to carry out the powers granted to it by this part or any other law.

(6) The authority shall institute procedures to ensure

that jobs created as a result of state funding pursuant to this section shall be subject to equal opportunity hiring practices as provided for in s. 110.112.

(7) The authority shall comply with all statutory requirements of general application which relate to the filing of any report or documentation required by law, including the requirements of ss. 189.4085, 189.415, 189.417, and 189.418.

(8) The authority does not have power at any time or in any manner to pledge the credit or taxing power of the state or any political subdivision or agency thereof, nor shall any of the authority's obligations be deemed to be obligations of the state or of any political subdivision or agency thereof, nor shall the state or any political subdivision or agency thereof, except the authority, be liable for the payment of the principal of or interest on such obligations.

343.94 Bond financing authority.--

(1) Pursuant to s. 11(f), Art. VII of the State Constitution, the Legislature approves bond financing by the Bay Area Regional Transportation Authority for construction of or improvements to commuter rail systems, transit systems, ferry systems, highways, bridges, toll collection facilities, interchanges to the system, and any other transportation facility appurtenant, necessary, or incidental to the system. Subject to terms and conditions of applicable revenue bond resolutions and covenants, such costs may be financed in whole or in part by revenue bonds issued pursuant to paragraph (2)(a) or paragraph (2)(b), whether currently issued or issued in the future or by a combination of such bonds.

(2)(a) Bonds may be issued on behalf of the authority pursuant to the State Bond Act.

(b) Alternatively, the authority may issue its own bonds pursuant to this part at such times and in such principal amount as, in the opinion of the authority, is necessary to provide sufficient moneys for achieving its purposes; however, such bonds may not pledge the full faith and credit of the state. Bonds issued by the authority pursuant to this paragraph or paragraph (a), whether on original issuance or on refunding, shall be authorized by resolution of the members thereof, may be either term or serial bonds, and shall bear such date or dates, mature at such time or times, not exceeding 40 years after their respective dates, bear interest at such rate or rates, be payable semiannually, be in such denominations, be in such form, either coupon or fully registered, carry such registration, exchangeability, and interchangeability privileges, be payable in such medium of payment and at such place or places, be subject to such terms of redemption, and be entitled to such priorities on the revenues, rates, fees, rentals, or other charges or receipts of the authority, including revenues from lease-purchase agreements, as such resolution or any resolution subsequent thereto may provide. The bonds shall be executed either by manual or facsimile signature by such officers as the authority shall determine; however, such bonds shall bear at least one signature that is manually executed thereon, and the coupons attached to such bonds shall bear the facsimile signature or signatures of such officer or officers as shall be designated by the authority and have the seal of the authority

affixed, imprinted, reproduced, or lithographed thereon, all as may be prescribed in such resolution or resolutions.

(c) Bonds issued pursuant to paragraph (a) or paragraph (b) shall be sold at public sale in the manner provided by the State Bond Act. However, if the authority, by official action at a public meeting, determines that a negotiated sale of such bonds is in the best interest of the authority, the authority may negotiate the sale of such bonds with the underwriter designated by the authority and the Division of Bond Finance within the State Board of Administration with respect to bonds issued pursuant to paragraph (a) or solely by the authority with respect to bonds issued pursuant to paragraph (b). The authority's determination to negotiate the sale of such bonds may be based, in part, upon the written advice of the authority's financial adviser. Pending the preparation of definitive bonds, interim certificates may be issued to the purchaser or purchasers of such bonds and may contain such terms and conditions as the authority may determine.

(d) The authority may issue bonds pursuant to paragraph (b) to refund any bonds previously issued regardless of whether the bonds being refunded were issued by the authority pursuant to this chapter or on behalf of the authority pursuant to the State Bond Act.

(3) Any such resolution or resolutions authorizing any bonds hereunder may contain provisions that are part of the contract with the holders of such bonds, as to:

(a) The pledging of all or any part of the revenues, fares, rates, fees, rentals, or other charges or receipts of the

authority, derived by the authority.

(b) The completion, improvement, operation, extension, maintenance, repair, or lease of, or lease-purchase agreement relating to, the system and the duties of the authority and others, including the department, with reference thereto.

(c) Limitations on the purposes to which the proceeds of the bonds, then or thereafter to be issued, or of any loan or grant by the United States or the state may be applied.

(d) The fixing, charging, establishing, and collecting of rates, fees, rentals, or other charges for use of the services and facilities constructed by the authority.

(e) The setting aside of reserves or sinking funds or repair and replacement funds and the regulation and disposition thereof.

(f) Limitations on the issuance of additional bonds.

(g) The terms and provisions of any lease-purchase agreement, deed of trust, or indenture securing the bonds or under which the same may be issued.

(h) Any other or additional agreements with the holders of the bonds which the authority may deem desirable and proper.

(4) The authority may employ fiscal agents as provided by this part or the State Board of Administration may, upon request of the authority, act as fiscal agent for the authority in the issuance of any bonds that are issued pursuant to this part, and the State Board of Administration may, upon request of the authority, take over the management, control, administration, custody, and payment of any or all debt services or funds or assets now or hereafter available for any bonds issued pursuant

to this part. The authority may enter into any deeds of trust, indentures, or other agreements with its fiscal agent, or with any bank or trust company within or without the state, as security for such bonds and may, under such agreements, sign and pledge all or any of the revenues, rates, fees, rentals, or other charges or receipts of the authority. Such deed of trust, indenture, or other agreement may contain such provisions as are customary in such instruments or as the authority authorizes, including, but without limitation, provisions as to:

(a) The completion, improvement, operation, extension, maintenance, repair, and lease of, or lease-purchase agreement relating to, highway, bridge, and related transportation facilities and appurtenances and the duties of the authority and others, including the department, with reference thereto.

(b) The application of funds and the safeguarding of funds on hand or on deposit.

(c) The rights and remedies of the trustee and the holders of the bonds.

(d) The terms and provisions of the bonds or the resolutions authorizing the issuance of the bonds.

(5) Any of the bonds issued pursuant to this part are, and are hereby declared to be, negotiable instruments and have all the qualities and incidents of negotiable instruments under the law merchant and the negotiable instruments law of the state.

(6) Notwithstanding any of the provisions of this part, each project, building, or facility that has been financed by the issuance of bonds or other evidence of indebtedness under this part and any refinancing thereof are hereby approved as

provided for in s. 11(f), Art. VII of the State Constitution.

343.941 Bonds not debts or pledges of faith and credit of state.--Revenue bonds issued under the provisions of this part are not debts of the state or pledges of the faith and credit of the state. Such bonds are payable exclusively from revenues pledged for their payment. Each such bond shall contain a statement on its face that the state is not obligated to pay the same or the interest thereon, except from the revenues pledged for its payment, and that the faith and credit of the state is not pledged to the payment of the principal or interest of such bond. The issuance of revenue bonds under the provisions of this part does not directly, indirectly, or contingently obligate the state to levy or to pledge any form of taxation whatsoever, or to make any appropriation for their payment. No state funds shall be used to pay the principal or interest of any bonds issued to finance or refinance any portion of the authority's transportation projects, and each such bond shall contain a statement on its face to this effect.

343.943 Covenant of the state.--The state does hereby pledge to, and agrees with, any person, firm, or corporation or federal or state agency subscribing to or acquiring the bonds to be issued by the authority for the purposes of this part that the state will not limit or alter the rights hereby vested in the authority and the department until all bonds at any time issued, together with the interest thereon, are fully paid and discharged insofar as the same affects the rights of the holders of bonds issued hereunder. The state does further pledge to, and agree with, the United States that, if any federal agency

constructs or contributes any funds for the completion, extension, or improvement of the system or any part or portion thereof, the state will not alter or limit the rights and powers of the authority and the department in any manner which would be inconsistent with the continued maintenance and operation of the system or the completion, extension, or improvement thereof or which would be inconsistent with the due performance of any agreements between the authority and any such federal agency. The authority and the department shall continue to have and may exercise all powers herein granted so long as necessary or desirable for the carrying out of the purposes of this part and the purposes of the United States in the completion, extension, or improvement of the system or any part or portion thereof.

343.944 Remedies of the bondholders.--

(1) The rights and the remedies in this section conferred upon or granted to the bondholders are in addition to and not in limitation of any rights and remedies lawfully granted to such bondholders by the resolution or resolutions providing for the issuance of bonds or by a lease-purchase agreement, deed of trust, indenture, or other agreement under which the bonds may be issued or secured. If the authority defaults in the payment of the principal of or interest on any of the bonds issued pursuant to the provisions of this part after such principal of or interest on the bonds becomes due, whether at maturity or upon call for redemption, or the department defaults in any payments under, or covenants made in, any lease-purchase agreement between the authority and the department, and such default continues for a period of 30 days, or if the authority

or the department fails or refuses to comply with the provisions of this part or any agreement made with, or for the benefit of, the holders of the bonds, the holders of 25 percent in aggregate principal amount of the bonds then outstanding may appoint a trustee to represent such bondholders for the purposes hereof, if such holders of 25 percent in aggregate principal amount of the bonds then outstanding shall first give notice of their intention to appoint a trustee to the authority and to the department. Such notice shall be deemed to have been given if given in writing, deposited in a securely sealed postpaid wrapper, mailed at a regularly maintained United States post office box or station, and addressed, respectively, to the chair of the authority and to the secretary of the department at the principal office of the department.

(2) Such trustee and any trustee under any deed of trust, indenture, or other agreement may and, upon written request of the holders of 25 percent or such other percentages as are specified in any deed of trust, indenture, or other agreement aforesaid in principal amount of the bonds then outstanding, shall, in any court of competent jurisdiction, in his, her, or its own name:

(a) By mandamus or other suit, action, or proceeding at law or in equity, enforce all rights of the bondholders, including the right to require the authority to fix, establish, maintain, collect, and charge rates, fees, rentals, and other charges adequate to carry out any agreement as to or pledge of the revenues or receipts of the authority, to carry out any other covenants and agreements with or for the benefit of the

bondholders, and to perform its and their duties under this part.

(b) By mandamus or other suit, action, or proceeding at law or in equity, enforce all rights of the bondholders under or pursuant to any lease-purchase agreement between the authority and the department, including the right to require the department to make all rental payments required to be made by it under the provisions of any such lease-purchase agreement and to require the department to carry out any other covenants and agreements with or for the benefit of the bondholders and to perform its and their duties under this part.

(c) Bring suit upon the bonds.

(d) By action or suit in equity, require the authority or the department to account as if it were the trustee of an express trust for the bondholders.

(e) By action or suit in equity, enjoin any acts or things that may be unlawful or in violation of the rights of the bondholders.

(3) Any trustee, when appointed as aforesaid or acting under a deed of trust, indenture, or other agreement, and regardless of whether all bonds have been declared due and payable, may appoint a receiver who may enter upon and take possession of the system or the facilities or any part or parts thereof, the rates, fees, rentals, or other revenues, charges, or receipts from which are or may be applicable to the payment of the bonds so in default, and, subject to and in compliance with the provisions of any lease-purchase agreement between the authority and the department, operate and maintain the same for

and on behalf of and in the name of the authority, the department, and the bondholders, and collect and receive all rates, fees, rentals, and other charges or receipts or revenues arising therefrom in the same manner as the authority or the department might do, and shall deposit all such moneys in a separate account and apply such moneys in such manner as the court shall direct. In any suit, action, or proceeding by the trustee, the fees, counsel fees, and expenses of the trustee and the receiver, if any, and all costs and disbursements allowed by the court shall be a first charge on any rates, fees, rentals, or other charges, revenues, or receipts derived from the system or the facilities or services or any part or parts thereof, including payments under any such lease-purchase agreement as aforesaid, which rates, fees, rentals, or other charges, revenues, or receipts may be applicable to the payment of the bonds so in default. Such trustee, in addition to the foregoing, possesses all of the powers necessary for the exercise of any functions specifically set forth herein or incident to the representation of the bondholders in the enforcement and protection of their rights.

(4) This section or any other section of this part does not authorize any receiver appointed pursuant hereto for the purpose, subject to and in compliance with the provisions of any lease-purchase agreement between the authority and the department, of operating and maintaining the system or any facilities or part or parts thereof to sell, assign, mortgage, or otherwise dispose of any of the assets of whatever kind and character belonging to the authority. It is the intention of

this part to limit the powers of such receiver, subject to and in compliance with the provisions of any lease-purchase agreement between the authority and the department, to the operation and maintenance of the system or any facility or part or parts thereof, as the court may direct, in the name of and for and on behalf of the authority, the department, and the bondholders. In any suit, action, or proceeding at law or in equity, a holder of bonds on the authority, a trustee, or any court may not compel or direct a receiver to sell, assign, mortgage, or otherwise dispose of any assets of whatever kind or character belonging to the authority. A receiver also may not be authorized to sell, assign, mortgage, or otherwise dispose of any assets of whatever kind or character belonging to the authority in any suit, action, or proceeding at law or in equity.

343.945 Pledges enforceable by bondholders.--It is the express intention of this part that any pledge to the authority by the department of rates, fees, revenues, or other funds as rentals, or any covenants or agreements relative thereto, is enforceable in any court of competent jurisdiction against the authority or directly against the department by any holder of bonds issued by the authority.

343.946 Lease-purchase agreement.--

(1) In order to effectuate the purposes of this part and as authorized by this part, the authority may enter into a lease-purchase agreement with the department relating to and covering authority projects within the seven-county Bay Area region.

(2) Such lease-purchase agreement shall provide for the leasing of the system by the authority, as lessor, to the department, as lessee, shall prescribe the term of such lease and the rentals to be paid thereunder, and shall provide that, upon the completion of the faithful performance thereunder and the termination of such lease-purchase agreement, title in fee simple absolute to the system as then constituted shall be transferred in accordance with law by the authority to the state and the authority shall deliver to the department such deeds and conveyances as shall be necessary or convenient to vest title in fee simple absolute in the state.

(3) Such lease-purchase agreement may include such other provisions, agreements, and covenants as the authority and the department deem advisable or required, including, but not limited to, provisions as to the bonds to be issued for the purposes of this part, the completion, extension, improvement, operation, and maintenance of the system and the expenses and the cost of operation of the authority, the charging and collection of tolls, rates, fees, and other charges for the use of the services and facilities thereof, and the application of federal or state grants or aid which may be made or given to assist the authority in the completion, extension, improvement, operation, and maintenance of the system.

(4) The department as lessee under such lease-purchase agreement may pay as rentals thereunder any rates, fees, charges, funds, moneys, receipts, or income accruing to the department from the operation of the system and may also pay as rentals any appropriations received by the department pursuant

to any act of the Legislature heretofore or hereafter enacted; however, nothing in this section or in such lease-purchase agreement is intended to require, nor shall this part or such lease-purchase agreement require, the making or continuance of such appropriations, nor shall any holder of bonds issued pursuant to this part ever have any right to compel the making or continuance of such appropriations.

(5) The department shall have power to covenant in any lease-purchase agreement that it will pay all or any part of the cost of the operation, maintenance, repair, renewal, and replacement of facilities, and any part of the cost of completing facilities to the extent that the proceeds of bonds issued are insufficient, from sources other than the revenues derived from the operation of the system.

343.947 Department may be appointed agent of authority for construction.--The department may be appointed by the authority as its agent for the purpose of constructing and completing transportation projects, and improvements and extensions thereto, in the authority's master plan. In such event, the authority shall provide the department with complete copies of all documents, agreements, resolutions, contracts, and instruments relating thereto; shall request the department to do such construction work, including the planning, surveying, and actual construction of the completion, extensions, and improvements to the system; and shall transfer to the credit of an account of the department in the treasury of the state the necessary funds therefor. The department shall proceed with such construction and use the funds for such purpose in the same

manner that it is now authorized to use the funds otherwise provided by law for its use in construction of commuter rail systems, transit systems, ferry systems, roads, bridges, and related transportation facilities.

343.95 Acquisition of lands and property.--

(1) For the purposes of this part, the authority may acquire private or public property and property rights, including rights of access, air, view, and light, by gift, devise, purchase, or condemnation by eminent domain proceedings, as the authority may deem necessary for any purpose of this part, including, but not limited to, any lands reasonably necessary for securing applicable permits, areas necessary for management of access, borrow pits, drainage ditches, water retention areas, rest areas, replacement access for landowners whose access is impaired due to the construction of a facility, and replacement rights-of-way for relocated rail and utility facilities; for existing, proposed, or anticipated transportation facilities within the seven-county Bay Area region identified by the authority; or for the purposes of screening, relocation, removal, or disposal of junkyards and scrap metal processing facilities. The authority may condemn any material and property necessary for such purposes.

(2) The right of eminent domain herein conferred shall be exercised by the authority in the manner provided by law.

(3) When the authority acquires property for a transportation facility within the seven-county Bay Area region, the authority is not subject to any liability imposed by chapter 376 or chapter 403 for preexisting soil or groundwater

contamination due solely to its ownership. This subsection does not affect the rights or liabilities of any past or future owners of the acquired property, nor does it affect the liability of any governmental entity for the results of its actions which create or exacerbate a pollution source. The authority and the Department of Environmental Protection may enter into interagency agreements for the performance, funding, and reimbursement of the investigative and remedial acts necessary for property acquired by the authority.

343.96 Cooperation with other units, boards, agencies, and individuals.--Express authority and power is hereby given and granted to any county, municipality, drainage district, road and bridge district, school district, or any other political subdivision, board, commission, or individual in or of the state to make and enter into contracts, leases, conveyances, partnerships, or other agreements with the authority within the provisions and purposes of this part. The authority may make and enter into contracts, leases, conveyances, partnerships, and other agreements with any political subdivision, agency, or instrumentality of the state and any and all federal agencies, corporations, and individuals for the purpose of carrying out the provisions of this part.

343.962 Public-private partnerships.--

(1) The authority may receive or solicit proposals and enter into agreements with private entities or consortia thereof for the building, operation, ownership, or financing of multimodal transportation systems, transit-oriented development nodes, transit stations, or related facilities within the

jurisdiction of the authority. Before approval, the authority must determine that a proposed project:

(a) Is in the public's best interest.

(b) Would not require state funds to be used unless the project is on or provides increased mobility on the State Highway System.

(c) Would have adequate safeguards to ensure that additional costs or unreasonable service disruptions would not be realized by the traveling public and citizens of the state in the event of default or the cancellation of the agreement by the authority.

(2) The authority shall ensure that all reasonable costs to the state related to transportation facilities that are not part of the State Highway System are borne by the private entity or any partnership created to develop the facilities. The authority shall also ensure that all reasonable costs to the state and substantially affected local governments and utilities related to the private transportation facility are borne by the private entity for transportation facilities that are owned by private entities. For projects on the State Highway System or that provide increased mobility on the State Highway System, the department may use state resources to participate in funding and financing the project as provided for under the department's enabling legislation.

(3) The authority may request proposals for public-private multimodal transportation projects or, if it receives an unsolicited proposal, the authority must publish a notice in the Florida Administrative Weekly and a newspaper of general

circulation in the county in which the proposed project is located at least once a week for 2 weeks stating that it has received the proposal and will accept, for 60 days after the initial date of publication, other proposals for the same project purpose. A copy of the notice must be mailed to each local government in the affected areas. After the public notification period has expired, the authority shall rank the proposals in order of preference. In ranking the proposals, the authority shall consider professional qualifications, general business terms, innovative engineering or cost-reduction terms, finance plans, and the need for state funds to deliver the proposal. If the authority is not satisfied with the results of the negotiations, it may, at its sole discretion, terminate negotiations with the proposer. If these negotiations are unsuccessful, the authority may go to the second and lower-ranked firms, in order, using the same procedure. If only one proposal is received, the authority may negotiate in good faith and, if it is not satisfied with the results, it may, at its sole discretion, terminate negotiations with the proposer. Notwithstanding this subsection, the authority may, at its discretion, reject all proposals at any point in the process up to completion of a contract with the proposer.

(4) Agreements entered into pursuant to this section may authorize the public-private entity to impose tolls or fares for the use of the facility. However, the amount and use of toll or fare revenues shall be regulated by the authority to avoid unreasonable costs to users of the facility.

(5) Each public-private transportation facility

constructed pursuant to this section shall comply with all requirements of federal, state, and local laws; state, regional, and local comprehensive plans; the authority's rules, policies, procedures, and standards for transportation facilities; and any other conditions that the authority determines to be in the public's best interest.

(6) The authority may exercise any of its powers, including eminent domain, to facilitate the development and construction of multimodal transportation projects pursuant to this section. The authority may pay all or part of the cost of operating and maintaining the facility or may provide services to the private entity, for which services it shall receive full or partial reimbursement.

(7) Except as provided in this section, this section is not intended to amend existing law by granting additional powers to or imposing further restrictions on the governmental entities with regard to regulating and entering into cooperative arrangements with the private sector for the planning, construction, and operation of transportation facilities.

(8) The authority may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section and shall, by rule, establish an application fee for the submission of unsolicited proposals under this section. The fee must be sufficient to pay the costs of evaluating the proposals.

343.97 Exemption from taxation.--The effectuation of the authorized purposes of the authority created under this part is for the benefit of the people of this state, for the increase of their commerce and prosperity, and for the improvement of their

health and living conditions and, because the authority performs essential governmental functions in effectuating such purposes, the authority is not required to pay any taxes or assessments of any kind or nature whatsoever upon any property acquired or used by it for such purposes, or upon any rates, fees, rentals, receipts, income, or charges at any time received by it. The bonds issued by the authority, their transfer, and the income therefrom, including any profits made on the sale thereof, shall at all times be free from taxation of any kind by the state or by any political subdivision, taxing agency, or instrumentality thereof. The exemption granted by this section does not apply to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations.

343.973 Eligibility for investments and security.--Any bonds or other obligations issued pursuant to this part shall be and constitute legal investments for banks, savings banks, trustees, executors, administrators, and all other fiduciaries and for all state, municipal, and other public funds and shall also be and constitute securities eligible for deposit as security for all state, municipal, or other public funds, notwithstanding the provisions of any other law to the contrary.

343.975 Complete and additional statutory authority.--

(1) The powers conferred by this part are supplemental to the existing powers of the board and the department. This part does not repeal any of the provisions of any other law, general, special, or local, but supplements such other laws in the exercise of the powers provided in this part and provides a complete method for the exercise of the powers granted in this

part. The projects planned and constructed by the Bay Area Regional Transportation Authority shall comply with all applicable federal, state, and local laws. The authority shall coordinate project planning, development, and implementation with the applicable adopted comprehensive plans of local governments within whose jurisdictions the projects or improvements will be located, in order to define and resolve potential inconsistencies between plans. The extension and improvement of the system, and the issuance of bonds hereunder to finance all or part of the cost thereof, may be accomplished upon compliance with the provisions of this part without regard to or necessity for compliance with the provisions, limitations, or restrictions contained in any other general, special, or local law, including, but not limited to, s. 215.821. An approval of any bonds issued under this part by the qualified electors or qualified electors who are freeholders in the state or in any other political subdivision of the state is not required for the issuance of such bonds pursuant to this part.

(2) This part does not repeal, rescind, or modify any other law relating to the State Board of Administration, the Department of Transportation, the Tampa-Hillsborough County Expressway Authority, or the Division of Bond Finance within the State Board of Administration; however, this part supersedes such other laws as are inconsistent with its provisions, including, but not limited to, s. 215.821.

(3) This part does not preclude the department from acquiring, holding, constructing, improving, maintaining, operating, or owning tolled or nontolled facilities funded and

constructed from nonauthority sources that are part of the State Highway System within the geographical boundaries of the Bay Area Regional Transportation Authority.

Section 2. This act shall take effect July 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 545 Motor Vehicles
SPONSOR(S): Patterson and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 124

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Infrastructure	8 Y, 0 N	Owen	Miller
2) Economic Expansion & Infrastructure Council		Owen	Tinker TBT
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

HB 545 addresses the registration and equipment requirements of custom vehicles and street rods. Current statute defines the term "street rod" and specifies that the vehicle may only be used for certain occasions, the owner of the vehicle may apply for a specialty plate, and the vehicle must meet state motor vehicle safety requirements.

HB 545 expands the law to:

- Include a definition of "custom vehicle".
- Direct the Department of Highway Safety and Motor Vehicles (Department) to include certain items on the vehicle's title, to collect a tax and fee from the vehicle owner at registration, and to collect written statements from the vehicle owner.
- Create a specialty license plate for custom vehicles, in addition to the one currently available for street rods.
- Exempt custom vehicles and street rods from laws relating to emission controls, but does not exempt them from safety inspections, as long as the inspection is limited to equipment required of a vehicle of the model year listed on the certificate of title.
- Allow custom vehicles and street rods to be equipped with blue dot tail lights.

The fiscal impact incurred by the Department would be $7,560 in programming costs due to the addition of a specialty license plate. Issuance of this plate will not require additional employees or equipment.

HB 545 has an effective date of July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Under s. 320.0863, F.S., a street rod is defined as "a modified motor vehicle manufactured before 1949 which is maintained primarily for use in exhibitions, club activities, parades, and other functions of public interest but not for general transportation. For purposes of this section, the word 'modified' means that "an engine, a driveline, a suspension, brakes, or other component parts manufactured after 1949 are installed." There is no definition for a custom vehicle in current state statute.

To complete vehicle registration in the state, a street rod must currently pay a $7.50 license tax, plus a processing fee of $3. Since there is no current definition for a custom vehicle, the vehicle falls under "automobiles for private use" and must currently pay a license tax from $14.50 to $32.50, depending on the weight of the vehicle.

Specialty license plates are available for street rods, and the Department of Highway Safety and Motor Vehicles (Department) issued 1,054 plates in FY 2005-06.

Proposed Changes

HB 545 provides specific registration and titling classes for street rods and custom vehicles, including kit cars and replicas. The bill provides definitions for both, with a street rod being a vehicle either manufactured prior to 1949 or made to resemble a pre-1949 vehicle and a custom vehicle being a vehicle made to resemble a vehicle made between 1949 and 1982. The definition for street rod in the bill is broader than the current statute, allowing vehicles manufactured after 1949 to be considered street rods. Custom vehicles and street rods will be assigned the same model year designation as the production vehicle they most closely resemble and non-original materials will be allowed in production.

In addition, the bill requires the owner of a custom vehicle or street rod to submit a written statement to the Department stating the vehicle will not be used for general daily transportation, but maintained for occasional transportation, exhibitions, club activities, parades, tours, etc. The owner must also submit written proof to the Department that the vehicle meets state equipment and safety requirements, except only those requirements that were in effect in the year listed on the vehicle's title are required. For instance, a custom vehicle made to resemble a 1969 Camaro would not be required to have airbags installed.

The bill creates a specialty license plate for custom vehicles and allows custom vehicles and street rods to be equipped with blue dot tail lights, which are red lamps containing a blue or purple insert. Also, the bill exempts these vehicles from the use and inspection of emission controls.

Additional states, such as Illinois, Colorado and Montana, have already enacted this model legislation in the Specialty Equipment Market Association's (SEMA) effort to streamline the regulation of street rods and custom vehicles throughout the country.

C. SECTION DIRECTORY:

Section 1. Substantially rewords s. 320.0863, F.S.; provides definitions; provides for the registration of custom vehicles and street rods; provides registration and equipment requirements for such vehicles; exempts such vehicles from certain equipment and inspection requirements.

Section 2. Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See FISCAL COMMENTS section.

2. Expenditures:

   See FISCAL COMMENTS section.

Highway Safety Operating TF:	FY 2007-08	FY 2008-09
Salaries and Benefits:	$0	$0
Programming Costs:	$7,560	$0
Purchase of License Plates:	$0	$0
Total	$7,560	$0

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See FISCAL COMMENTS section.

2. Expenditures:

   See FISCAL COMMENTS section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Custom vehicle hobbyists will have a new license plate for display and operational purposes. Custom vehicle hobbyists will also pay a lower license tax on their vehicles.

D. FISCAL COMMENTS:

To complete vehicle registration in the state, a street rod must currently pay a $7.50 license tax, plus a processing fee of $3. Since there is no current definition for a custom vehicle, the vehicle falls under "automobiles for private use" and must currently pay a license tax from $14.50 to $32.50, depending on the weight of the vehicle. The bill allows custom vehicles to pay the $7.50 license tax, along with street rods. At a minimum, there will be a loss of $7 for every custom vehicle currently paying the lower tax for automobiles for private use, as well as a potential increase in the number of registered street rods due to the broader definition found in the bill. The Department has no record of the number of custom vehicles in the state, so the exact amount of revenue loss to the State is indeterminate. For FY 2005-06, the Department issued 1,054 street rod specialty license plates.

The bill will require contracted programming modifications to the motor vehicle software systems at the Department at an estimated cost of $7,560 for the addition of the custom vehicle license plate. The Department will absorb the cost within existing resources. Issuance of this plate will not require additional employees or equipment.

Tax Collector offices will have an additional license plate type to offer to the general public. Clerks will likewise have to ensure titles are marked with the letter "R" indicating "Reproduction".

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The requirement to include the capital letter "R" following the year on the vehicle's title is a duplication of information already available elsewhere on the title. It may cause confusion as to its intent when a Florida title is transferred to another state. There are currently title brands available for both replica and rebuilt vehicles, according to the Department. In addition, Chapter 319, F.S., addresses vehicle title issues which are not issues found in Chapter 320, F.S., which this bill addresses.

The requirement that individuals provide written proof that the vehicle meets state equipment and safety requirements is not appropriate to place on the Department or Tax Collector offices, since neither entity is trained in historical safety requirements for Florida motor vehicles.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On February 8, 2007, this bill was considered by the Committee on Infrastructure. An amendment was adopted which removes the requirement for the Department to include a capital letter "R" following the year on the vehicle's certificate of title. A second amendment was adopted which clarifies that a vehicle owner must submit "a written statement" rather than "written proof" that a vehicle meets state equipment and safety requirements when registering the vehicle. The bill was reported favorably with two amendments.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1(for drafter's use only)

Bill No. **545**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Economic Expansion & Infrastructure

Committee on Infrastructure offered the following:

Amendment

Remove line(s) 33 - 40 and insert:

(2) The model year and year of manufacture which the body of a custom vehicle or street rod resembles is the model year and year of manufacture listed on the certificate of title, regardless of when the vehicle was actually manufactured.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2(for drafter's use only)

Bill No. **545**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Economic Expansion & Infrastructure

Committee on Infrastructure offered the following:

Amendment

Remove line(s) 51 - 52 and insert:

(c) A written statement that the vehicle meets state equipment and safety requirements for motor vehicles. However, the vehicle

A bill to be entitled

An act relating to motor vehicles; amending s. 320.0863, F.S.; providing definitions; providing for the registration of custom vehicles and street rods; providing registration and equipment requirements for such vehicles; exempting such vehicles from certain equipment and inspection requirements; providing an effective date.

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

Section 1. Section 320.0863, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 320.0863, F.S., for present text.)

320.0863 Custom vehicles and street rods; registration and license plates.--

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

(a) "Blue dot tail light" means a red lamp that contains a blue or purple insert that is not more than one inch in diameter and is installed in the rear of a motor vehicle.

(b) "Custom vehicle" means a motor vehicle that:

1. Is 25 years old or older and of a model year after 1948 or was manufactured to resemble a vehicle that is 25 years old or older and of a model year after 1948; and

2. Has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

(c) "Street rod" means a motor vehicle that:

1. Is of a model year of 1948 or older or was manufactured

after 1948 to resemble a vehicle of a model year of 1948 or older; and

2. Has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

(2)(a) The model year and year of manufacture which the body of a custom vehicle or street rod resembles is the model year and year of manufacture listed on the certificate of title, regardless of when the vehicle was actually manufactured.

(b) The model year and year of manufacture on the certificate of title shall include the capital letter "R" following the year to indicate that the vehicle is a reproduction or complete rebuild.

(3) To register a street rod or custom vehicle, the owner shall apply to the department by submitting a completed application form and provide the following:

(a) The license tax prescribed by s. 320.08(2)(a) and a processing fee of $3.

(b) A written statement that the vehicle will not be used for general daily transportation but will be maintained for occasional transportation, exhibitions, club activities, parades, tours, or other functions of public interest and similar uses.

(c) Written proof that the vehicle meets state equipment and safety requirements for motor vehicles. However, the vehicle must meet only the requirements that were in effect in this state as a condition of sale in the year listed as the model year on the certificate of title.

(4) The registration numbers and special license plates

assigned to vehicles under this section shall run in a separate series, commencing with "Custom Vehicle 1" or "Street Rod 1," respectively, and the plates shall be of a distinguishing color and design.

(5)(a) A vehicle registered under this section is exempt from any law or local ordinance relating to the use and inspection of emission controls. The exemption under this paragraph does not apply to any periodic or other inspection relating to safety equipment or fitness for operation on public roadways; however, any such inspection shall be limited to equipment required to be fitted on the vehicle in the model year listed on the certificate of title.

(b) A vehicle registered under this section may also be equipped with blue dot tail lights for stop lamps, rear turning indicator lamps, rear hazard lamps, and rear reflectors.

Section 2. This act shall take effect July 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 815 Motor Vehicle Dealers
SPONSOR(S): McKeel
TIED BILLS: **IDEN./SIM. BILLS:** SB 1722

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Infrastructure	9 Y, 0 N	Owen	Miller
2) Economic Expansion & Infrastructure Council		Owen	Tinker
3)			
4)			
5)			

SUMMARY ANALYSIS

Chapter 320, F.S., provides for the licensing of motor vehicle dealers and motor vehicle manufacturers, distributors, and importers, and also regulates numerous components of the franchise contracts they enter into to do business in the state of Florida.

HB 815 makes a number of changes to this chapter, including:

- Requiring the motor vehicle manufacturer to meet in person with the dealership they are charging back subsequent to an audit for warranty or incentive payments.
- Prohibiting the manufacturer from changing or altering the basis for each of the proposed charge-backs as presented to the motor vehicle dealer following the conclusion of the audit.
- Requiring the motor vehicle manufacturer to provide the basis or methodology for which the motor vehicle dealer was selected for the audit or review.
- Adding a provision that prohibits a motor vehicle manufacturer from refusing to allow, limiting, or restricting a dealer from acquiring or adding a sales or service operation for another line-make of motor vehicles to their same or expanded facility, unless the manufacturer is able to prove the addition will substantially impair the dealer's ability to sell or service the manufacturer's motor vehicles.
- Adding to the definition of an unfair discontinuation, cancellation, or non-renewal of a franchise agreement. If a motor vehicle dealer is not given 180 days notice to cure the alleged breach of the franchise agreement, the discontinuation, cancellation, or non-renewal of the agreement is considered unfair.

The bill has no fiscal impact on state and local governments and is effective July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Reduce Government: HB 815 creates additional requirements and obligations on automobile manufacturers regarding aspects of their agreements with franchised motor vehicle dealers in Florida.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Chapter 320, F.S., provides for the licensing of motor vehicle dealers and motor vehicle manufacturers, distributors, and importers, and also regulates numerous components of the franchise contracts they enter into to do business in the state of Florida.

Section 320.64, F.S., outlines the causes for the Department of Highway Safety and Motor Vehicles (Department) to deny, suspend, or revoke the license of a licensed manufacturer, importer or distributor of motor vehicles.

Section 320.641, F.S., outlines the procedure a motor vehicle manufacturer must follow when discontinuing, cancelling, non-renewing, modifying or replacing franchise agreements. The manufacturer is required to provide written notice to the motor vehicle dealer at least 90 days before the effective date of the action, along with the specific grounds for such action. Any dealer who receives such a notice may file a petition or complaint for a determination of whether the action is unfair or prohibited.

According to s. 320.641(3), F.S., a discontinuation, cancellation, or non-renewal of a franchise agreement is considered unfair if:

- It is not clearly permitted by the franchise agreement;
- It is not undertaken in good faith;
- It is not undertaken for good cause;
- It is based on an alleged breach of the franchise agreement which is not a material or substantial breach; or
- The grounds relied upon for termination, cancellation, or non-renewal have not been applied in a uniform and consistent manner by the licensee.

A modification or replacement of a franchise agreement is considered unfair if:

- It is not clearly permitted by the franchise agreement;
- It is not undertaken in good faith; or
- It is not undertaken for good cause.

The motor vehicle manufacturer has the burden of proof that such action is fair and not prohibited.

A motor vehicle dealer who can demonstrate that a violation of, or failure to comply with, any of the provisions found in these sections will or can adversely and pecuniarily affect the dealer is entitled to pursue all of the remedies, procedures and rights of recovery available under ss. 320.695 and 320.697, F.S.. Section 320.695, F.S., allows for the grant of a temporary or permanent injunction by any circuit court of the state. Section 320.697, F.S., allows for recovery in circuit court of damages in the amount equal to three times the pecuniary loss, together with costs and attorney's fees.

Proposed Changes:

HB 815 makes a number of changes to existing statutes regulating automobile franchisees in this state. The general impact of the bill is to raise the level of protection for franchised motor vehicle dealers.

The bill:
Amends s. 320.64(25), F.S., by:

- Specifying that the motor vehicle manufacturer may not charge a motor vehicle dealer back subsequent to the payment of a warranty or incentive claim unless a representative of the manufacturer has met in person at the dealership with a representative of the dealer and explained in detail the basis for each of the charge-backs. The dealer is given no less than 30 days after the meeting to explain the dealer's position relating to each of the charge-backs.
- Prohibiting the manufacturer from changing or altering the basis for each of the proposed charge-backs as presented to the dealer following the conclusion of the audit.
- Directing the manufacturer to provide the dealer, at or prior to the meeting, with a written statement containing the basis or methodology upon which the dealer was selected for the audit or review.
    - Each franchised motor vehicle dealer maintains an "open account" with the manufacturer with which it has entered into a franchise agreement. The purpose of the open account is to facilitate billing and accounting between parties. The account is a running series of debits and credits for purchases, rebates, reimbursements, etc. between the manufacturer and the dealer.
    - No provision in Florida Statute currently requires manufacturers to permit a dealer to respond to alleged improper claims.

Creates s. 320.64(37), F.S., which:

- Prohibits the motor vehicle manufacturer from refusing to allow, limiting, or restricting a dealer from acquiring or adding a sales or service operation for another line-make of motor vehicles to their same or expanded facility, unless the manufacturer is able to prove the addition will substantially impair the dealer's ability to sell or service the manufacturer's motor vehicles.

Amends s. 320.641(3), F.S. by:

- Specifying in the current statutory definition of an "unfair discontinuation, cancellation, or non-renewal of a franchise agreement" that if a motor vehicle dealer is not given 180 days notice to cure the alleged breach of the franchise agreement, the discontinuation, cancellation, or non-renewal of the agreement is considered unfair.

As provided in current law, affected motor vehicle dealers could pursue all of the remedies, procedures and rights of recovery available under ss. 320.695 and 320.697, F.S., when a manufacturer fails to comply with or violates these new provisions.

C. SECTION DIRECTORY:

Section 1. Amends s. 320.64, F.S., by revising provisions for grounds for denial, suspension, or revocation of a license of a motor vehicle manufacturer, factor branch, distributor, or importer licensed by the Department to enter into franchise agreements with dealers; prohibiting certain charge-backs of warranty services payments made to a dealer unless certain procedures are followed; revising such procedures; and prohibiting applicant or licensee from refusing to allow, limiting, or restricting a motor vehicle dealer acquisition or addition of operations for another line-make of motor vehicles without a showing that the acquisition or addition would impair the dealer's ability to adequately sell or service such applicant's or licensee's motor vehicles.

Section 2. Amends s. 320.641, F.S., by revising procedures for a determination that a discontinuation, cancellation, or non-renewal of a franchise agreement by the applicant or licensee is unfair; and providing for a 180-day notice to cure an alleged breach of the agreement.

Section 3. Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. To the extent HB 815 protects the rights of existing franchised motor vehicle dealers in cases involving the ability to receive a charge-back from a manufacturer, the establishment of an additional sales or service operation for another line-make of motor vehicles at the same or expanded facility, and the amount of time allowed to cure an alleged breach of a franchise agreement, the bill may benefit franchised motor vehicle dealers. These same law changes may create financial costs for licensed manufacturers, distributors, and importers.

D. FISCAL COMMENTS:

There is no government fiscal impact. The Department of Highway Safety and Motor Vehicles already regulates this industry, so the additional grounds in the bill for regulatory actions should result in no additional state impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Florida Automobile Dealers Association claims that a manufacturer's audit of a dealer can result in hundreds of allegedly improper claims resulting in charge backs of greater than $100,000.

The Association also claims that manufacturers have increasingly begun to require dealers to provide exclusive facilities for sales and service of the manufacturer's vehicles, even though the product may suffer a significant downturn in popularity in later years. One example provided was of the Volkswagen brand, which saw a resurgence in the late 1990s, but within two years saw sales decrease dramatically. This left dealers with large facilities, but no vehicles to fill the showroom and service bays.

Finally, the Association states that, under current law, the dealer is not given the chance to take corrective action prior to being subject to termination and the potential loss of revenue. The purpose of the language in HB 815, they claim, is to provide dealers with an opportunity to demonstrate that a dealer's deficiencies in performance have been corrected prior to the institution of formal termination proceedings.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 15, 2007, this bill was considered by the Committee on Infrastructure.

An amendment was adopted which clarifies the manufacturer may also meet with a dealer by telephone or videoconference to discuss proposed charge-backs; requires the manufacturer to provide the dealer with documentation for each charge-back and gives the dealer at least 45 days to respond; and specifies the dealer must be given the right to a meeting and to respond if the manufacturer changes the basis for a charge-back.

A second amendment was adopted which requires the manufacturer to provide a 180-day cure period before ending a franchise agreement if the alleged failure relates to the dealer's sales or service performance.

The bill was reported favorably with two amendments.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1(for drafter's use only)

Bill No. **815**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Economic Expansion & Infrastructure

The Committee on Infrastructure offered the following:

Amendment

Remove line(s) 54-77 and insert:

the applicant or licensee for such repairs or incentives. An applicant or licensee may not charge a motor vehicle dealer back subsequent to the payment of a claim unless a representative of the applicant or licensee has met in person, by telephone, or by video teleconference with an officer or employee of the dealer designated by the motor vehicle dealer. At such meeting the applicant or licensee must have provided a detailed explanation, with supporting documentation, as to the basis for each of the claims for which the applicant or licensee proposed to charge-back the dealer and a written statement containing the basis upon which the motor vehicle dealer was selected for audit or review. Thereafter the applicant or licensee must have provided the motor vehicle dealer's representative a reasonable period after the meeting within which to respond to the proposed charge-backs, said period to be commensurate with the volume of

claims under consideration, but in no case less than 45 days after such meeting. The applicant or licensee shall be prohibited from changing or altering the basis for each of the proposed charge-backs as presented to the motor vehicle dealer's representative following the conclusion of the audit, unless the applicant or licensee received new information affecting the basis for one or more charge-backs. If the applicant or licensee has claimed the existence of new information, the dealer must have been given the same right to a meeting and right to respond as when the charge-back was originally presented.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2(for drafter's use only)

Bill No. **815**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Economic Expansion & Infrastructure

The Committee on Infrastructure offered the following:

Amendment

Remove line(s) 111-116 and insert:

alleged breach of the franchise agreement which is not in fact a material and substantial breach; or, if the grounds relied upon for termination, cancellation, or nonrenewal have not been applied in a uniform and consistent manner by the licensee. If the notice of discontinuation, cancellation or non-renewal relates to an alleged failure of the new motor vehicle dealer's sales or service performance obligations under the franchise agreement, the new motor vehicle dealer must first be provided with at least 180 days to correct the alleged failure before a licensee may send the notice of discontinuation, cancellation or non-renewal. A

A bill to be entitled

An act relating to motor vehicle dealers; amending s. 320.64, F.S.; revising provisions for grounds for denial, suspension, or revocation of license of a motor vehicle manufacturer, factory branch, distributor, or importer licensed by the Department of Highway Safety and Motor Vehicles to enter into franchise agreements with dealers; prohibiting certain charge-backs of warranty service payments made to a dealer unless certain procedures are followed; revising such procedures; prohibiting applicant or licensee from refusing to allow, limiting, or restricting a motor vehicle dealer acquisition or addition of operations for another line-make of motor vehicles without a showing that the acquisition or addition would impair the dealer's ability to adequately sell or service such applicant's or licensee's motor vehicles; amending s. 320.641, F.S.; revising procedures for a determination that a discontinuation, cancellation, or nonrenewal of a franchise agreement by the applicant or licensee is unfair; providing for a 180-day notice to cure an alleged breach of the agreement; providing an effective date.

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

Section 1. Subsection (25) of section 320.64, Florida Statutes, is amended, and subsection (37) is added to that section, to read:

320.64 Denial, suspension, or revocation of license; grounds.--A license of a licensee under s. 320.61 may be denied, suspended, or revoked within the entire state or at any specific location or locations within the state at which the applicant or licensee engages or proposes to engage in business, upon proof that the section was violated with sufficient frequency to establish a pattern of wrongdoing, and a licensee or applicant shall be liable for claims and remedies provided in ss. 320.695 and 320.697 for any violation of any of the following provisions. A licensee is prohibited from committing the following acts:

(25) The applicant or licensee has undertaken an audit of warranty payments or incentive payment previously paid to a motor vehicle dealer in violation of this section or has failed to comply with s. 320.696. An applicant or licensee may reasonably and periodically audit a motor vehicle dealer to determine the validity of paid claims. Audit of warranty payments shall only be for the 1-year period immediately following the date the claim was paid. Audit of incentive payments shall only be for an 18-month period immediately following the date the incentive was paid. An applicant or licensee shall not deny a claim or charge a motor vehicle dealer back subsequent to the payment of the claim unless the applicant or licensee can show that the claim was false or fraudulent or that the motor vehicle dealer failed to substantially comply with the reasonable written and uniformly applied procedures of the applicant or licensee for such repairs or incentives. An applicant or licensee may not charge a motor vehicle dealer back

subsequent to the payment of the claim unless a representative of the applicant or licensee has met in person at the dealership with an officer or employee of the dealer designated by the motor vehicle dealer and explained in detail the basis for each of the proposed charge-backs and thereafter given the motor vehicle dealer's representative a reasonable opportunity at the meeting, and no less than 30 days after such meeting, to explain the motor vehicle dealer's position relating to each of the proposed charge-backs. The applicant or licensee shall be prohibited from changing or altering the basis for each of the proposed charge-backs as presented to the motor vehicle dealer's representative following the conclusion of the audit. In the event the motor vehicle dealer was selected for audit or review on the basis that some or all of the motor vehicle dealer's claims were viewed as excessive in comparison to average, mean, or aggregate data accumulated by the applicant or licensee, or in relation to claims submitted by a group of other motor vehicle dealers, the applicant or licensee shall, at or prior to the meeting with the motor vehicle dealer's representative, provide the dealer with a written statement containing the basis or methodology upon which the motor vehicle dealer was selected for audit or review.

(37) Notwithstanding the terms of any franchise agreement, the applicant or licensee has refused to allow, limited, or restricted a motor vehicle dealer from acquiring or adding a sales or service operation for another line-make of motor vehicles at the same or expanded facility at which the motor vehicle dealer currently operates a dealership unless the

applicant or licensee can demonstrate that such acquisition or addition will substantially impair the dealer's ability to adequately sell or service such applicant's or licensee's motor vehicles.

A motor vehicle dealer who can demonstrate that a violation of, or failure to comply with, any of the preceding provisions by an applicant or licensee will or can adversely and pecuniarily affect the complaining dealer, shall be entitled to pursue all of the remedies, procedures, and rights of recovery available under ss. 320.695 and 320.697.

Section 2. Subsection (3) of section 320.641, Florida Statutes, is amended to read:

320.641 Discontinuations, cancellations, nonrenewals, modifications, and replacement of franchise agreements.--

(3) Any motor vehicle dealer who receives a notice of intent to discontinue, cancel, not renew, modify, or replace may, within the 90-day notice period, file a petition or complaint for a determination of whether such action is an unfair or prohibited discontinuation, cancellation, nonrenewal, modification, or replacement. Agreements and certificates of appointment shall continue in effect until final determination of the issues raised in such petition or complaint by the motor vehicle dealer. A discontinuation, cancellation, or nonrenewal of a franchise agreement is unfair if it is not clearly permitted by the franchise agreement; is not undertaken in good faith; is not undertaken for good cause; or is based on an alleged breach of the franchise agreement for which the motor

vehicle dealer was not given 180 days' notice to cure the alleged breach and which is not in fact a material and substantial breach~~,~~ or~~,~~ if the grounds relied upon for termination, cancellation, or nonrenewal have not been applied in a uniform and consistent manner by the licensee. A modification or replacement is unfair if it is not clearly permitted by the franchise agreement; is not undertaken in good faith; or is not undertaken for good cause. The applicant or licensee shall have the burden of proof that such action is fair and not prohibited.

Section 3. This act shall take effect July 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 841 Economic Development Incentives
SPONSOR(S): Flores
TIED BILLS: **IDEN./SIM. BILLS:** SB 2124

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Economic Development	9 Y, 0 N	West	Croom
2) Economic Expansion & Infrastructure Council		West SPW	Tinker TBT
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

This bill requires the Department of Revenue (DOR) to make monthly payments of one-half of the sales tax generated by qualified convention centers to the local governments that own such convention centers. The funds are generated by the sales tax of a qualified convention center through normal use of the building such as admission, parking, concessions, utility services, and other such services.

This bill requires convention centers to be certified through the Office of Tourism, Trade, and Economic Development (OTTED) to be eligible for this tax refund. A local government may not receive more than $1 million per fiscal year and total distributions are capped at $5 million statewide each fiscal year. If the fiscal cap of $5 million is exceeded, this bill provides for an apportionment process.

This bill will have a negative fiscal impact on the General Revenue Fund up to $5 million annually. These funds will be distributed to local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government—HB 841 bill grants rule-making authority to the Office of Tourism, Trade, and Economic Development for the receipt and processing of applications for the refund of sales tax generated by qualified convention centers.

Ensure Lower Taxes—HB 841 authorizes a monthly distribution from sales tax revenues generated by qualified convention centers to local governments for the purpose of stimulating economic development through tourism.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Currently, Florida permits local governments to use tax reimbursements to construct, acquire, maintain, or expand convention centers in order to stimulate tourism or economic development.

The Convention Development Tax Act created in s. 212.0305, F.S., stimulates tourism by allowing local governments to use sales tax reimbursements to improve and construct convention centers. It states, "[o]ne of the principal purposes of the convention development tax is to promote tourism and the use of hotel facilities by facilitating the improvement and construction of convention centers". This tax is levied by participating local governments against any person renting or leasing a dwelling for less than 6 months. The tax is 2 percent on every dollar. The full amount of taxes, less administrative costs, is remitted back to the participating local government monthly for use in promoting tourism, improving an existing convention center, or construction of a new convention center.

The Local Option Tourist Development Act created in s.125.0104. F.S., allows local municipalities to levy a tax on transient rentals of hotels, motels, and other similar establishments. This tax is levied by participating local governments against any person renting or leasing a dwelling for less than 6 months. The tax is either 1 percent or 2 percent on every dollar as determined by the local government. The full amount of taxes, less administrative costs, is remitted back to the participating local government monthly for use in construction or renovation of any professional sports franchise or spring training facility, promoting tourism, improving an existing convention center, or construction of a new convention center. Receipts from this tax may be used to stimulate both national and international tourism.

However, s. 212.20, F.S., does not provide for sales tax reimbursements to be distributed to local governments or municipalities owning convention centers.

Current Economic Incentives in Florida

The Florida Legislature has enacted numerous programs designed to encourage economic development throughout the state. Most programs are administered by the Office of Tourism, Trade, and Economic Development. OTTED is tasked with attracting high-technology and research and development industries to Florida. Three similar reimbursement programs are currently available in the state:

Professional Sports Franchises

The Office of Tourism, Trade, and Economic Development offers a reimbursement program (s. 288.1162, F.S.) for sales tax generated by a facility for a new professional sports franchise or a facility

for a retained professional sports franchise. Qualified applicants receive up to $166,667 in monthly installments for a professional sports franchise. A facility must surpass 300,000 in paid attendance annually to be considered a qualified facility. If a facility is used for spring training, then a qualified applicant can receive up to $41,667 in monthly installments for that facility. A spring training facility must surpass 50,000 in paid attendance annually to be considered a qualified facility. Funds must be used to build, renovate, or maintain facilities or pay off debt in the acquisition or construction of the qualified facility.

Entertainment Industry Financial Incentive

The Office of Film and Entertainment offers a cash reimbursement program (s. 288.1254, F.S.) for 15 percent of the total budget spent in Florida for qualified film projects. To qualify for this program, a film project must have a Florida budget that exceeds $850,000 in eligible expenditures. Eligible expenditures include wages, salaries, compensation for technical and production crews, directors, producers, and other staff who are Florida residents. Goods and services purchased from Florida vendors also qualify as eligible expenditures. The maximum allowable reimbursement is $2 million per film project.[1]

Qualified Target Industry (QTI)

The Office of Tourism, Trade, and Economic Development in conjunction with Enterprise Florida have developed a list of targeted industries that offer high-wage jobs that have a large non-Florida customer base. Pursuant to s. 288.106, F.S., qualified businesses receive refunds on taxes paid for creating new jobs in specific industries. Eligible taxes include corporate income, sales, and other taxes. Qualified businesses must engage in an industry that offers high wages and high job growth. QTI requires local financial support through city or county resolution before this incentive is approved. The amount of the QTI award is based on the number of new jobs created and higher awards are given to businesses with higher wages.[2]

Effect of Proposed Changes:

This bill creates s. 212.20(7)(e), F.S., requiring the Department of Revenue (DOR) to make monthly payments to local governments with qualified convention centers. The funds are generated by the sales tax of a qualified convention center through normal use of the building such as admission, parking, concessions, utility services, and other such services. One-half of the sales tax generated by such centers will go to General Revenue and the remaining one-half is refunded to qualified convention centers. An eligible convention center must be certified through the Office of Tourism, Trade, and Economic Development pursuant to s. 288.1172, F.S., to be eligible for this tax refund.

HB 841 limits the sales tax reimbursement to no more than $1 million annually for any one local government; in addition, the bill provides that the total statewide reimbursement may not exceed $5 million annually. Currently, Orange County is the only local government that would reach the $1 million annual cap and accordingly would not be eligible for the full 50 percent reimbursement. The Orange County Convention Center is estimated to generate $4.4 million in state sales tax during fiscal year 2007-2008.[3] If the fiscal cap of $5 million statewide is exceeded, this bill provides for an apportionment process. The apportionment process shall distribute proceeds to each eligible convention center through a mathematical equation where the amount remitted by an eligible convention center is the numerator and the total amount remitted by all eligible convention centers is the denominator.

[1] See 2006 Incentives Report: A Progress Report on Programs Funded from the Economic Development Initiatives Account. Produced by Enterprise Florida.
[2] Id.
[3] Revenue Estimating Conference 2007.

Local governments are required to use the remitted sales tax revenues to stimulate economic development for the attraction and retention of corporate headquarters in high-technology, manufacturing, research and development, entertainment, and tourism industries, as designated by the unit of local government by resolution of its governing body, and to assist the eligible convention centers in attracting more business and expanding their offerings, including developing their own events and shows. Distributions may be used to attract out-of-state businesses for the purpose of relocating within Florida. However, such funds may not be used to encourage or otherwise provide any type of incentives to businesses currently located in the state for the purpose of moving to another location within the state. Distributions may also be used to install renewable energy sources. This bill provides a repeal date of June 30, 2010.

This bill creates s. 288.1172, F.S., requiring OTTED to adopt rules that will allow for the screening of applications to certify eligible convention centers. A convention center must have the following characteristics to be considered an eligible convention center:

- Must be publicly owned by a local government or municipality;
- Must contain at least 30,000 square feet of exhibit space;
- Must be certified by resolution as serving a public purpose; and
- Must be located in a county levying a local option tourist development tax under s. 125.0104, F.S.

Failure to use the proceeds in any of the above mentioned ways is grounds for revoking certification. This section is repealed on June 30, 2010.

Currently, there are at least 16[4] convention centers in Florida that meet the criteria in this bill[5]:

- Orange County Convention Center (Orange) 2,100,000 sq. ft.
- Miami Beach Convention Center (Miami-Dade) 502,848 sq. ft.
- Greater Ft. Lauderdale/Broward County Convention Center (Broward) 199,526 sq. ft.
- Tampa Convention Center (Hillsborough) 200,000 sq. ft.
- The Lakeland Center (Polk) 100,000 sq. ft.
- Prime F. Osborn III Convention Center (Duval) 100,000 sq. ft.
- Palm Beach County Convention Center (Palm Beach) 100,000 sq. ft.
- Coconut Grove Convention Center (Miami-Dade) 150,000 sq. ft.
- Ocean Center (Volusia) 60,000 sq. ft.
- Donald L. Tucker Center (Leon) 58,000 sq. ft.
- Osceola Heritage Park Exhibition Building (Osceola) 49,000 sq. ft.
- Clearwater Harbor View Center (Pinellas) 30,000 sq. ft.
- Harborside Event Center (Lee) 30,000 sq. ft.
- Manatee Convention & Civic Center (Manatee) 32,400 sq. ft.
- St Johns County Convention Center (St Johns) 36,150 sq. ft.
- Emerald Coast Conference Center (Okaloosa) 35,000 sq. ft.

C. SECTION DIRECTORY:

Section 1: Creates s. 212.20(7)(e), F.S.; sets parameters for distribution of funds; requires monthly distributions to local governments with certified convention centers; defines which sales taxes collected by convention centers are eligible for refund; sets limits and provides methods and timelines for distribution; provides an apportionment process for when the $5 million cap is exceeded; sets requirements for the use of distributed funds; provides a repeal date of June 30, 2010.

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[4] The Expo Center (Orange) has renovated the exhibit space and now may not contain at least 30,000 square feet per the Office of Orange County Government.

[5] Revenue Estimating Conference 2007.

Section 2: Creates s. 288.1172, F.S.; provides a process for certification through the Office of Tourism, Trade, and Economic Development; grants OTTED rule-making authority for the certification process; provides a process for distribution of funds; establishes requirements for the use of funds; establishes a repeal date of June 30, 2010.

Section 3: Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	FY 2007-2008	FY 2008-2009	FY 2009-2010
General Revenue	($4.3 million)	($4.4 million)	($4.5 million)

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

A local government may receive up to $1 million annually in sales tax reimbursements for sales tax generated from normal use of a qualified convention center such as parking, admission, and concessions though other similar transactions qualify. Please see "Fiscal Comments" below.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown

D. FISCAL COMMENTS:

This bill will have a negative fiscal impact of up to $5 million annually on the General Revenue Fund. The Florida Revenue Estimating Conference determined this bill will have a negative fiscal impact of $4.3 million on the General Revenue Fund in fiscal year 2007-2008 and a corresponding positive impact of $4.3 million on local governments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

This bill redirects revenue generated by convention centers from General Revenue back to local governments for the purpose of stimulating economic development.

2. Other:

None

B. RULE-MAKING AUTHORITY:

This bill grants rule-making authority to the Office of Trade, Tourism, and Economic Development for the receipt and processing of applications.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

No statement provided.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None

A bill to be entitled

An act relating to economic development incentives; amending s. 212.20, F.S.; providing for distribution of a portion of revenues from the tax on sales, use, and other transactions to specified units of local government owning eligible convention centers; providing limitations; requiring the Department of Revenue to prescribe certain forms; providing for future repeal; creating s. 288.1172, F.S.; providing for certification of units of local government owning eligible convention centers by the Office of Tourism, Trade, and Economic Development; requiring the office to adopt specified rules; providing a definition; providing requirements for certification; providing for use of proceeds distributed to units of local government under the act; providing for revocation of certification; providing an effective date.

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

Section 1. Paragraph (d) of subsection (6) of section 212.20, Florida Statutes, is amended to read:

212.20 Funds collected, disposition; additional powers of department; operational expense; refund of taxes adjudicated unconstitutionally collected.--

(6) Distribution of all proceeds under this chapter and s. 202.18(1)(b) and (2)(b) shall be as follows:

(d) The proceeds of all other taxes and fees imposed pursuant to this chapter or remitted pursuant to s. 202.18(1)(b)

and (2)(b) shall be distributed as follows:

1. In any fiscal year, the greater of $500 million, minus an amount equal to 4.6 percent of the proceeds of the taxes collected pursuant to chapter 201, or 5 percent of all other taxes and fees imposed pursuant to this chapter or remitted pursuant to s. 202.18(1)(b) and (2)(b) shall be deposited in monthly installments into the General Revenue Fund.

2. Two-tenths of one percent shall be transferred to the Ecosystem Management and Restoration Trust Fund to be used for water quality improvement and water restoration projects.

3. After the distribution under subparagraphs 1. and 2., 8.814 percent of the amount remitted by a sales tax dealer located within a participating county pursuant to s. 218.61 shall be transferred into the Local Government Half-cent Sales Tax Clearing Trust Fund. Beginning July 1, 2003, the amount to be transferred pursuant to this subparagraph to the Local Government Half-cent Sales Tax Clearing Trust Fund shall be reduced by 0.1 percent, and the department shall distribute this amount to the Public Employees Relations Commission Trust Fund less $5,000 each month, which shall be added to the amount calculated in subparagraph 4. and distributed accordingly.

4. After the distribution under subparagraphs 1., 2., and 3., 0.095 percent shall be transferred to the Local Government Half-cent Sales Tax Clearing Trust Fund and distributed pursuant to s. 218.65.

5. After the distributions under subparagraphs 1., 2., 3., and 4., 2.0440 percent of the available proceeds pursuant to this paragraph shall be transferred monthly to the Revenue

Sharing Trust Fund for Counties pursuant to s. 218.215.

6. After the distributions under subparagraphs 1., 2., 3., and 4., 1.3409 percent of the available proceeds pursuant to this paragraph shall be transferred monthly to the Revenue Sharing Trust Fund for Municipalities pursuant to s. 218.215. If the total revenue to be distributed pursuant to this subparagraph is at least as great as the amount due from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000, a ~~no~~ municipality may not ~~shall~~ receive less than the amount due from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000. If the total proceeds to be distributed are less than the amount received in combination from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000, each municipality shall receive an amount proportionate to the amount it was due in state fiscal year 1999-2000.

7. Of the remaining proceeds:

a. In each fiscal year, the sum of $29,915,500 shall be divided into as many equal parts as there are counties in the state, and one part shall be distributed to each county. The distribution among the several counties shall begin each fiscal year on or before January 5th and shall continue monthly for a total of 4 months. If a local or special law required that any moneys accruing to a county in fiscal year 1999-2000 under the then-existing provisions of s. 550.135 be paid directly to the

district school board, special district, or a municipal government, such payment shall continue until such time that the local or special law is amended or repealed. The state covenants with holders of bonds or other instruments of indebtedness issued by local governments, special districts, or district school boards prior to July 1, 2000, that it is not the intent of this subparagraph to adversely affect the rights of those holders or relieve local governments, special districts, or district school boards of the duty to meet their obligations as a result of previous pledges or assignments or trusts entered into which obligated funds received from the distribution to county governments under then-existing s. 550.135. This distribution specifically is in lieu of funds distributed under s. 550.135 prior to July 1, 2000.

b. The department shall distribute $166,667 monthly pursuant to s. 288.1162 to each applicant that has been certified as a "facility for a new professional sports franchise" or a "facility for a retained professional sports franchise" pursuant to s. 288.1162. Up to $41,667 shall be distributed monthly by the department to each applicant that has been certified as a "facility for a retained spring training franchise" pursuant to s. 288.1162; however, not more than $416,670 may be distributed monthly in the aggregate to all certified facilities for a retained spring training franchise. Distributions shall begin 60 days following such certification and shall continue for not more than 30 years. ~~Nothing contained in~~ This paragraph does not ~~shall be construed to~~ allow an applicant certified pursuant to s. 288.1162 to receive more in

distributions than actually expended by the applicant for the public purposes provided for in s. 288.1162(6).

c. Beginning 30 days after notice by the Office of Tourism, Trade, and Economic Development to the Department of Revenue that an applicant has been certified as the professional golf hall of fame pursuant to s. 288.1168 and is open to the public, $166,667 shall be distributed monthly, for up to 300 months, to the applicant.

d. Beginning 30 days after notice by the Office of Tourism, Trade, and Economic Development to the Department of Revenue that the applicant has been certified as the International Game Fish Association World Center facility pursuant to s. 288.1169, and the facility is open to the public, $83,333 shall be distributed monthly, for up to 168 months, to the applicant. This distribution is subject to reduction pursuant to s. 288.1169. A lump sum payment of $999,996 shall be made, after certification and before July 1, 2000.

e. The department shall distribute monthly to units of local government which have been certified as owning eligible convention centers pursuant to s. 288.1172 an amount equal to 50 percent of the proceeds defined in this subparagraph which are received and collected in the previous month by the department under this chapter and are generated by such eligible convention centers and remitted on the sales and use tax returns of eligible convention centers. As used in this sub-subparagraph, the term "proceeds" is further defined as all applicable sales taxes collected by an eligible convention center for standard services provided by center staff to users of the center,

including parking, admission, ticket sales, food services, utilities services, space rentals, equipment rentals, security services, decorating services, business services, advertising services, communications services, exhibit supply sales and rentals, locksmith services, and sales of gifts and sundries. The total distribution to each unit of local government may not exceed $1 million per state fiscal year. However, total distributions to all units of local government may not exceed $5 million per state fiscal year, and such distribution shall be limited exclusively to the taxes collected and remitted under this chapter. If collections and remittances of eligible convention centers exceed the $5 million maximum amount authorized for distribution, the department shall distribute proceeds to each eligible unit of local government using an apportionment factor, the numerator of which is the amount remitted by an eligible convention center and the denominator of which is the total amount remitted by all eligible convention centers. The apportionment factor for each eligible convention center shall be applied to the $5 million maximum amount authorized for distribution in order to determine the amount that shall be distributed to each local government unit. The department shall prescribe forms required to be filed with the department by eligible convention centers. Distributions shall begin 60 days following notification of certification by the Office of Tourism, Trade, and Economic Development pursuant to s. 288.1172. Distributions shall be used solely to encourage and provide economic development for the attraction, recruitment, and retention of corporate headquarters and of high-technology,

manufacturing, research and development, entertainment, and tourism industries, as designated by the unit of local government by resolution of its governing body, and to assist the eligible convention centers in attracting more business and expanding their offerings, including developing their own events and shows. Distributions may not be used to encourage or otherwise provide incentives or payments to existing businesses that have offices within the state for the purpose of relocating those offices to another location within the state. This sub-subparagraph is repealed on June 30, 2010.

8. All other proceeds shall remain with the General Revenue Fund.

Section 2. Section 288.1172, Florida Statutes, is created to read:

288.1172 Convention centers owned by units of local government; certification as owning eligible convention centers; duties.--

(1) The Office of Tourism, Trade, and Economic Development shall serve as the state agency for screening applicants for state funding pursuant to s. 212.20(6)(d)7.e. and for certifying an applicant as owning an eligible convention center.

(2) The Office of Tourism, Trade, and Economic Development shall adopt rules pursuant to ss. 120.536(1) and 120.54 for the receipt and processing of applications for funding pursuant to s. 212.20(6)(d)7.e.

(3) As used in this section, the term "eligible convention center" means a publicly owned facility having exhibition space in excess of 30,000 square feet, the primary function of which

is to host meetings, conventions, or trade shows.

(4) Before certifying an applicant as owning an eligible convention center, the Office of Tourism, Trade, and Economic Development must determine that:

(a) The unit of local government, as defined in s. 218.369, owns an eligible convention center.

(b) The convention center contains more than 30,000 square feet of exhibit space.

(c) The unit of local government in which the convention center is located has certified by resolution after a public hearing that the application serves a public purpose pursuant to subsection (7).

(d) The convention center is located in a county that is levying a tourist development tax pursuant to s. 125.0104.

(5) Upon certification of an applicant, the Office of Tourism, Trade, and Economic Development shall notify the executive director of the Department of Revenue of such certification by means of an official letter granting certification. The Department of Revenue shall not begin distributing proceeds until 60 days following notice by the Office of Tourism, Trade, and Economic Development that a unit of local government has been certified as owning an eligible convention center.

(6) An applicant that has previously been certified under any provision of this section and that received proceeds under such certification is ineligible for an additional certification.

(7) A unit of local government which is certified as

owning an eligible convention center may use proceeds provided pursuant to s. 212.20(6)(d)7.e. for any of the following purposes or combination thereof:

(a) To fund the installation of renewable energy technologies, as defined in s. 377.803, for use at the qualifying convention center;

(b) To encourage and provide economic development for attracting, recruiting, and retaining corporate headquarters and high-technology, manufacturing, research and development, entertainment, and tourism industries, as designated by the unit of local government by resolution of its governing body; or

(c) To assist the eligible convention center in attracting more business and expanding its offerings, including developing its own events and shows.

(8) Failure to use the proceeds as provided in this section is grounds for revoking certification.

(9) This section is repealed on June 30, 2010.

Section 3. This act shall take effect July 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 851 Historic Preservation
SPONSOR(S): Proctor and others
TIED BILLS: HB 853 **IDEN./SIM. BILLS:** SB 2404

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Tourism & Trade	6 Y, 0 N	Vogt	Hoagland
2) Economic Expansion & Infrastructure Council		Vogt	Tinker TBT
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

HB 851 transfers the management and maintenance of select St. Augustine historical properties through contract to the University of Florida. The bill provides the goals for long-term preservation, and delineates the powers and duties of the university and its direct support organization in relation to the properties. It gives authority for the University of Florida to form a direct support organization (DSO) to support the historic preservation efforts, education programs and initiatives of the university and provides for powers and duties of the DSO. The bill provides that upon execution of a contract between the Board of Trustees of the Internal Improvement Trust Fund and the University of Florida, section 267.171, F.S., authorizing the lease of the properties to the City of St. Augustine, is repealed.

The bill appears to have an approximate $408,940 recurring impact to state government beginning in fiscal year 2008-09. This amount is computed based on the current formula that allows for roughly $7.00 per square foot for the operation and maintenance of state university educational buildings. These funds would be subject to legislative appropriation. This bill appears to have a positive fiscal impact on the local government of St. Augustine.

The bill provides an effective date of July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

The state owned historic properties in St. Augustine have been leased by the City of St. Augustine through statute (s. 267.171, F.S.) since 1997. The current lease terms state:

- An initial term of 5 years with an option for renewal for successive periods of 5 years
- An annual rent of $1.00
- The city shall maintain all buildings to promote a better understanding of the history of St. Augustine and an appreciation for historic structures
- The Division of Historical Resources shall transfer to the City the sum of $425,000 to assist in the establishment of a property management program and the maintenance of the properties
- The city shall provide security and protection at its own expense
- The city shall maintain the buildings on the properties in accordance with good preservation practices
- The city shall reimburse the Division for any and all insurance premium incurred by the Division

The State of Florida through the Trustees of the Internal Improvement Trust Fund owns 37 individual parcels of property that contain 32 primary buildings in the St. Augustine Historic district. All of these properties were previously administered by the state funded Historic St. Augustine Preservation Board which was dissolved by the Legislature in 1997.

The buildings are either reconstructions or restored historic structures that portray civilian life in Spanish colonial St. Augustine. An interpretive program based on the properties and collections was developed by the Historic St. Augustine Preservation Board and is still used for educational programs on the properties. The colonial town plan of St. Augustine, which includes the aforementioned property, was designated a National Historic Landmark in 1970[1].

Several other state historic buildings are currently managed by universities. For example, historic properties in Pensacola are managed by the University of West Florida and the Ringling Museum is managed by Florida State University. In these cases, following the year that responsibility was transferred, the universities requested and received operations and maintenance funds from the Board of Governors and the Legislature.

Proposed Changes

HB 851 creates s. 267.1735, F.S., transferring the management of various historic properties in St. Augustine through contract to the University of Florida. The goals for contracting with the university are delineated and include:

[1] http://www.cr.nps.gov/nhl/designations/Lists/FL01.pdf

- ensuring the long-term preservation and interpretation of state-owned historic properties in St. Augustine
- facilitating an educational program at the University of Florida that will be responsive to the state's needs for professionals in historic preservation, archaeology, cultural resource management, cultural tourism, and museum administration

HB 851 also creates s. 267.1736, F.S., giving authority to the University of Florida to form a direct-support organization (DSO). The purpose of which would be to assist the university in carrying out its historic preservation and education purposes for the St. Augustine properties. The bill specifies that the DSO may raise money, submit requests and receive grants for the federal, state or its political subdivisions, private foundations, and individuals. The university and its direct-support organization are also eligible to match state funds in the Trust Fund for University Major Gifts under s. 1011.94, F.S.

The bill provides that upon execution of a contract between the Board of Trustees of the Internal Improvement Trust Fund and the University of Florida, section 267.171, F.S., authorizing the lease of the properties to the City of St. Augustine is repealed.

Contract Requirements

All existing management contracts are rescinded upon execution of a contract between the Board of Trustees of the Internal Improvement Trust Fund and the University of Florida for the management of the properties. The university is required to use the proceeds derived from the properties for the purpose of advancing historic preservation.

The bill allows for the transfer of ownership and responsibilities for certain property and requires the transfer of other property, funds, records, and personnel to the university. The subsection also requires that the transfer of segregated funds be made in such a way that the relation between program and revenue source is retained pursuant to law.

Direct Support Organization

The bill provides for both broad and specific powers and duties of the university. Included in those is the contracting with the direct-support organization in s. 267.1736, F.S., to assist the university in carrying out its historic preservation and education responsibilities. The university or direct support organization shall have the power to engage in any lawful business or activity to establish, maintain and operate the state-owned facilities and properties under contract with the Board of Trustees of the Internal Improvement Fund including:

- renting or leasing for revenue of any land, improved or restored real estate, or personal property directly related to carrying out the purposes for historic preservation
- selling of craft products
- selling of merchandise relating to historical and antiquarian period of St. Augustine
- fix and collect charges for admission to the facilities

The details of membership and number of the board of directors of the DSO are stated. The membership must include individuals that have professional expertise in historic preservation and history. Membership must also be representative of the areas of the state served by the direct-support organization.

The bill delineates how the DSO shall operate under written contract with the university. This includes approval of articles of incorporation and bylaws, submission of an annual budget, and terms of the fiscal year. The bill also provides that the provisions outlined in s.1004.28, F.S., which state DSO requirements, apply to this newly created DSO as well and that the university may adopt policies and rules pursuant to the statute. The bill states that moneys may be held in a separate account in the name of the DSO and may include lease income, admissions income, membership fees, and private donations. The bill provides that an annual financial audit of the DSO is to occur.

The bill also provides several exemptions to the university:

- exemption from the competitive bid requirements when the protection or preservation of historic properties is involved.
- exemption from the surplus property requirements under certain circumstances, particularly when the object is determined to no longer be appropriate for advancing historic preservation.

Provides an effective date of July 1, 2007.

B. SECTION DIRECTORY:

Section 1: Creates section 267.1735, F.S. Authorizes the transfer of management by contract of state owned properties in St. Augustine to the University of Florida.

Section 2: Creates section 267.1736, F.S. Authorizes the University of Florida to create a Direct Support Organization to assist the university in carrying out the historic preservation responsibilities.

Section 3: Provides that upon execution of a contract between the Board of Trustees Internal Improvement Trust Fund and the University of Florida, section 267.171, F.S., is repealed. This section leased the historic properties to the City of St. Augustine.

Section 4: Provides an effective date of July, 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: none.

2. Expenditures: Beginning in the fiscal year following execution of the contract between the Board of Trustees of the Internal Improvement Trust Fund and the University of Florida, a potential recurring fiscal impact for operation and maintenance costs will occur. Currently this amount is estimated to be $408,940, but would increase annually by a rate set within the university's budget. Any budget request of additional state funds would require a legislative appropriation. See Fiscal Comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The City of St. Augustine will experience a loss in admission fees, proceeds from the gift shop, and rental income in relation to the historic sites.

2. Expenditures: This bill will likely have a positive fiscal impact on the City of St. Augustine. According to the city, the revenues brought in by the sites do not meet the costs of maintenance and operation. The city has been using money from its general revenue sources over the past 10 years.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: none.

D. FISCAL COMMENTS: The bill appears to have an approximate $408,940 potential recurring impact on state government beginning the fiscal year after the contract is executed. This amount is computed

based on the current formula that allows for roughly $7.00 per square foot for the operation and maintenance of state university educational facilities. The buildings contain approximately 58,420 square feet of space that can be used for the educational mission of the university thus making them eligible for the operation and maintenance funds. Any additional state funds would be subject to legislative appropriation.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: none.

D. STATEMENT OF THE SPONSOR

No statement provided.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

A bill to be entitled

An act relating to historic preservation; creating s. 267.1735, F.S.; providing goals for contracting with the University of Florida for management of certain state-owned properties; requiring agreement of all parties to contracts for management of such properties and the University of Florida; rescinding existing contracts upon execution of contract between the University of Florida and the Board of Trustees of the Internal Improvement Trust Fund; specifying use of proceeds derived from the management of such properties; authorizing transfer and ownership of certain artifacts, documents, and properties to the university; providing for transfer of records, property, and funds to the university; specifying certain powers and duties of the University of Florida; providing that the university may contract with its direct-support organization to perform all acts necessary to assist the university in carrying out its historic preservation and historic education responsibilities; delineating certain powers; authorizing contracting without competitive bidding under certain circumstances; providing eligibility to match state funds in the Trust Fund for University Major Gifts; creating s. 267.1736, F.S.; requiring the authorization of a direct-support organization to assist the university in historic preservation and historic preservation education purposes and responsibilities; providing purposes and duties of the direct-support organization; providing for a board of directors;

providing membership requirements; delineating contract and other governance requirements; repealing s. 267.171, F.S., relating to contract with the City of St. Augustine for the management of certain state-owned properties, contingent on execution of a specified contract; providing an effective date.

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

Section 1. Section 267.1735, Florida Statutes, is created to read:

267.1735 Historic preservation in St. Augustine; goals; contracts for historic preservation; powers and duties.--

(1) The goal for contracting with the University of Florida is to ensure long-term preservation and interpretation of state-owned historic properties in St. Augustine while facilitating an educational program at the University of Florida that will be responsive to the state's needs for professionals in historic preservation, archaeology, cultural resource management, cultural tourism, and museum administration and will help meet needs of St. Augustine and the state through educational internships and practicums.

(2)(a) Upon agreement by all parties to the contracts for the management of the various state-owned properties presently subleased to and managed by the City of St. Augustine and by the University of Florida to assume the management of those properties, all existing management contracts shall be rescinded upon execution of a contract between the Board of Trustees of

the Internal Improvement Trust Fund and the University of Florida for the management of those properties.

(b) The contract shall provide that the University of Florida shall use all proceeds derived from the management of these state-owned properties for the purpose of advancing historic preservation.

(3) The Board of Trustees of the Internal Improvement Trust Fund may transfer ownership and responsibility of any artifacts, documents, equipment, and other forms of tangible personal property to the University of Florida to assist the university in the transition of the management of the state-owned properties. All records, property, and unexpended balances of appropriations, allocations, or other funds associated with the state-owned properties shall be transferred to the University of Florida to be used for its historic preservation activities and responsibilities as provided in the contract with the Board of Trustees of the Internal Improvement Trust Fund. The transfer of segregated funds must be made in such a manner that the relation between program and revenue source as provided by law is retained.

(4)(a) The University of Florida is the governing body for the management and maintenance of state-owned properties contracted by this section and shall exercise those powers delegated to it by contract as well as perform all lawful acts necessary, convenient, and incident to the effectuating of its function and purpose under this section and s. 267.1736. The University of Florida may contract with its direct-support organization described in s. 267.1736 to perform all acts that

are lawful and permitted for not-for-profit corporations under chapter 617 in assisting the university in carrying out its historic preservation and historic preservation education responsibilities.

(b) The university or its direct-support organization, if permitted in its contract with the university, shall have the power to engage in any lawful business or activity to establish, maintain, and operate the state-owned facilities and properties under contract with the Board of Trustees of the Internal Improvement Trust Fund, including, but not limited to:

1. The renting or leasing for revenue of any land, improved or restored real estate, or personal property directly related to carrying out the purposes for historic preservation under terms and conditions of the contract with the Board of Trustees of the Internal Improvement Trust Fund and deemed by the university to be in the best interest of the state.

2. The selling of craft products created through the operation and demonstration of historical museums, craft shops, and other facilities.

3. The limited selling of merchandise relating to the historical and antiquarian period of St. Augustine and its surrounding territory and the historical period of East Florida from the Apalachicola River to the eastern boundaries of the state.

(c) The university or its direct-support organization, if permitted in its contract with the university, shall have the authority to:

1. Enter into agreements to accept credit card payments as compensation and establish accounts in credit card banks for the deposit of credit card sales invoices.

2. Fix and collect charges for admission to any of the state-owned facilities under contract with the Board of Trustees of the Internal Improvement Trust Fund.

3. Permit the acceptance of tour vouchers issued by tour organizations or travel agents for payment of admissions.

4. Adopt and enforce reasonable rules to govern the conduct of the visiting public.

(5) Notwithstanding the provisions of s. 287.057, the University of Florida or its direct-support organization may enter into contracts or agreements with or without competitive bidding, in its discretion, for the protection or preservation of historic properties.

(6) Notwithstanding s. 273.055, the University of Florida may exchange, sell, or otherwise transfer any artifact, document, equipment, and other form of tangible personal property if its direct-support organization recommends such exchange, sale, or transfer to the president of the university and if it is determined that the object is no longer appropriate for the purpose of advancing historic preservation. However, any artifacts, documents, or other forms of tangible personal property that have intrinsic historical or archaeological value relating to the history, government, or culture of the state may not be exchanged, sold, or otherwise transferred without prior authorization from the Department of State.

(7) Notwithstanding any other provision of law, the University of Florida and its direct-support organization are eligible to match state funds in the Trust Fund for University Major Gifts established in s. 1011.94.

Section 2. Section 267.1736, Florida Statutes, is created to read:

267.1736 Direct-support organization.--

(1) The University of Florida shall authorize a direct-support organization to assist the university in carrying out its dual historic preservation and historic preservation education purposes and responsibilities for the City of St. Augustine, St. Johns County, and the state under s. 267.1735 by raising money; submitting requests for and receiving grants from the Federal Government, the state or its political subdivisions, private foundations, and individuals; receiving, holding, investing, and administering property; and making expenditures to or for the benefit of the university. The sole purpose for the direct-support organization is to support the historic preservation efforts and historic preservation education programs and initiatives of the university. Such a direct-support organization is an organization that is:

(a) Incorporated under the provisions of chapter 617 and approved by the Department of State as a Florida corporation not for profit;

(b) Organized and operated to receive, hold, invest, and administer property and to make expenditures to or for the benefit of the university; and

(c) Approved by the university to be operating for the benefit of and in a manner consistent with the goals of the university and in the best interest of the state.

(2) The number of the board of directors of the direct-support organization shall be determined by the president of the university. Membership on the board of directors of the direct-support organization shall include the professional expertise needed to ensure that the university is meeting its dual purposes of historic preservation and historic preservation education. Such membership shall include, but not be limited to, a licensed architect who has expertise in historic preservation and architectural history, a professional historian in the field of American history, and a professional archaeologist. All board members must have demonstrated interest in the preservation of Florida's historical and archaeological heritage. Membership on the board of directors must be representative of the areas of the state served by the direct-support organization and the university in its preservation efforts. The president of the university, or the president's designee, shall serve as a member of the board of directors.

(3) The direct-support organization shall operate under written contract with the university. The contract must provide for:

(a) Approval of the articles of incorporation and bylaws of the direct-support organization by the university.

(b) Submission of an annual budget for the approval of the university. The budget must comply with rules adopted by the university.

(c) Certification by the university that the direct-support organization is complying with the terms of the contract and in a manner consistent with the historic preservation goals and purposes of the university and in the best interest of the state. Such certification must be made annually by the university and reported in the official minutes of a meeting of the university.

(d) The reversion to the university, or the state if the university ceases to exist, of moneys and property held in trust by the direct-support organization for the benefit of the university if the direct-support organization is no longer approved to operate for the university or if the university ceases to exist.

(e) The fiscal year of the direct-support organization, which must begin July 1 of each year and end June 30 of the following year.

(f) The disclosure of material provisions of the contract and the distinction between the University of Florida and the direct-support organization to donors of gifts, contributions, or bequests, as well as on all promotional and fundraising publications.

(4) The university may authorize a direct-support organization to use its property (except money), facilities, and personal services, subject to the provisions of this section and s. 1004.28. A direct-support organization that does not provide equal employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin may not use the property, facilities, or personal services of the

university. For the purposes of this subsection, the term "personal services" includes full-time personnel and part-time personnel as well as payroll processing.

(5) The university shall establish policies and may adopt rules pursuant to s. 1004.28 prescribing the procedures by which the direct-support organization is governed and any conditions with which a direct-support organization must comply to use property, facilities, or personal services of the university.

(6) Any moneys may be held in a separate depository account in the name of the direct-support organization and subject to the provisions of the contract with the university. Such moneys may include lease income, admissions income, membership fees, private donations, income derived from fundraising activities, and grants applied for and received by the direct-support organization.

(7) The direct-support organization shall provide for an annual financial audit in accordance with s. 1004.28.

(8) Provisions governing direct-support organizations in s. 1004.28 and not provided in this section shall apply to the direct-support organization.

Section 3. Upon execution of a contract between the Board of Trustees of the Internal Improvement Trust Fund and the University of Florida for the management of state-owned properties currently managed by the City of St. Augustine under contract with the Department of State, section 267.171, Florida Statutes, is repealed.

Section 4. This act shall take effect July 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 853 Pub. Rec./St. Augustine Historic Preservation Donors
SPONSOR(S): Proctor
TIED BILLS: HB 851 **IDEN./SIM. BILLS:** SB 2406

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Tourism & Trade	6 Y, 0 N	Vogt	Hoagland
2) Economic Expansion & Infrastructure Council		Vogt	Tinker TBT
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

The bill creates a public records exemption for identifying information of persons making a donation to the direct-support organization of the University of Florida for the purpose of supporting the educational and historic preservation of state-owned historic properties in St. Augustine. This anonymity must also be maintained in any publication concerning the direct-support organization.

This bill provides for future review and repeal of the exemption on October 2, 2012, and provides a statement of public necessity.

The bill does not appear to have an impact on state or local governments.

The bill requires a two-thirds vote of the members present and voting for passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited Government- This bill decreases access to public records.

B. EFFECT OF PROPOSED CHANGES:

Public Records Law

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1909. In 1992, Floridians adopted an amendment to the state constitution that raised the statutory right of access to public records to a constitutional level. Section (24)(a), Art. I of the State Constitution provides that:

> Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative executive, and judicial branches of government and each agency or department created there under; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

The Public Records Law[1] also specifies conditions under which the public must have access to governmental records. Section 119.011(11), F.S., defines the term "public records" to include:

> all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition of public records to include all materials made or received by an agency in connection with official business which are used "to perpetuate, communicate, or formalize knowledge."[2] Unless the Legislature makes these materials exempt, they are open for public inspection, regardless of whether they are in final form.[3]

Under s. 24(c), Art. I of the State Constitution, the Legislature may provide for the exemption of records from the public records requirements provided: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law.

The Open Government Sunset Review Act, s. 119.15, F.S., provides for the review, repeal, and reenactment of an exemption. A new exemption is repealed on October 2nd in the fifth year after enactment, unless the exemption is reenacted by the Legislature. An exemption may be created or maintained only if it serves an identifiable public purpose, and it may be no broader than necessary to meet that purpose.

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[1] Chapter 119, F.S.
[2] *Shevin v. Byron, Harless, Schaffer, Reid, and Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).
[3] *See Wait v. Florida Power & Light Co.*, 372 So. 2d 420 (Fla. 1979).

Proposed Changes

The bill creates a public records exemption to allow donors and prospective donors to the direct-support organization of the University of Florida who support the educational and historic preservation of state-owned historic properties in St. Augustine to remain anonymous, if they wish. The bill provides that the public records exemption is necessary because the release of information identifying donors will adversely affect the direct-support organization's ability to further the state goal of maintaining, preserving, promoting and advancing historic preservation of these state owned properties. The bill states that the exemption will allow the DSO to administer the promotion, preservation, and public education efforts effectively and efficiently.

This bill takes effect on the date that HB 851 or similar legislation takes effect. The public records exemption will automatically repeal on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.

C. SECTION DIRECTORY:

Section 1: adds to s. 267.1736, F.S., as created by HB 851, 2007 Regular session, to create a public records exemption for identifying information of persons making a donation to the direct-support organization of the University of Florida to support the educational and historic preservation of state-owned historic properties in St. Augustine.

Section 2: provides for review and future repeal of the exemption on October 2, 2012.

Section 3: provides a statement of public necessity.

Section 4: provides an effective date of the same date that HB 851, or similar legislation takes effect.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The public records law in general creates a significant, although unquantifiable, increase in government spending. Government employees must locate requested records, and must examine every requested

record to determine if a public records exemption prohibits release of the record. There is likely no fiscal impact to a single public records exemption; the location and examination process remains whether or not a particular public records exemption exists.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

3. Other:

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. Thus, the bill requires a two-thirds vote for passage.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement provided.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

A bill to be entitled

An act relating to public records; amending s. 267.1736, F.S.; providing an exemption from public records requirements for certain donor and prospective donor information involving state-owned properties in a historic district in the City of St. Augustine; providing for future legislative review and repeal under the Open Government Sunset Review Act; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (9) is added to section 267.1736, Florida Statutes, as created by HB 851, 2007 Regular Session, to read:

267.1736 Direct-support organization.--

(9)(a) The identity of a donor or prospective donor to the direct-support organization who desires to remain anonymous, and all information identifying such donor or prospective donor, is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution; and that anonymity must be maintained in the auditor's report. The university and the Auditor General shall have access to all records of the direct-support organization upon request.

(b) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds a public necessity in protecting the identity of donors and prospective donors to the direct-support organization authorized to assist the University of Florida in carrying out its dual historic preservation and historic preservation education purposes and responsibilities for the various state-owned properties within the historic district currently subleased by the Department of State to the City of St. Augustine for management. This protection will enable the direct-support organization to effectively and efficiently administer the promotion, preservation, and public education efforts related to these state-owned properties. The purpose of the exemption is to honor the request for anonymity of donors or prospective donors to the not-for-profit corporation and thereby encourage donations from individuals and entities that might otherwise decline to contribute. Without the exemption, potential donors may be dissuaded from contributing to the direct-support organization because such donors fear being harmed by the release of sensitive financial information. Difficulty in soliciting donations would hamper the ability of the direct-support organization to carry out its marketing, promotion, education, and preservation activities and would hinder fulfillment of the goal of the state in maintaining these state-owned properties and in preserving, promoting, and advancing historic preservation of these properties through funding by both the public sector and the private sector.

Section 3. This act shall take effect on the same date that HB 851 or similar legislation takes effect, if such

legislation is adopted in the same legislative session or an extension thereof and becomes law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 979 Use of the Term "Chamber of Commerce"
SPONSOR(S): Gardiner and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1862

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Economic Development	8 Y, 0 N	West	Croom
2) Economic Expansion & Infrastructure Council		West SRW	Tinker TBT
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

House Bill 979 creates definitions for the terms "chamber of commerce" and "business entity" and prohibits a business entity which does not qualify as a chamber of commerce under the newly created definition from using the term in its business name or to describe itself. This prohibition does not apply to binational chambers of commerce or chambers of commerce in existence on or before October 1, 1992.

The bill provides that any violation of this prohibition is a first-degree misdemeanor. Further, the bill provides the ability for any chamber of commerce to petition a court to limit or restrain a business entity from unlawful use of the term. It is unclear how many businesses will be affected by passage of this bill, but it is expected to be a small number.

The bill will have no impact on state revenue collections or expenditures.

The bill provides that the act will take effect October 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: This bill creates new statutes that provide criminal penalties for violating the prohibition set out in this bill.

Safeguard Individual Liberty: This bill prevents business entities or organizations that do not meet the requirements set out in this bill from using the term "chamber of commerce."

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

The idea of a national institution to represent the unified interests of U.S. business first took shape when President Howard Taft, in a speech before Congress on December 7, 1911, addressed the need for a "central organization in touch with associations and chambers of commerce throughout the country and able to keep purely American interests in a closer touch with different phases of commercial affairs."

Four months later, on April 12, 1912, President Taft's vision became a reality when a group of 700 delegates from various commercial and trade organizations came together to create a unified body of business interest that today is the U.S. Chamber of Commerce.

In 1925, construction on the Chamber headquarters was completed on property that had belonged to Daniel Webster and the U.S. business community made it a rallying point for promoting and defending free enterprise and individual opportunity. More than 90 years later, the Chamber has grown from an initial membership of 878 to more than 3 million businesses, nearly 3,000 state and local chambers, 830 associations, and over 90 American Chambers of Commerce abroad.[1]

According to the U.S. Chamber of Commerce website (www.uschamber.com), there are 97 registered local Chambers of Commerce in Florida.[2]

Black's Law Dictionary, Seventh Edition, defines the term "chamber of commerce" as:

> "An association of merchants and other business leaders who organize to promote the commercial interests in a given area and whose group is generally affiliated with the national organization of the same name."

Limiting the Use of Certain Terms

The Florida Legislature has enacted statutes limiting the use of certain terms in the name of a regulated business entity. For example, ss. 636.033 and 641.33, F.S., limit the use of the words "insurance," "casualty," "surety," "mutual", and "HMO" in the name of a business.

Chapter 495, F.S., entitled Registration of Trademarks and Service Marks, establishes procedures for the registration of trademarks with the Department of State. Section 495.011(6), F.S., defines a trade name as:

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[1] Information from this section can be found at http://www.uschamber.com/about/history/default.htm?n=tb (visited 3/15/07).
[2] Information online at http://www.uschamber.com/chambers/directory/default.htm?st=fl (visited 3/15/07).

"...any word, name, symbol, character, design, drawing or device or any combination thereof adopted and used by a person to identify her or his business, vocation or occupation and to distinguish it from the business, vocation or occupation of others."

Section 495.151, F.S., authorizes affected parties to seek an injunction to enjoin another from the continued use of the same or similar trade name if it appears that there exists the likelihood of injury to the business reputation or of dilution of the distinctive quality of the name.

> 495.151, F.S. Injury to business reputation; dilution.—Every person, association, or union of workers adopting and using a mark, trade name, label or form of advertisement may proceed by suit, and all courts having jurisdiction thereof shall grant injunctions to enjoin subsequent use by another of the same or any similar mark, trade name, label or form of advertisement if it appears to the court that there exists a likelihood of injury to business reputation or of dilution of the distinctive quality of the mark, trade name, label or form of advertisement of the prior user, notwithstanding the absence of competition between the parties or of confusion as to the source of goods or services.

Abuses

In 2005, a company using the name "Florida Regional Chamber of Commerce" was soliciting membership dues throughout the state of Florida. By phoning future clients and asking where they should mail the $389 membership renewal bill, they gave the appearance of being a not-for-profit Chamber of Commerce associated with the state and local governments.

In reality, the Florida Regional Chamber of Commerce didn't exist, and the Florida Department of State Division of Corporations had no record of such a company. Unlike most chambers of commerce whose main goals are to advance general working conditions through social and political representation, the Regional Chamber of Commerce was intimidating prospective members into paying dues without rightful justification. Several companies reported being charged $1,000 in membership dues after only agreeing to pay $49 for a three month membership.

Effect of Proposed Changes:

HB 979 creates Section 501.973, F.S., to define a "chamber of commerce" as a "voluntary-membership, dues-paying organization of business and professional persons dedicated, as stated in the articles of incorporation or bylaws of the organization, to improving the economic climate and business development of the community, area, or region in which the organization is located and which:

> 1. Operates as an approved not-for-profit corporation under chapter 617, F.S., and as a corporation or association qualified for tax exempt status under s. 501(c)(6) or s. 501 (c)(3) of the Internal Revenue Code of 1986, as amended.
>
> 2. Files any required corporation annual reports with the Secretary of State, and if applicable, required annual information returns with the United States Internal Revenue Service.
>
> 3. Is governed by a volunteer board of directors of at least 7 members who are elected from among the membership of the organization and who serve without compensation."

The bill defines a "business entity" as "any corporation, partnership, limited partnership, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state." The bill prohibits a business entity that does not qualify as a chamber of commerce under the newly created definition from using the term in its business name or to describe itself. This provision does not apply, however, to binational chambers of commerce recognized by the Office of International Affairs, Department of State, or to chambers of commerce in existence on or before October 1, 1992.

An example of a binational chamber is the Association of Bi-National Chambers of Commerce in Florida (ABiCC).

> The ABiCC serves as the cooperative chamber representing bi-national chambers throughout the state of Florida. ABiCC represents almost 40 member organizations throughout the state of Florida, whose total membership equates to 8,000 international memberships within the state of Florida. This makes up a large part of the international community within Florida.
>
> ABiCC has seen a tremendous increase in bi-national chambers located in the state of Florida, which directly relates to the growing diversification of our economy.[3]

The bill does not place oversight responsibility with any state agency but provides standing, pursuant to s. 495.151, F. S., for any chamber of commerce to petition the court to enjoin a business entity from using the term in its name or to describe itself.

The bill provides that any violation of this prohibition is a first-degree misdemeanor. A first-degree misdemeanor is punishable by up to 60 days imprisonment under s. 775.082(4)(b), F.S., and a fine of up to $500 under s. 775.083(1)(e), F.S.

C. SECTION DIRECTORY:

Section 1: Creates s. 501.973, Florida Statutes, regarding chambers of commerce.

> Subsection (1) creates a statutory definition for "business entity" and "chamber of commerce."
>
> Subsection (2) creates a first-degree misdemeanor penalty for a business entity to use the term chamber of commerce in its name or to describe itself and provides exemptions.
>
> Subsection (3) specifies that the section imposes no requirement for oversight or regulation of a business name, trademark, trade name, or other requirement for filing or registration.
>
> Subsection (4) authorizes a chamber of commerce to bring suit to enjoin a business entity from using the term.

Section 2: Provides that the act will take effect October 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

[3] Information online at http://www.abicc.org/about.htm (visited 3/15/07).

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Businesses using the term "chamber of commerce" in their names that do not meet the statutory definition created in this legislation will be subject to criminal prosecution or civil actions. A business that is required to change its name may incur costs such as a $35 filing fee with the Division of Corporations, replacing signs, changing logos, replacing stationary, replacing marketing materials, and other office supplies involved in running a business.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

   Statutes limiting the use of certain terms in the name of a business have been upheld against attack under the First Amendment of the United States Constitution and under the Equal Protection Clause of the United States Constitution when the purpose of the statute is to prevent consumers from being misled.[4]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In 1995, Congress added to the existing federal trademark law, the Lanham Act (15 U.S.C.A – 1994), the Federal Trademark Dilution Act (FTDA). The concept of trademark "dilution" is distinct from the more common concept of trademark "infringement." A trademark infringement claim requires a plaintiff to show that the use of the junior mark is likely to cause confusion between its product or service and the product or service of the infringing mark. Infringement law protects consumers from being misled by the use of infringing marks and also protects producers from unfair practices by an imitating competitor.

A trademark dilution claim focuses on the "whittling away" of the "uniqueness" of a trademark and the resulting loss of economic power caused by other uses of the mark, regardless of whether such use is likely to actually cause confusion (not merely to likely cause dilution).

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[4] See Friedman v. Rogers, 440 U.S. 1 (1979); Baker v. Registered Dentists of Okla., 543 F. supp 1177 (W.D. Oklahoma 1982); Greater Miami Fin. Corp. v. Dickinson, 214 So. 2d 874 (Fla. 1968).

Unlike most state statutes, including Florida at s. 4965.151, F.S., which allow a dilution claim if a junior mark is "likely to cause dilution," the language of the FTDA is limited to use of a trademark that "causes dilution." It is likely that should this bill become law, litigation may result which will address distinctions between state and federal law in terms of trademark dilution.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

A bill to be entitled

An act relating to use of the term "chamber of commerce"; creating s. 501.973, F.S.; providing definitions; prohibiting certain business entities from using the term "chamber of commerce" under certain circumstances; providing exceptions; providing a penalty; specifying nonimposition of certain requirements; authorizing chambers of commerce to sue certain business entities to enjoin use of certain terms; providing an effective date.

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

Section 1. Section 501.973, Florida Statutes, is created to read:

501.973 Chambers of commerce.--

(1) For the purposes of this section:

(a) "Business entity" means any corporation, partnership, limited partnership, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state.

(b) "Chamber of commerce" means a voluntary membership, dues-paying organization of business and professional persons dedicated, as stated in the articles of incorporation or bylaws of the organization, to improving the economic climate and business development of the community, area, or region in which the organization is located and which:

1. Operates as an approved not-for-profit corporation under chapter 617 and as a corporation or association qualified

for tax exempt status under s. 501(c)(3) or s. 501(c)(6) of the Internal Revenue Code of 1986, as amended.

2. Files any required corporation annual reports with the Secretary of State and, if applicable, required annual information returns with the United States Internal Revenue Service.

3. Is governed by a volunteer board of directors of at least seven members who are elected from among the membership of the organization and who serve without compensation.

(2) A business entity, other than a chamber of commerce, shall not use the term "chamber of commerce" in its name or to describe itself, except for binational chambers of commerce recognized by the Office of International Affairs of the Department of State or chambers of commerce in existence on or before October 1, 1992. Any business entity which violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) This section imposes no requirement for oversight or regulation of a business entity name, trademark, trade name, or other requirement for filing or registration under any provision of law.

(4) Subject to the provisions of s. 495.151, a chamber of commerce may sue any business entity that is not a chamber of commerce as defined in this section to enjoin such entity from using the term "chamber of commerce" in its name or to describe itself as a chamber of commerce in any business or commerce.

Section 2. This act shall take effect October 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1003 Law Enforcement Vehicles
SPONSOR(S): Pickens
TIED BILLS: **IDEN./SIM. BILLS:** SB 1676

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Infrastructure	8 Y, 1 N	Owen	Miller
2) Economic Expansion & Infrastructure Council		Owen	Tinker TBT
3)			
4)			
5)			

SUMMARY ANALYSIS

Current statute does not permit law enforcement agencies to utilize all-terrain vehicles (ATVs) or low-speed vehicles on most public roads and permits only municipalities to utilize golf carts and utility vehicles by municipal employees for municipal purposes.

HB 1003 creates s. 319.21265, F.S. to allow the use of all-terrain vehicles, golf carts, low-speed vehicles, or utility vehicles by law enforcement agencies. It specifies that the vehicles must be clearly marked as law enforcement and may be equipped with certain equipment authorized for use on law enforcement vehicles. The operators and passengers of such vehicles must wear safety gear.

The bill has no fiscal impact on state or local governments and is effective July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

All-Terrain Vehicles (ATV)
An all-terrain vehicle (ATV) is defined as, "any motorized off-highway or all-terrain vehicle 50 inches or less in width, having a dry weight of 900 pounds or less, designed to travel on three or more low-pressure tires, having a seat designed to be straddled by the operator and handlebars for steering control, and intended for use by a single operator and with no passenger."[1]

Current statute prohibits ATV operation on "the public roads, streets, or highways of this state, except as otherwise permitted by the managing state or federal agency."[2] However, s. 316.2123, F.S. provides an exception for ATVs "operated during the daytime on an unpaved roadway where the posted speed limit is less than 35 miles per hour by a licensed driver or by a minor under the supervision of a licensed driver." A county government may exempt the county from this section, making operation of an ATV on an unpaved road illegal.

Current statute also allows ATV use by police officers on public beaches and beach access roads, as well as on public roads within public lands, while in the course and scope of their duties.[3]

All ATVs must be titled with the Department of Highway Safety and Motor Vehicles (Department).[4]

Golf Carts
A golf cart is defined as, "a motor vehicle that is designed and manufactured for operation on a golf course for sporting or recreational purposes and that is not capable of exceeding speeds of 20 miles per hour."[5]

According to s. 316.212, F.S., operation of a golf cart on a public road or street is prohibited, with the following exceptions:

- Operation on a county road that has been designated by a county, or a municipal street that has been designated by a municipality, for use by golf carts;
- Operation on a part of the State Highway System under the following conditions:
  - To cross a portion which intersects a county or municipal road that has been designated for use by golf carts;
  - To cross a portion where a golf course is constructed on both sides of the highway;
  - A road that has been designated for transfer to a local government unit pursuant to s. 335.0415, F.S.
- Operation for the purpose of crossing a street or highway where a single mobile home park is located on both sides of the street (applies to mobile home park residents and guests only);

[1] s. 317.0003(1), F.S.
[2] s. 316.2074(5), F.S.
[3] s. 316.2074(6-7), F.S.
[4] s. 317.0006(1), F.S.
[5] s. 320.01(22), F.S.

- Operation only during the hours between sunrise and sunset, unless the responsible governmental entity allows operation between sunset and sunrise and the golf cart is equipped with headlights, brake lights, turn signals and a windshield.
- Operation within any self-contained retirement community.[6]
- Operation by municipal employees for municipal purposes, including, but not limited to, police patrol, traffic enforcement, and inspection of public facilities.[7]

A golf cart may not be operated by any person under the age of 14. Local government entities may enact an ordinance regarding golf cart operation which is more restrictive than statute.

Low-Speed Vehicles

A low-speed vehicle is defined as, "any four-wheeled electric vehicle whose top speed is greater than 20 miles per hour but not greater than 25 miles per hour, including neighborhood electric vehicles."[8]

Operation of a low-speed vehicle is currently authorized in statute.[9] The vehicle must be operated on streets where the speed limit is 35mph or less; equipped with proper equipment; registered and insured. A county or municipality may prohibit the operation of low-speed vehicles on any road under its jurisdiction.

Utility Vehicles

A utility vehicle is defined as, "a motor vehicle designed and manufactured for general maintenance, security, and landscaping purposes, but the term does not include any vehicle designed or used primarily for the transportation of persons or property on a street or highway, or a golf cart, or an all-terrain vehicle as defined in s. 316.2074, F.S."[10]

According to s. 316.2127, F.S., operation of a utility vehicle by a homeowners' association, or its agents, is prohibited, with the following exceptions:

- Operation on a county road that has been designated by a county, or a city street that has been designated by a city, for use by utility vehicles for general maintenance, security, and landscaping purposes;
- Operation on a portion of the State Highway System to cross a portion which intersects a county road or a city street, to cross a portion where the highway bisects property controlled or maintained by the homeowners' association, or to travel on a state road that has been designated for transfer to a local government unit pursuant to s. 335.0415, F.S.
- Operation only during the hours between sunrise and sunset, unless the responsible governmental entity allows operation between sunset and sunrise and the utility vehicle is equipped with headlights, brake lights, turn signals and a windshield.
- Operation by municipal employees for municipal purposes, including, but not limited to, police patrol, traffic enforcement, and inspection of public facilities[7]

A utility vehicle may not be operated by any person under the age of 14.

Proposed Changes

HB 1003 allows any law enforcement agency in this state to operate ATVs, golf carts, low-speed vehicles, or utility vehicles on any street, road, or highway in this state while carrying out its official duties. Currently, law enforcement officers are utilizing these vehicles at the municipal, county and state level to carry-out activities. The rural areas of the state have become especially reliant on ATVs

[6] s. 316.2125(1), F.S.
[7] s. 316.2126(1), F.S.
[8] s. 320.01(42), F.S.
[9] s. 316.2122, F.S.
[10] s. 320.01(43), F.S.

to cover the large areas of unpaved land in their jurisdictions. Putnam County currently uses ATVs in marijuana eradication activities and would like to use them in door-to-door notification of persons located within one mile of sexual predators. Some officers use the vehicles to search for missing persons. According to the Florida Sheriff's Association, each county in the state utilizes at least one of these vehicles. This bill would specifically authorize such utilization by municipal, county, and state law enforcement agencies.

The bill also specifies that the off-road vehicles used by law enforcement agencies must be clearly marked as law enforcement vehicles and may be equipped with approved law enforcement equipment, such as special warning lights and signaling devices.

In addition, the bill directs the vehicle operator and any passengers to wear the safety equipment which is required or recommended for use by operators or passengers, such as safety helmets.

C. SECTION DIRECTORY:

Section 1. Creates s. 316.21265, F.S., authorizing law enforcement agencies to use specific off-road vehicles on the streets, roads, and highways of this state; and providing requirements for such vehicles.

Section 2. Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

To the extent that local and state agencies already own off-road vehicles, there will be no direct fiscal impact for being authorized to use them on any street, road or highway. Some law enforcement agencies may choose to purchase additional off-road vehicles with the specific authorization provided by the bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

A bill to be entitled

An act relating to law enforcement vehicles; creating s. 316.21265, F.S.; authorizing law enforcement agencies to use specific off-road vehicles on the streets, roads, and highways of this state; providing requirements for such vehicles; providing an effective date.

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

Section 1. Section 316.21265, Florida Statutes, is created to read:

316.21265 Use of all-terrain vehicles, golf carts, low-speed vehicles, or utility vehicles by law enforcement agencies.--

(1) Notwithstanding any provision of law to the contrary, any law enforcement agency in this state may operate all-terrain vehicles as defined in s. 316.2074, golf carts as defined in s. 320.01(22), low-speed vehicles as defined in s. 320.01(42), or utility vehicles as defined in s. 320.01(43) on any street, road, or highway in this state while carrying out its official duties.

(2) Such vehicles must be clearly marked as vehicles of a law enforcement agency and may be equipped with special warning lights, signaling devices, or other equipment approved or authorized for use on law enforcement vehicles.

(3) The vehicle operator and passengers must wear safety gear, such as helmets, which is ordinarily required or recommended for use by operators or passengers on such vehicles.

Section 2. This act shall take effect July 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1049 False, Deceptive, or Misleading Advertising
SPONSOR(S): Davis
TIED BILLS: **IDEN./SIM. BILLS:** SB 426

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Tourism & Trade	5 Y, 0 N	Vogt	Hoagland
2) Economic Expansion & Infrastructure Council		Vogt DV	Tinker TBT
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 1049 prohibits a person from advertising or conducting a live musical performance by using a false, deceptive, or misleading statement of an affiliation, connection, or association between a performing group and a recording group, with exceptions. Violation of these prohibitions will result in the committing of a misdemeanor, and gives authority for the court to impose a civil penalty of up to $5,000 for each violation.

The bill appears to have a minimal fiscal impact on state and local governments. The bill creates a new misdemeanor offense which could result in more criminal convictions with potential costs for prosecution and punishment. The bill also authorizes the court to award court costs to the prevailing party which could offset the costs associated with litigation.

The bill provides an effective date of July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty- This bill creates a new misdemeanor offense for misleading or deceptive advertising by musical groups.

B. EFFECT OF PROPOSED CHANGES:

Background

Currently throughout the state and nation musical groups are performing under names similar to or the same as original groups popular in years past. These bands often times advertise themselves as the original band and do not distinguish themselves as a tribute band or salute to the performer. These types of practices have misled many event organizers and concert goers. These conditions have led to public dissatisfaction, as well as the original groups seeking relief and legislation to combat these issues. The passing of legislation similar to HB 1049 has occurred in 7 states and 12 other states are currently considering it during their legislative session.[1]

Chapter 817, F.S., governs fraudulent practices. More specifically part 1 of chapter 817 deals with false pretenses and frauds relating to advertising, reselling of tickets, and insurance claims among other practices. The penalties for violation of these prohibitions are also named.

Trademark registration and protection are governed within the state of Florida by Chapter 495, F.S., which provides registration requirements, classification, infringement provisions and remedies for trademark owners.

A trademark protects the words, names, symbols, sounds, or colors that distinguish goods and services from those manufactured or sold by others and to indicate the source of the goods. Trademarks, unlike patents, can be renewed forever as long as they are being used in commerce. A service mark is a word, name, symbol or device that is to indicate the source of the services and to distinguish them from the services of others. A service mark is the same as a trademark except that it identifies and distinguishes the source of a service rather than a product. The terms "trademark" and "mark" are often used to refer to both trademarks and service marks.[2]

The Lanham Act contains the federal statutes governing the registration of trademarks, trade names, and other identifying marks. The act defines the scope of a trademark, the process by which a federal registration can be obtained from the patent and trademark office and the penalties from interference and infringement. Any person who, without the consent of the registrant, uses a registered mark when such use is likely to cause confusion, or to cause mistake, or to deceive may be liable in a civil action by the registrant.[3] Further, the act prohibits the use of a false or misleading description or representation in commercial advertising or promotion that "misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities."[4]

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[1] Currently in law in Pennsylvania, Connecticut, Illinois, Michigan, Massachusetts, South Carolina, and North Dakota. Other states considering the law are New York, Vermont, Virginia, Delaware, Minnesota, Maryland, New Jersey, California, Nevada, Texas, Wisconsin, and Tennessee.

[2] http://www.uspto.gov/main/glossary/index.html#t

[3] 15 U.S.C Section 1114

[4] 15 U.S.C Section 1125

Proposed Changes

HB 1049 creates s. 817.4115, F.S., to prohibit a person from advertising or conducting a live musical performance by using a false, deceptive, or misleading statement of affiliation, connection or association between a performing group and a recording group. This section defines:

- "Performing person or group" as a vocal or instrumental performer using or attempting to use the name of a recording person or group.
- "Recording person or group" as a vocal or instrumental performer that has previously produced or released, or both, a commercial recording.

The bill provides the following exceptions:

- The performing person or at least one member of the performing group was a member of the recording group and has the legal right to use the name of the recording group by not abandoning the affiliation with the recording group or its name;
- The performing person or group is the authorized registrant and owner of a federal service mark for that person or group which is registered with the United States Patent and Trademark Office;
- The live musical performance or production is identified as a "salute" or "tribute" to, and is otherwise unaffiliated with, the recording person or group;
- The advertising does not relate to a live musical performance taking place in this state; or
- The performance is expressly authorized in the advertising by the recording person or group.

This bill provides that any person who violates the prohibition commits a second degree misdemeanor and a first degree misdemeanor for subsequent violations. The section authorizes the Department of Legal Affairs or a state attorney to file a civil action for injunctive relief and authorizes a court to impose a civil penalty of up to $5,000 for each violation.

The bill provides an effective date of July 1, 2007.

C. SECTION DIRECTORY:

Section 1: Creates s.817.4115, F.S, prohibiting a person from advertising or conducting a live musical performance by using a false, deceptive, or misleading statement of an affiliation, connection, or association between a performing group and a recording group, with exceptions. Provides that violation of these prohibitions will result in the committing of a misdemeanor, and gives authority for the court to impose a civil penalty of up to $5,000 for each violation.

Section 2: Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   See fiscal comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See fiscal comments below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill appears to have a minimal fiscal impact on state and local governments. The bill creates a new misdemeanor offense which could result in more criminal convictions with potential costs for prosecution and punishment. The bill also authorizes the court to award court costs to the prevailing party which could offset the costs associated with litigation.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement provided.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

A bill to be entitled

An act relating to false, deceptive, or misleading advertising; creating s. 817.4115, F.S.; defining the terms "performing person or group" and "recording person or group"; prohibiting a person, in advertising or conducting a live musical performance, from using a false, deceptive, or misleading statement of an affiliation, connection, or association between a performing person or group and a recording person or group; providing exceptions; providing that a violation of the act is a misdemeanor of the first degree; providing criminal penalties; authorizing the Department of Legal Affairs or state attorney to file a civil action for injunctive relief against any person or group violating the act; providing for the prevailing party to receive court costs and attorney's fees; authorizing a court to impose a civil penalty for each violation of the act; providing an effective date.

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

Section 1. Section 817.4115, Florida Statutes, is created to read:

817.4115 False, deceptive, or misleading advertisement of live musical performances.--

(1) For purposes of this section, the term:

(a) "Performing person or group" means a vocal or instrumental performer using or attempting to use the name of a

recording person or group.

(b) "Recording person or group" means a vocal or instrumental performer that has previously produced or released, or both, a commercial recording.

(2)(a) A person may not advertise a live musical performance or production in this state using a false, deceptive, or misleading statement of an affiliation, connection, or association between a performing person or group and a recording person or group.

(b) A person may not conduct a live musical performance or production in this state using a false, deceptive, or misleading statement of an affiliation, connection, or association between a performing person or group and a recording person or group.

(3) An advertisement of a live musical performance does not violate subsection (2) if:

(a) The performing person or at least one member of the performing group was a member of the recording group and retains the legal right to use the name of the recording group by not having abandoned the affiliation with the recording group or its name;

(b) The performing person or group is the authorized registrant and owner of a federal service mark for that person or group which is registered with the United States Patent and Trademark Office;

(c) The live musical performance or production is identified as a "salute" or "tribute" to, and is otherwise unaffiliated with, the recording person or group;

(d) The advertising does not relate to a live musical

performance taking place in this state; or

(e) The performance is expressly authorized in the advertising by the recording person or group.

(4) Any person who violates subsection (2) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Upon a second or subsequent violation of subsection (2), the person commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or by a fine not to exceed $5,000, or both.

(5) The Department of Legal Affairs or a state attorney may file a civil action on behalf of the people of this state for injunctive relief against any person or group violating subsection (2) to restrain the prohibited activity. The court may award court costs and reasonable attorney's fees to the prevailing party. The court may also impose a civil penalty not to exceed $5,000 for each violation of subsection (2).

Section 2. This act shall take effect July 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1305 Notaries Public
SPONSOR(S): Thompson
TIED BILLS: **IDEN./SIM. BILLS:** SB 2490

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Tourism & Trade	5 Y, 0 N	Vogt	Hoagland
2) Economic Expansion & Infrastructure Council		Vogt	Tinker TBT
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 1305 allows for documents requiring notarization to be notarized electronically. The bill provides specifications for a notary public's electronic signature. The bill directs the Department of State to adopt rules to ensure the security, reliability, and uniformity of signatures and seals authorized.

The bill appears to have a fiscal impact on state government in regards to additional staff and expense within the Department of State. The bill does not appear to have a fiscal impact on local governments.

The bill provides an effective date of July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government- This bill creates additional rulemaking power for the Secretary of State.

B. EFFECT OF PROPOSED CHANGES:

Background

A notary public is a state-appointed official who administers oaths and serves as an impartial witness when important documents are signed. A notary identifies each signer, and makes sure the signer has entered into the agreement knowingly and willingly. To confirm that a document and its signature are authentic, the notary affixes his or her signature and official seal to it.[1]

Notaries public are governed by Chapter 117, F.S. Provisions concerning appointment of notaries public, application, fees, administration of oaths, seal and permitted duties are outlined in this chapter.

A person wishing to become a notary public may obtain an application and information from a bonding company approved to submit applications electronically to the Department of State, Notary Commissions and Certifications Section. The application fee is $39, $4 of which is appropriated to the Executive Office of the Governor to be used to educate and assist notaries public, the rest is directed to General Revenue. The application that is sent to the Department of State must contain: the full name, residence address and telephone number, business address and telephone number, date of birth, race, sex, social security number, citizenship status, driver's license number or the number of other official state-issued identification, affidavit of good character from someone unrelated to the applicant who has known the applicant for 1 year or more, a list of all professional licenses and commissions issued by the state during the previous 10 years and a statement as to whether or not the applicant has had such license or commission revoked or suspended, and a statement as to whether or not the applicant has been convicted of a felony, and, if there has been a conviction, a statement of the nature of the felony and restoration of civil rights. If a name change is required during a notary's commission a completed name change is required by DOS and a $25 fee is assessed.

The Department of State (DOS) serves as the custodian of records for notary public applications, and maintains the record for the full term of a notary commission. Currently there are over 750,000 active notaries in the state, and DOS receives approximately 65,000 new applicants annually.

Proposed Changes

HB 1305 creates s. 117.021, F.S, to allow for electronic notarization of documents. The bill requires that provisions (including appointment process, administration of oaths, acknowledgments of deeds, seals, and prohibited acts) found in Chapter 117, F.S., that apply to traditional notarization, apply to electronic notarization of documents as well. The bill omits the provision found in s. 117.05 (12), F.S., requiring a notary public to supervise the making of a photocopy of an original document.

The bill requires that before performing an electronic notarial act, a notary public must register the capability to notarize electronically with the Secretary of State on a form to be prescribed by DOS. The bill does not specify how DOS is to handle the record keeping and whether this will be handled similar to current filings or in a different manner. Currently filings within the Division of Corporations are considered public records and are indexed so they can easily be accessed.

[1] http://www.nationalnotary.org/userimages/WhatNotary.pdf

The bill also provides the specifications of the electronic signature of a notary public and requires that it be:

- Unique to the notary public
- Capable of independent verification
- Retained under the notary public's sole control
- Attached to or logically associated with the electronic document in a manner that any subsequent alteration to the electronic document displays evidence of the alteration

The bill also provides that when a signature is required to be accompanied by a notary public seal, the requirement is satisfied when the electronic signature of the notary public contains all of the following seal information:

- The full name of the notary public
- The words "Notary Public State of Florida"
- The commission date of expiration
- The commission number

The bill also requires that the Department of State adopt rules to ensure the security, reliability, and uniformity of signatures and seals authorized.

The bill provides an effective date of July 1, 2007.

C. SECTION DIRECTORY:

Section 1: Creates s. 117.021, F.S., allows for the electronic notarization of documents, provides registration requirements, and gives DOS rule making authority.
Section 2: Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: See Fiscal Comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None

2. Expenditures: None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS: DOS has estimated that to handle the additional workload associated with the filing of electronic signatures it will require 3 FTEs for a total of $105,000 in salaries and benefits, $13,000 in recurring expense, and $15,000 in nonrecurring expense. In addition to workload costs,

DOS has indicated a potential cost relating to security of the electronic signatures of $500,000. However, it is not clear at this time if implementation of the bill would result in these costs.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY: This bill creates additional rulemaking authority for the Secretary of State. It is anticipated that the Division of Corporations would be assigned the responsibility for the rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

D. STATEMENT OF THE SPONSOR

No statement provided.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

A bill to be entitled

An act relating to notaries public; creating s. 117.021, F.S.; authorizing electronic notarization; providing registration requirements; requiring electronic signatures to include certain information; providing requirements for the use of a notary public seal with electronic signatures; providing that failure to comply with such requirements may result in specified sanctions against the notary public; requiring the Department of State to adopt rules to ensure the security, reliability, and uniformity of the signatures and seals; providing an effective date.

WHEREAS, notaries public are among the longest serving public officials in the United States, and

WHEREAS, in Florida, notaries public are commissioned and regulated by the Executive Office of the Governor and licensed by the Secretary of State, and

WHEREAS, notaries public are the time-tested defense against identity fraud, mortgage fraud, and other kinds of fraud that represent a threat to a healthy economy, and

WHEREAS, notaries public provide a disinterested third-party witness in a broad spectrum of transactions, ensuring credibility and reliability to signatures on documents vital to our economy, and

WHEREAS, a notary public's signature and seal is vital to the authenticity and integrity of notarized documents, and

WHEREAS, the advent of electronic notarization demands that the issues of security and identity in the electronic

notarization process be subject to accountability and uniform standards so as to foster public trust and protect consumers, and

WHEREAS, to ensure that electronic notarizations enjoy the same level of credibility as paper-based notarizations, it is imperative that appropriate, substantive, secure, and uniform standards and procedures be adopted, and

WHEREAS, the absence of uniform standards represents a hindrance to the adoption of technologically available electronic notarization systems, NOW, THEREFORE,

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

Section 1. Section 117.021, Florida Statutes, is created to read:

117.021 Electronic notarization.--

(1) Any document requiring notarization may be notarized electronically. The provisions of ss. 117.01, 117.03, 117.04, 117.05(1)-(11), (13), and (14), 117.105, and 117.107 apply to all notarizations under this section.

(2) Before performing an electronic notarial act, a notary public shall register the capability to notarize electronically with the Secretary of State on a form to be prescribed by Department of State.

(3) In performing an electronic notarial act, a notary public shall use an electronic signature that is:

(a) Unique to the notary public;

(b) Capable of independent verification;

(c) Retained under the notary public's sole control; and

(d) Attached to or logically associated with the electronic document in a manner that any subsequent alteration to the electronic document displays evidence of the alteration.

(4) When a signature is required to be accompanied by a notary public seal, the requirement is satisfied when the electronic signature of the notary public contains all of the following seal information:

(a) The full name of the notary public exactly as provided on the notary public's application for commission;

(b) The words "Notary Public State of Florida";

(c) The date of expiration of the commission of the notary public; and

(d) The notary public's commission number.

(5) Failure of a notary public to comply with any of the requirements of this section may constitute grounds for suspension of the notary public's commission by the Executive Office of the Governor.

(6) The Department of State shall adopt rules to ensure the security, reliability, and uniformity of signatures and seals authorized in this section.

Section 2. This act shall take effect July 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1457 Recreational Vehicle Dealers and Manufacturers
SPONSOR(S): Gardiner
TIED BILLS: **IDEN./SIM. BILLS:** SB 2488

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Infrastructure	6 Y, 0 N	Owen	Miller
2) Economic Expansion & Infrastructure Council		Owen	Tinker TBT
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

Current law provides no regulation of the relationship between recreational vehicle (RV) dealers and manufacturers. Section 320.771, F.S, provides a licensure structure for RV dealer licensure through the Department of Highway Safety and Motor Vehicles (Department).

HB 1457 creates new sections of statute within Chapter 320, F.S. The bill:

- Requires RV manufacturers to have a signed dealer agreement and specifies what shall be in the agreement.
- Prohibits a dealer from selling outside of its market area, unless certain criteria are met.
- Clarifies that manufacturers must treat similarly situated dealers the same.
- Establishes the criteria for cancelling a manufacturer/dealer agreement.
- Establishes the criteria for a transfer of ownership and family succession of a dealership.
- Establishes warranty obligations.
- Specifies inspection criteria for vehicles shipped to a dealer, the time frame and standards for rejection of a vehicle, and the responsibilities of each party in the event a vehicle is rejected.
- Prohibits manufacturers from engaging in certain coercive practices.
- Sets a dispute resolution process, by which a party must first go through mediation before the case is brought to circuit court.
- Clarifies that a dealer's license may be suspended or revoked and the dealer fined by the Department for violations of the act.
- Specifies violations of the act are a misdemeanor of the second degree and punishable by imprisonment of up to 60 days and a fine of up to $500.
- Provides a severability clause.

The bill has no fiscal impact to state or local governments and is effective July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Reduce Government: HB 1457 creates a regulation of the relationship between recreational vehicle dealers and manufacturers.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Current law provides no regulation of the relationship between RV dealers and manufacturers. Section 320.771, F.S, provides a licensure structure for RV dealer licensure through the Department.

According to the Department, there are approximately 263 RV dealers currently licensed in the state of Florida. According to the Florida RV Trade Association, of those, approximately 130 dealers are recognized as new RV dealers. The remainder fall into the category of those who sell used RVs. This population may include car dealers who also have an RV license to sell RVs they receive as trades or offer on a very limited basis to the public.

There are approximately 100 RV manufacturers currently licensed with the Department.

Proposed Changes:

HB 1457 creates language in Chapter 320, F.S. to regulate the relationship between RV dealers and manufacturers.

Definitions
The bill creates s. 320.3202, F.S., to define the terms: area of sales responsibility, dealer, distributor, factory campaign, family member, line-make, manufacturer, manufacturer/dealer agreement, proprietary part, recreational vehicle, transient customer, and warrantor.

Manufacturer/Dealer Agreement and Dealer Market Area
The bill creates s. 320.3203, F.S., to:

- Require RV manufacturers to have a written manufacturer/dealer agreement prior to selling RVs in Florida.
- Require manufacturers to designate in the agreement a market area for the dealer, where the dealer has the exclusive right to display or sell the manufacturer's new RVs of a particular line-make. Such designation may not be changed for a period of one year.
- Require a dealer to have a written manufacturer/dealer agreement prior to selling RVs in Florida.
- Prohibits a dealer from selling outside of its market area unless it meets one of the set forth criteria, which are:
    - If another dealer and their manufacturer allow them into another market area.
    - If the sale is in conjunction with a public trade show and in an open market area which is not protected by a manufacturer/dealer agreement.
    - If the sale is in conjunction with a manufacturer-funded trade show involving more than 35 dealers.

Sale of RVs by Manufacturer
The bill creates s. 320.3204, F.S., to specify that sales of RVs by manufacturers must be in accordance with published prices, charges, and terms of sale in effect at any given time. The manufacturer must

sell products on the same basis, with respect to all rebates, discounts, and programs, to all competing dealers similarly situated.

Termination, Cancellation, and Nonrenewal of a Manufacturer/Dealer Agreement

The bill creates s. 320.3205, F.S., to:

- Prohibit a manufacturer from terminating, canceling or failing to renew a manufacturer/dealer agreement without good cause. If the manufacturer renews an agreement, it may not require the purchase of excess inventory or increased sales goals in excess of the market growth in the dealer's area.
- Specify the manufacturer has the burden of showing good cause when terminating an agreement. When determining whether there is good cause, the following factors must be considered:
    - The extent of the affected dealer's penetration into the relevant market area.
    - The nature and extent of the dealer's investment in its business.
    - The adequacy of the dealer's service facilities, equipment, parts, supplies and personnel.
    - The effect of the proposed action on the community.
    - The extent and quality of the dealer's service under RV warranties.
    - The failure to follow agreed-upon procedures related to the overall operation.
    - The dealer's performance under the terms of its agreement.
- Direct a manufacturer to provide a dealer with at least 120 days' prior written notice of termination, cancellation, or nonrenewal of the manufacturer/dealer agreement.
    - The notice shall state all reasons for termination, cancellation or nonrenewal.
    - The dealer is given 30 days following receipt of the notice to provide a notice of intent to cure all claimed deficiencies. The dealer then has 120 days to rectify the deficiencies.
    - If the deficiencies are rectified within 120 days, the manufacturer's notice is void.
    - If the dealer does not provide a notice of intent to cure, the termination, cancellation or nonrenewal is effective 30 days after the dealer's receipt of the notice.
- Allow a manufacturer to provide a 30 day notice of termination, cancellation, or nonrenewal if the dealer has been convicted of a felony, closed his business, made a significant misrepresentation, or had his license suspended or revoked by the Department.
- Provide that the notice provisions do not apply if the reason for termination, cancellation, or nonrenewal is insolvency, the occurrence of an assignment for the benefit of creditors, or bankruptcy.
- Allow a dealer to terminate its manufacturer/dealer agreement with or without cause by giving the manufacturer 30 days' notice. The dealer has the burden of showing good cause, which may be one of the following:
    - Manufacturer convicted of a felony.
    - Manufacturer closes his business for more than 10 days.
    - A significant misrepresentation by the manufacturer.
    - A violation of the newly created sections of statute found in this bill (ss. 320.3201-320.3211, F.S.)
    - A declaration by the manufacturer of bankruptcy.
- Direct a manufacturer to repurchase the following items, at the election of the dealer, once a manufacturer/dealer agreement is terminated, cancelled, or not renewed by the manufacturer or the dealer for cause:
    - All new RVs, at 100% of the net invoice cost;
    - All current and undamaged manufacturer's accessories and parts, if accompanied by the original invoice, at 105% of the original net price; and
    - Any functioning diagnostic equipment, special tools, current signage, and other equipment and machinery, at 100% of the dealer's net cost, provided it was purchased by the dealer within five years before termination and can no longer be used in the normal course of business.
    - Manufacturer shall pay the dealer within 30 days of receipt of the returned items.

Transfer of Ownership; Family Succession

The bill creates s. 320.3206, F.S., to

- Require the dealer to notify the manufacturer of a change in ownership within 30 days of the closing.
- Prohibit the manufacturer from disapproving the change or sale unless the manufacturer can show its decision is based on criteria such as: the prospective transferee's business experience, moral character, financial qualifications, and any criminal record.
- Direct the manufacturer rejecting a proposed change or sale to provide written notice to the dealer within 30 days after receipt of the dealer's notification. Absent the manufacturer's notice of rejection, the change or sale is deemed approved.
- Specify that the manufacturer has the burden of showing its rejection of the transfer or sale is reasonable.
- Prohibit a manufacturer from failing to provide a dealer with an opportunity to designate, in writing, a family member as a successor to the dealership in the event of the death, incapacity, or retirement of the dealer, unless the manufacturer has provided written notice of its objections.
- Specify the grounds for rejection of the succession of a dealership to a dealer's family member are: lack of creditworthiness, conviction of a felony, lack of required licenses or business experience, or other condition which makes the succession unreasonable. The manufacturer has the burden of showing unreasonableness of the succession.
- Prohibit succession of a family member if the succession involves a relocation of the business or an alteration of the terms and conditions of the manufacturer/dealer agreement, unless the manufacturer consents.

Warranty Obligations

The bill creates s.320.3207, F.S., to:

- Direct each warrantor to:
  - Specify in writing to each of its dealers the obligations for preparation, delivery, and warranty service on its products.
  - Compensate the dealer for warranty service required of the dealer by the warrantor.
  - Provide the dealer with the schedule of compensation and the time allowances for the performance of such work. The schedule of compensation must include diagnostic work as well as warranty labor.
- Specify that time allowances for the diagnosis and performance of warranty work are to be reasonable and the dealer does not need manufacturer prior approval to undertake warranty work that will require less than three hours of labor.
- Require the compensation of a dealer for warranty labor to be no less than the lowest retail labor rates actually charged by the dealer.
- Direct the warrantor to reimburse the dealer for warranty parts at actual wholesale cost plus a minimum 30-percent handling charge and the cost of any freight to return warranty parts to the warrantor.
- Specify that warranty audits of dealer records may be conducted on a reasonable basis. Dealer claims for warranty compensation are not to be denied except for cause, such as: performance of nonwarranty repairs, noncompliance with warrantor's published policies, lack of material documentation, fraud, or misrepresentation.
- Directs the dealer to submit warranty claims within 45 days after completing the work. If the dealer is unable to perform repetitive warranty repairs, the dealer must notify the warrantor verbally or in writing as soon as is reasonably possible.
- Provides the warrantor with 30 days after the dealer's submission to disapprove a warranty claim. Claims not disapproved within the 30 days are construed to be approved and must be paid within 45 days.
- Set forth a list of bad practices for warrantors which constitutes a violation of this act, including:
  - Failure to perform any of its warranty obligations;
  - Failure to include the expected date by which necessary parts and equipment will be available to dealers to perform the factory campaign work;

- Failure to compensate any of its dealers for authorized repairs to RVs damaged in manufacture or transit to the dealer;
- Failure to compensate any of its dealers for authorized warranty service;
- Intentional misrepresentation to purchasers of RVs that warranties with respect to the manufacture, performance, or design are made by the dealer either as warrantor or cowarrantor; or
- Requiring the dealer to make warranties to customers in any manner related to the manufacture of the RV.

- Set forth a list of bad practices for dealers which constitutes a violation of this act, including:
  - Failure to perform predelivery inspection functions;
  - Failure to perform authorized warranty service work on any transient customer's vehicle of the same line-make without good cause; or
  - Misrepresentation of the terms of any warranty.
- Require reciprocal indemnification.

Inspection and Rejection of New RVs by the Dealer

The bill creates s. 320.3208, F.S., to:

- Specify that when a new RV is damaged prior to or during transit to the dealer, when the carrier has been selected by the manufacturer, the dealer shall:
  - Notify the manufacturer of the damage by the next business day after date of delivery; and
  - Either request authorization from the manufacturer to repair the vehicle or reject the vehicle in the timeframe authorized in the manufacturer/dealer agreement. If the manufacturer refuses or fails to authorize repair within ten days, ownership of the vehicle reverts to the manufacturer.
  - Have no obligation, financial or otherwise, with respect to the damaged RV.
- Specify that the timeframe for inspection of a new RV shall be part of the manufacturer/dealer agreement, but should not be less than three business days after the delivery of the RV.
- Authorize a dealer to reject an RV that, at the time of delivery, has an unreasonable amount of miles on its odometer.

Coercion of Dealer Prohibited

The bill creates s. 320.3209, F.S., to:

- Prohibit a manufacturer from coercing or attempting to coerce a dealer to:
  - Purchase a product the dealer did not order;
  - Enter into an agreement with the manufacturer;
  - Take any action which is unfair or unreasonable to the dealer; or
  - Require the dealer to enter into an agreement that requires the dealer to submit its disputes to binding arbitration or otherwise waive rights or responsibilities under this act.
- Provide a definition of the term "coerce".

Civil Dispute Resolution; Mediation; Relief

The bill creates s. 320.3210, F.S., to:

- Provide that a dealer, manufacturer, distributor, or warrantor injured by a violation of this act may bring a civil action in circuit court to recover actual damages. Attorney's fees and costs shall be awarded to the prevailing party. The venue for the civil action must be in the dealership's county.
- Direct the party bringing a suit under this section to serve a written demand for mediation upon the offending party, which shall contain a brief statement of the dispute and the relief sought. The demand shall be served via certified mail.
- Require both parties to mutually select an independent certified mediator and meet with the mediator within 20 days after the demand is served.
- Specify that a demand for mediation shall stay the time for any complaint, petition, protest, or action under this act until both parties have met with the mediator. If such action is filed before

the meeting, the court will enter an order suspending the action until the mediation meeting has occurred.
- Require the parties of the mediation to bear their own costs and divide the cost of the mediator equally.
- Authorize a dealer to seek a temporary or permanent injunction restraining any person from:
  - acting as a dealer without being properly licensed,
  - violating any of the provisions of this act, or
  - failing or refusing to comply with the provisions in this act.

Penalties

The bill creates s. 320.3211, F.S., to:
- Authorize the Department to suspend or revoke an RV dealer's license if the dealer violates any provision of this act.
- Authorize the Department to collect by legal process fines against any person it finds has violated any provision of this act in an amount not to exceed $1,000 for each violation. The individual is entitled to an administrative hearing to contest the action or fine.
- Specify that any person who violates the provisions of this act commits a second degree misdemeanor, punishable by imprisonment for up to 60 days and a fine of up to $500.

The bill provides a severability clause for the provisions of the act.

The bill is effective July 1, 2007.

C. SECTION DIRECTORY:

Section 1. Creates s. 320.3201, F.S., providing legislative intent.

Section 2. Creates s. 320.3202, F.S., providing definitions.

Section 3. Creates s. 320.3203, F.S., providing requirements for a manufacturer/dealer agreement; requiring designation of the area of sales responsibility; providing conditions for sales outside the dealer's area of sales responsibility.

Section 4. Creates s. 320.3204, F.S., providing requirements for sale by manufacturers and distributors.

Section 5. Creates s. 320.3205, F.S., providing requirements and procedures for termination, cancellation, or nonrenewal of an agreement by a manufacturer or a dealer; providing for the repurchase by the manufacturer or a dealer; providing for the repurchase by the manufacturer of vehicles, accessories, and parts and equipment, tools, signage, and machinery.

Section 6. Creates s. 320.3206, F.S., providing for change in ownership by a dealer; requiring notice to the manufacturer; providing requirements for rejection by the manufacturer; providing for a dealer to name a family member as a successor in case of retirement, incapacitation, or death of the dealer; providing requirements for rejection of the successor by the manufacturer.

Section 7. Creates s. 320.3207, F.S., providing requirements for warrantors, manufacturers, and dealers with respect to warranties; providing responsibilities; providing requirements for compensation of the dealer; authorizing warranty audits by the warrantor; requiring cause for denial of compensation; providing for disposition of warranty claims; prohibiting certain acts by the warrantor and the dealer; requiring notice of certain pending suits.

Section 8. Creates s. 320.3208, F.S., providing for inspection and rejection of a recreational vehicle upon delivery to a dealer.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department claims the bill does not address the approximately 263 RV dealers who are currently licensed by the Department. These licensed dealers may carry the same line-makes and possibly could be in conflict with future designation of "area sales responsibility" or are currently overlapping the designated area. They claim the bill also does not address the approximately 103 RV manufacturers currently licensed by the Department with regard to a timeframe for initiating manufacturer/dealer agreements with the currently licensed RV dealers.

The Department also points to the fact that the bill does not provide for licensing of RV distributors/importers. They also claim the bill does not provide for notification to the Department of the "area of sales responsibility" and line-makes assigned to RV dealers. Such notification is necessary to prevent sale of RVs by non-authorized dealers. The Department claims to also need to be notified when the "area of sales responsibility" and line-make have been taken away from the dealer.

The Department also claims the term "similarly situated" needs to be defined.

The Florida RV Trade Association is in support of the language and claims model legislation enacted in states such as Pennsylvania and Georgia is very similar to the language in HB 1457.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 19, 2007, this bill was considered by the Committee on Infrastructure. A strike-all amendment was adopted which makes several technical changes, adds legislative intent language, and specifies that RV distributors and importers are subject to licensure by the Department. The bill was reported favorably with one amendment.

Amendment No. (for drafter's use only)

Bill No. **1457**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Economic Expansion & Infrastructure Council

Committee on Infrastructure offered the following:

Amendment (with directory and title amendments)

Delete everything after the enacting clause and insert:

Section 1. Section 320.3201, Florida Statutes, is created to read:

320.3201 Legislative intent.--

(1) It is the intent of the Legislature to protect the public health, safety, and welfare of the citizens of the state by regulating the relationship between recreational vehicle dealers and manufacturers, maintaining competition, and providing consumer protection and fair trade.

(2) It is the intent of the Legislature that this act is to be applied to manufacturer/dealer agreements entered into after the effective date.

Section 2. Section 320.3202, Florida Statutes, is created to read:

320.3202 Definitions.--As used in ss. 320.3201-320.3211, the term:

(1) "Area of sales responsibility" means the geographical area agreed to by the dealer and the manufacturer in the manufacturer/dealer agreement in which the dealer has the exclusive right to display or sell the manufacturer's new recreational vehicles of a particular line-make.

(2) "Dealer" means any person, firm, corporation, or business entity licensed or required to be licensed pursuant to s. 320.771.

(3) "Distributor" means any person, firm, corporation, or business entity that purchases new recreational vehicles for resale to dealers.

(4) "Factory campaign" means an effort on the part of a warrantor to contact recreational vehicle owners or dealers in order to address a part or equipment issue.

(5) "Family member" means a spouse or a child, grandchild, parent, sibling, niece, or nephew or the spouse thereof.

(6) "Line-make" means a specific series of recreational vehicle products that:

(a) Are identified by a common series trade name or trademark;

(b) Are targeted to a particular market segment, as determined by their decor, features, equipment, size, weight, and price range;

(c) Have lengths and interior floor plans that distinguish the recreational vehicles from recreational vehicles with substantially the same decor, equipment, features, price, and weight; and

(d) Belong to a single, distinct classification of recreational vehicle product type having a substantial degree of commonality in the construction of the chassis, frame, and body.

(7) "Manufacturer" means any person, firm, corporation, or business entity that engages in the manufacturing of recreational vehicles.

(8) "Manufacturer/dealer agreement" means a written agreement or contract entered into between a manufacturer and a dealer which fixes the rights and responsibilities of the parties and pursuant to which the dealer sells new recreational vehicles.

(9) "Proprietary part" means any part manufactured by or for and sold exclusively by the manufacturer.

(10) "Recreational vehicle" means the types of motor vehicle or motor vehicles defined by s. 320.01(1)(b).

(11) "Transient customer" means a customer who is temporarily traveling through a dealer's area of sales responsibility.

(12) "Warrantor" means any person, firm, corporation, or business entity that gives a warranty in connection with a new recreational vehicle or parts, accessories, or components thereof. Such term does not include service contracts, mechanical or other insurance, or extended warranties sold for separate consideration by a dealer or other person not controlled by a manufacturer.

(13) "Department" means the Department of Highway Safety and Motor Vehicles.

Section 3. Section 320.3203, Florida Statutes, is created to read:

320.3203 Requirement for a written manufacturer/dealer agreement; area of sales responsibility.--

(1) A manufacturer or distributor may not sell a recreational vehicle in the state to or through a dealer without having entered into a manufacturer/dealer agreement which is signed by both parties.

(2) The manufacturer shall designate in the manufacturer/dealer agreement the area of sales responsibility exclusively assigned to a dealer and shall not change such area or establish another dealer for the same line-make in such area during the duration of the agreement.

(3) The area of sales responsibility may not be subject to review or change before 1 year after the execution of the manufacturer/dealer agreement.

(4) A motor vehicle dealer may not sell a new recreational vehicle in this state without having entered into a manufacturer/dealer agreement and may not sell outside of its designated area of sales responsibility.

(5)(a) Notwithstanding subsection (4), a dealer may sell outside of its designated area of responsibility if the dealer obtains a supplemental license pursuant to s. 320.771(7) and meets one of the following conditions:

1. For sales within another dealer's designated area of sales responsibility, the dealer must obtain in advance of the off-premise sale a written agreement signed by the dealer, the manufacturer of the recreational vehicles to be sold at the off-premise sale, and the dealer in whose designated area of sales responsibility the off-premise sale will occur. The written agreement must:

a. Designate the recreational vehicles to be sold;

b. Set forth the time period for the off-premise sale; and

c. Affirmatively authorize the sale of the recreational vehicles.

2. The off-premise sale is not located within any dealer's designated area of sales responsibility and is in conjunction with a public vehicle show.

3. The off-premise sale is in conjunction with a public vehicle show in which more than 35 dealers are participating and is predominantly funded by manufacturers.

(b) For the purposes of this subsection, "public vehicle show" means an event sponsored by an organization approved under section 501(c)(6) of the Internal Revenue Code which has the purpose of promoting the welfare of the recreational vehicle industry and is located at a site:

1. That will be used to display and sell recreational vehicles;

2. That is not used for off-premise sales for more than 10 days in a calendar year; and

3. That is not the location set forth on any dealer's license as its place of business.

Section 4. Section 320.3204, Florida Statutes, is created to read:

320.3204 Sales of recreational vehicles by manufacturer or distributor.--Sales of recreational vehicles by manufacturers or distributors shall be in accordance with published prices, charges, and terms of sale in effect at any given time. The manufacturer must sell products on the same basis, with respect to all rebates, discounts, and programs, to all competing dealers similarly situated.

Section 5. Section 320.3205, Florida Statutes, is created to read:

320.3205 Termination, cancellation, and nonrenewal of a manufacturer/dealer agreement.--

(1)(a) A manufacturer, directly or through any officer, agent, or employee, may not terminate, cancel, or fail to renew a manufacturer/dealer agreement without good cause, and, upon renewal, may not require additional inventory stocking requirements or increased retail sales targets in excess of the market growth in the dealer's area of responsibility.

(b) The manufacturer has the burden of showing good cause. For purposes of determining whether there is good cause for a proposed action by a manufacturer, all of the following factors must be considered:

1. The extent of the affected dealer's penetration in the relevant market area.

2. The nature and extent of the dealer's investment in its business.

3. The adequacy of the dealer's service facilities, equipment, parts, supplies, and personnel.

4. The effect of the proposed action on the community.

5. The extent and quality of the dealer's service under recreational vehicle warranties.

6. The failure to follow agreed-upon procedures or standards related to the overall operation of the dealership.

7. The dealer's performance under the terms of its manufacturer/dealer agreement.

(c) Except as provided in this section, a manufacturer shall provide a dealer at least 120 days' prior written notice

of termination, cancellation, or nonrenewal of the manufacturer/dealer agreement.

1. The notice shall state all reasons for termination, cancellation, or nonrenewal and shall further state that if, within 30 days following receipt of the manufacturer's notice, the dealer provides to the manufacturer a written notice of intent to cure all claimed deficiencies, the dealer will then have 120 days after the date of the manufacturer's notice to rectify the deficiencies. If the deficiencies are rectified within 120 days, the manufacturer's notice shall be void. If the dealer fails to provide the notice of intent to cure deficiencies in the prescribed time period, the termination, cancellation, or nonrenewal shall take effect 30 days after the dealer's receipt of the manufacturer's notice unless the dealer has new and untitled inventory on hand which may be disposed of pursuant to (3).

2. The notice period may be reduced to 30 days if the grounds for termination, cancellation, or nonrenewal are due to:

a. Conviction of or plea of nolo contendere to a felony of a dealer or one of its owners;

b. The abandonment or closing of the business operations of the dealer for 10 consecutive business days unless the closing is due to an act of God, strike, labor difficulty, or other cause over which the dealer has no control;

c. A significant misrepresentation by the dealer; or

d. A suspension or revocation of the dealer's license, or refusal to renew the dealer's license, by the department.

3. The notice provisions of this paragraph shall not apply if the reason for termination, cancellation, or nonrenewal is

insolvency, the occurrence of an assignment for the benefit of creditors, or bankruptcy.

(2) A dealer may terminate its manufacturer/dealer agreement with or without cause at any time by giving 30 days' written notice to the manufacturer. The dealer has the burden of showing good cause. Any of the following items shall be deemed good cause for a proposed action by a dealer:

(a) Conviction of or plea of nolo contendere to a felony of a manufacturer or one of its subsidiary companies.

(b) The business operations of the manufacturer have been abandoned or closed for 10 consecutive business days, unless the closing is due to an act of God, strike, labor difficulty, or other cause over which the manufacturer has no control.

(c) A significant misrepresentation by the manufacturer.

(d) A violation of ss. 320.3201-320.3211.

(e) A declaration by the manufacturer of bankruptcy, insolvency, or the occurrence of an assignment for the benefit of creditors or bankruptcy.

(3) If the manufacturer/dealer agreement is terminated, canceled, or not renewed by the manufacturer or by the dealer for cause, the manufacturer shall, at the election of the dealer and within 30 days of termination, cancellation, or nonrenewal, repurchase:

(a) All new recreational vehicles, as classified as "new" for titling purposes by s. 319.001(8), acquired from the manufacturer which have not been used except for demonstration purposes, altered, or damaged at 100 percent of the net invoice cost, including transportation, less applicable rebates and discounts to the dealer. In the event any of the vehicles repurchased are damaged, the amount due to the dealer shall be

reduced by the cost to repair the vehicle. Damage prior to delivery to the dealer will not disqualify repurchase under this subsection;

(b) All current and undamaged manufacturer's accessories and proprietary parts sold to the dealer for resale, if accompanied by the original invoice, at 105 percent of the original net price paid to the manufacturer to compensate the dealer for handling, packing, and shipping the parts; and

(c) Any functioning diagnostic equipment, special tools, current signage, and other equipment and machinery at 100 percent of the dealer's net cost plus freight, destination, delivery, and distribution charges and sales taxes, if any, provided it was purchased by the dealer within 5 years before termination and upon the manufacturer's request and can no longer be used in the normal course of the dealer's ongoing business. The manufacturer shall pay the dealer within 30 days after receipt of the returned items.

Section 6. Section 320.3206, Florida Statutes, is created to read:

320.3206 Transfer of ownership; family succession.--

(1) If a dealer desires to make a change in its ownership by the sale of the business assets, stock transfer, or otherwise, the dealer must give the manufacturer 30 days' written notice before the closing, including all supporting documentation as may be reasonably required by the manufacturer. The manufacturer shall not refuse consent to the proposed change or sale and may not disapprove or withhold approval of the change or sale unless the manufacturer can show that its decision is based on the manufacturer's reasonable criteria, which may include the prospective transferee's business

experience, moral character, financial qualifications, and any criminal record.

(2) If the manufacturer rejects a proposed change or sale, the manufacturer shall give written notice of its reasons to the dealer within 30 days after receipt of the dealer's notification and complete documentation. If the manufacturer does not give notice of rejection, the change or sale shall be deemed approved.

(3) The manufacturer has the burden of showing that its rejection of the transfer or sale is reasonable.

(4) It is unlawful for any manufacturer to fail to provide a dealer an opportunity to designate, in writing, a family member as a successor to the dealership in the event of the death, incapacity, or retirement of the dealer. It shall be unlawful to prevent or refuse to honor the succession to a dealership by a family member of the deceased, incapacitated, or retired dealer unless the manufacturer has provided to the dealer written notice of its objections within 30 days after receipt of the dealer's modification of the dealer's succession plan. Grounds for objection shall be lack of creditworthiness, conviction of a felony, lack of required licenses or business experience, or other condition that makes the succession unreasonable under the circumstances. The manufacturer has the burden of showing the unreasonableness of the succession. However, no family member may succeed to a dealership if the succession involves, without the manufacturer's consent, a relocation of the business or an alteration of the terms and conditions of the manufacturer/dealer agreement.

Section 7. Section 320.3207, Florida Statutes, is created to read:

320.3207 Warranty obligations.--

(1) Each warrantor shall:

(a) Specify in writing to each of its dealers obligations, if any, for preparation, delivery, and warranty service on its products;

(b) Compensate the dealer for warranty service required of the dealer by the warrantor; and

(c) Provide the dealer the schedule of compensation to be paid and the time allowances for the performance of such work and service.

In no event shall the schedule of compensation fail to include reasonable compensation for diagnostic work as well as warranty labor.

(2) Time allowances for the diagnosis and performance of warranty labor shall be reasonable for the work to be performed. The warrantor shall authorize the dealer to undertake warranty repairs without prior approval if the repairs require less than 3 hours of labor. In no event shall the compensation of a dealer for warranty labor be less than the lowest retail labor rates actually charged by the dealer for like nonwarranty labor as long as such rates are reasonable.

(3) The warrantor shall reimburse the dealer for warranty parts at actual wholesale cost plus a minimum 30-percent handling charge and the cost, if any, of freight to return warranty parts to the warrantor.

(4) Warranty audits of dealer records may be conducted by the warrantor on a reasonable basis, and dealer claims for warranty compensation shall not be denied except for cause, such as performance of nonwarranty repairs, material noncompliance

with warrantor's published policies and procedures, lack of material documentation, fraud, or misrepresentation.

(5) The dealer must submit warranty claims within 45 days after completing work.

(6) The dealer must notify the warrantor verbally or in writing if the dealer is unable to perform material or repetitive warranty repairs as soon as is reasonably possible.

(7) The warrantor must disapprove warranty claims in writing within 30 days after the date of submission by the dealer in the manner and form prescribed by the warrantor. Claims not specifically disapproved in writing within 30 days shall be construed to be approved and must be paid within 45 days.

(8) It is a violation of ss. 320.3201-320.3211 for any warrantor to:

(a) Fail to perform any of its warranty obligations with respect to a recreational vehicle and its components;

(b) Fail to include, in written notices of factory campaigns to recreational vehicle owners and dealers, the expected date by which necessary parts and equipment, including tires and chassis or chassis parts, will be available to dealers to perform the campaign work. The warrantor may ship parts to the dealer to effect the campaign work, and, if such parts are in excess of the dealer's requirements, the dealer may return unused parts to the warrantor for credit after completion of the campaign;

(c) Fail to compensate any of its dealers for authorized repairs effected by the dealer of merchandise damaged in manufacture or transit to the dealer, if the carrier is

designated by the warrantor, factory branch, distributor, or distributor branch;

(d) Fail to compensate any of its dealers for authorized warranty service in accordance with the schedule of compensation provided to the dealer pursuant to this section if performed in a timely and competent manner;

(e) Intentionally misrepresent in any way to purchasers of recreational vehicles that warranties with respect to the manufacture, performance, or design of the vehicle are made by the dealer either as warrantor or cowarrantor; or

(f) Require the dealer to make warranties to customers in any manner related to the manufacture of the recreational vehicle.

(9) It is a violation of ss. 320.3201-320.3211 for any dealer to:

(a) Fail to perform predelivery inspection functions, if required, in a competent and timely manner;

(b) Fail to perform warranty service work authorized by the warrantor in a reasonably competent and timely manner on any transient customer's vehicle of the same line-make without good cause; or

(c) Misrepresent the terms of any warranty.

(10)(a) Notwithstanding the terms of any manufacturer/dealer agreement, it is a violation of ss. 320.3201-320.3211 for any warrantor to fail to indemnify and hold harmless its dealer against any losses or damages to the extent such losses or damages are caused by the negligence or willful misconduct of the warrantor. The dealer shall not be denied indemnification for failing to discover, disclose, or remedy a defect in the design or manufacturing of the

recreational vehicle. The dealer shall provide to the warrantor a copy of any suit in which allegations are made that come within this subsection within 10 days after receiving such suit.

(b) Notwithstanding the terms of any manufacturer/dealer agreement, it is a violation of ss. 320.3201-320.3211 for any dealer to fail to indemnify and hold harmless its warrantor against any losses or damages to the extent such losses or damages are caused by the negligence or willful misconduct of the dealer. The warrantor shall provide to the dealer a copy of any suit in which allegations are made that come within this subsection within 10 days after receiving such suit.

Section 8. Section 320.3208, Florida Statutes, is created to read:

320.3208 Inspection and rejection by the dealer.--

(1) Whenever a new recreational vehicle is damaged prior to transit to the dealer or is damaged in transit to the dealer when the carrier or means of transportation has been selected by the manufacturer or distributor, the dealer shall:

(a) Notify the manufacturer or distributor of the damage within such additional time as specified in the manufacturer/dealer agreement; and

(b) Either:

1. Request from the manufacturer or distributor authorization to replace the components, parts, and accessories damaged or otherwise correct the damage; or

2. Reject the vehicle within the timeframe set forth in subsection (3).

If the manufacturer or distributor refuses or fails to authorize repair of such damage within 10 days after receipt of

notification or if the dealer rejects the recreational vehicle because of damage, ownership of the new recreational vehicle shall revert to the manufacturer or distributor.

(2) The dealer will exercise due care in custody of the damaged recreational vehicle, but the dealer shall have no other obligations, financial or otherwise, with respect to that recreational vehicle.

(3) The timeframe for inspection and rejection by the dealer shall be part of the manufacturer/dealer agreement and shall not be less than 3 business days after the physical delivery of the recreational vehicle.

(4) Any recreational vehicle that has, at the time of delivery to the dealer, an unreasonable amount of miles on its odometer, as determined by the dealer, may be subject to rejection by the dealer and reversion of the vehicle to the manufacturer or distributor.

Section 9. Section 320.3209, Florida Statutes, is created to read:

320.3209 Coercion of dealer prohibited.--

(1) A manufacturer or distributor may not coerce or attempt to coerce a dealer to:

(a) Purchase a product that the dealer did not order;

(b) Enter into an agreement with the manufacturer or distributor;

(c) Take any action which is unfair or unreasonable to the dealer; or

(d) Require a dealer to enter into an agreement that requires the dealer to submit its disputes to binding arbitration or otherwise waive rights or responsibilities under ss. 320.3201-320.3211.

(2) As used in this section, the term "coerce" includes, but is not limited to, threatening to terminate, cancel, or not renew a manufacturer/dealer agreement without good cause or threatening to withhold product lines or delay product delivery as an inducement to amending the manufacturer/dealer agreement.

Section 10. Section 320.3210, Florida Statutes, is created to read:

320.3210 Civil dispute resolution; mediation; relief.--

(1) A dealer, manufacturer, distributor, or warrantor injured by another party's violation of ss. 320.3201-320.3211 may bring a civil action in circuit court to recover actual damages. The court shall award attorney's fees and costs to the prevailing party in such an action. Venue for any civil action authorized by this section shall exclusively be in the county in which the dealership is located. In an action involving more than one dealer, venue may be in any county in which a dealer that is party to the action is located.

(2)(a) Prior to bringing suit under this section, the party bringing suit for an alleged violation shall serve a written demand for mediation upon the offending party.

(b) The demand for mediation shall be served upon the offending party via certified mail at the address stated within the agreement between the parties. In the event of a civil action between two dealers, the demand shall be mailed to the address on the dealer's license filed with the department.

(c) The demand for mediation shall contain a brief statement of the dispute and the relief sought by the party filing the demand.

(d) Within 20 days after the date a demand for mediation is served, the parties shall mutually select an independent

certified mediator and meet with that mediator for the purpose of attempting to resolve the dispute. The meeting place shall be in this state in a location selected by the mediator. The mediator may extend the date of the meeting for good cause shown by either party or upon stipulation of both parties.

(e) The service of a demand for mediation under this subsection shall stay the time for the filing of any complaint, petition, protest, or action under ss. 320.3201-320.3211 until representatives of both parties have met with a mutually selected mediator for the purpose of attempting to resolve the dispute. If a complaint, petition, protest, or action is filed before that meeting, the court shall enter an order suspending the proceeding or action until the meeting has occurred and may, upon written stipulation of all parties to the proceeding or action that they wish to continue to mediate under this subsection, enter an order suspending the proceeding or action for as long a period as the court considers appropriate. A suspension order issued under this paragraph may be revoked upon motion of any party or upon motion of the court.

(f) The parties to the mediation shall bear their own costs for attorney's fees and divide equally the cost of the mediator.

(3) In addition to the remedies provided in this section and notwithstanding the existence of any additional remedy at law, a dealer is authorized to make application to a circuit court for the grant, upon a hearing and for cause shown, of a temporary or permanent injunction, or both, restraining any person from acting as a dealer without being properly licensed pursuant s. 320.771, from violating or continuing to violate any of the provisions of ss. 320.3201-320.3211, or from failing or

refusing to comply with the requirements of ss. 320.3201-320.3211. Such injunction shall be issued without bond. A single act in violation of the provisions of ss. 320.3201-320.3211 shall be sufficient to authorize the issuance of an injunction.

Section 11. Section 320.3211, Florida Statutes, is created to read:

320.3211 Penalties.--

(1) The department shall, as it deems necessary, either suspend or revoke any license issued under s. 320.771 upon a finding that the dealer violated any provision of ss. 320.3201-320.3211. The department is authorized to assess, impose, levy, and collect by legal process fines, in an amount not to exceed $1,000 for each violation, against any individual if it finds that he or she has violated any provision of ss. 320.3201-320.3211. Such individual is entitled to an administrative hearing pursuant to chapter 120 to contest the action or fine levied, or about to be levied, upon him or her.

(2) In addition to the civil and administrative remedies, a person who violates any provision of ss. 320.3201-320.3211 commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 12. Section 320.8225, Florida Statutes, is amended to read:

320.8225 Mobile home manufacturer's and recreational vehicle manufacturer's, distributor's, and importer's license.--

(1) LICENSE REQUIRED.--Any person who engages in the business of a mobile home manufacturer or recreational vehicle manufacturer, distributor, or importer in this state, or who manufactures mobile homes or recreational vehicles out of state which are ultimately offered for sale in this state, shall

obtain annually a license for each factory location in this state and for each factory location out of state which manufactures mobile homes or recreational vehicles or distributes or imports recreational vehicles for sale in this state, prior to distributing mobile homes or recreational vehicles for sale in this state.

(2) APPLICATION.--The application for a license shall be in the form prescribed by the department and shall contain sufficient information to disclose the identity, location, and responsibility of the applicant. The application shall also include a copy of the warranty and a complete statement of any service agreement or policy to be utilized by the applicant, any information relating to the applicant's solvency and financial standing, and any other pertinent matter commensurate with safeguarding the public. The department may prescribe an abbreviated application for renewal of a license if the licensee had previously filed an initial application pursuant to this section. The application for renewal shall include any information necessary to bring current the information required in the initial application.

(3) FEES.--Upon making initial application, the applicant shall pay to the department a fee of $300. Upon making renewal application, the applicant shall pay to the department a fee of $100. Any applicant for renewal who has failed to submit his or her renewal application by October 1 shall pay a renewal application fee equal to the original application fee. No fee is refundable. All fees shall be deposited into the General Revenue Fund.

(4) NONRESIDENT.--Any person applying for a license who is not a resident of this state shall have designated an agent for service of process pursuant to s. 48.181.

(5) REQUIREMENT OF ASSURANCE.--

(a) Annually, prior to the receipt of a license to manufacture mobile homes, the applicant or licensee shall submit a surety bond, cash bond, or letter of credit from a financial institution, or a proper continuation certificate, sufficient to assure satisfaction of claims against the licensee for failure to comply with appropriate code standards, failure to provide warranty service, or violation of any provisions of this section. The amount of the surety bond, cash bond, or letter of credit shall be $50,000. Only one surety bond, cash bond, or letter of credit shall be required for each manufacturer, regardless of the number of factory locations. The surety bond, cash bond, or letter of credit shall be to the department, in favor of any retail customer who shall suffer loss arising out of noncompliance with code standards or failure to honor or provide warranty service. The department shall have the right to disapprove any bond or letter of credit that does not provide assurance as provided in this section.

(b) Annually, prior to the receipt of a license to manufacture, distribute, or import recreational vehicles, the applicant or licensee shall submit a surety bond, or a proper continuation certificate, sufficient to assure satisfaction of claims against the licensee for failure to comply with appropriate code standards, failure to provide warranty service, or violation of any provisions of this section. The amount of the surety bond shall be $10,000 per year. The surety bond shall be to the department, in favor of any retail customer who shall

suffer loss arising out of noncompliance with code standards or failure to honor or provide warranty service. The department shall have the right to disapprove any bond which does not provide assurance as provided in this section.

(c) The department shall adopt rules pursuant to chapter 120 consistent with this section in providing assurance of satisfaction of claims.

(d) The department shall, upon denial, suspension, or revocation of any license, notify the surety company of the licensee, in writing, that the license has been denied, suspended, or revoked and shall state the reason for such denial, suspension, or revocation.

(e) Any surety company which pays any claim against the bond of any licensee shall notify the department, in writing, that it has paid such a claim and shall state the amount of the claim.

(f) Any surety company which cancels the bond of any licensee shall notify the department, in writing, of such cancellation, giving reason for the cancellation.

(6) LICENSE YEAR.--A license issued to a mobile home manufacturer or recreational vehicle manufacturer, distributor, or importer entitles the licensee to conduct the business of a mobile home or recreational vehicle manufacturer for a period of 1 year from October 1 preceding the date of issuance.

(7) DENIAL OF LICENSE.--The department may deny a mobile home manufacturer's or recreational vehicle manufacturer's, distributor's, or importer's license on the ground that:

(a) The applicant has made a material misstatement in his or her application for a license.

(b) The applicant has failed to comply with any applicable provision of this chapter.

(c) The applicant has failed to provide warranty service.

(d) The applicant or one or more of his or her principals or agents has violated any law, rule, or regulation relating to the manufacture or sale of mobile homes or recreational vehicles.

(e) The department has proof of unfitness of the applicant.

(f) The applicant or licensee has engaged in previous conduct in any state which would have been a ground for revocation or suspension of a license in this state.

(g) The applicant or licensee has violated any of the provisions of the National Mobile Home Construction and Safety Standards Act of 1974 or any rule or regulation of the Department of Housing and Urban Development promulgated thereunder.

Upon denial of a license, the department shall notify the applicant within 10 days, stating in writing its grounds for denial. The applicant is entitled to a public hearing and may request that such hearing be held within 45 days of denial of the license. All proceedings shall be pursuant to chapter 120.

(8) REVOCATION OR SUSPENSION OF LICENSE.--The department shall suspend or, in the case of a subsequent offense, shall revoke any license upon a finding that the licensee violated any provision of this chapter or any other law of this state regarding the manufacture, warranty, or sale of mobile homes or recreational vehicles. When any license has been revoked or suspended by the department, it may be reinstated if the

department finds that the former licensee has complied with all applicable requirements of this chapter and an application for a license is refiled pursuant to this section.

(9) CIVIL PENALTIES; PROCEDURE.--In addition to the exercise of other powers provided in this section, the department is authorized to assess, impose, levy, and collect by legal process a civil penalty, in an amount not to exceed $1,000 for each violation, against any licensee if it finds that a licensee has violated any provision of this section or has violated any other law of this state having to do with dealing in motor vehicles. Any licensee shall be entitled to a hearing pursuant to chapter 120 should the licensee wish to contest the fine levied, or about to be levied, upon him or her.

Section 13. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application and, to this end, the provisions of this act are declared severable.

Section 13. This act shall take effect ~~July~~ October 1, 2007.

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

Remove line 43 and insert:

amending s.320.8225, F.S.; providing licensure requirements for distributors and importers; providing for severability; providing an effective date.

A bill to be entitled

An act relating to recreational vehicle dealers and manufacturers; creating s. 320.3201, F.S.; providing legislative intent; creating s. 320.3202, F.S.; providing definitions; creating s. 320.3203, F.S.; providing requirements for a manufacturer/dealer agreement; requiring designation of the area of sales responsibility; providing conditions for sales outside the dealer's area of sales responsibility; creating s. 320.3204, F.S.; providing requirements for sale by manufacturers and distributors; creating s. 320.3205, F.S.; providing requirements and procedures for termination, cancellation, or nonrenewal of an agreement by a manufacturer or a dealer; providing for the repurchase by the manufacturer of vehicles, accessories, and parts and equipment, tools, signage, and machinery; creating s. 320.3206, F.S.; providing for change in ownership by a dealer; requiring notice to the manufacturer; providing requirements for rejection by the manufacturer; providing for a dealer to name a family member as a successor in case of retirement, incapacitation, or death of the dealer; providing requirements for rejection of the successor by the manufacturer; creating s. 320.3207, F.S.; providing requirements for warrantors, manufacturers, and dealers with respect to warranties; providing responsibilities; providing requirements for compensation of the dealer; authorizing warranty audits by the warrantor; requiring cause for denial of compensation; providing for

disposition of warranty claims; prohibiting certain acts by the warrantor and the dealer; requiring notice of certain pending suits; creating s. 320.3208, F.S.; providing for inspection and rejection of a recreational vehicle upon delivery to a dealer; creating s. 320.3209, F.S.; prohibiting a manufacturer or distributor from coercing a dealer to perform certain acts; creating s. 320.3210, F.S.; providing for resolution when a dealer, manufacturer, distributor, or warrantor is injured by another party's violation; authorizing civil action; providing for mediation; providing for remedies; creating s. 320.3211, F.S.; providing administrative and criminal penalties for violations; providing for an administrative hearing to contest a penalty imposed by the department; providing for severability; providing an effective date.

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

Section 1. Section 320.3201, Florida Statutes, is created to read:

320.3201 Legislative intent.--It is the intent of the Legislature to protect the public health, safety, and welfare of the citizens of the state by regulating the relationship between recreational vehicle dealers and manufacturers, maintaining competition, and providing consumer protection and fair trade.

Section 2. Section 320.3202, Florida Statutes, is created to read:

320.3202 Definitions.--As used in ss. 320.3201-320.3211, the term:

(1) "Area of sales responsibility" means the geographical area agreed to by the dealer and the manufacturer in the manufacturer/dealer agreement in which the dealer has the exclusive right to display or sell the manufacturer's new recreational vehicles of a particular line-make.

(2) "Dealer" means any person, firm, corporation, or business entity licensed or required to be licensed pursuant to s. 320.771.

(3) "Distributor" means any person, firm, corporation, or business entity that purchases new recreational vehicles for resale to dealers.

(4) "Factory campaign" means an effort on the part of a warrantor to contact recreational vehicle owners or dealers in order to address a part or equipment issue.

(5) "Family member" means a spouse or a child, grandchild, parent, sibling, niece, or nephew or the spouse thereof.

(6) "Line-make" means a specific series of recreational vehicle products that:

(a) Are identified by a common series trade name or trademark;

(b) Are targeted to a particular market segment, as determined by their decor, features, equipment, size, weight, and price range;

(c) Have lengths and interior floor plans that distinguish the recreational vehicles from recreational vehicles with substantially the same decor, equipment, features, price, and

weight; and

(d) Belong to a single, distinct classification of recreational vehicle product type having a substantial degree of commonality in the construction of the chassis, frame, and body.

(7) "Manufacturer" means any person, firm, corporation, or business entity that engages in the manufacturing of recreational vehicles.

(8) "Manufacturer/dealer agreement" means a written agreement or contract entered into between a manufacturer and a dealer which fixes the rights and responsibilities of the parties and pursuant to which the dealer sells new recreational vehicles.

(9) "Proprietary part" means any part manufactured by or for and sold exclusively by the manufacturer.

(10) "Recreational vehicle" means the types of motor vehicle or motor vehicles defined by s. 320.01(1)(b).

(11) "Transient customer" means a customer who is temporarily traveling through a dealer's area of sales responsibility.

(12) "Warrantor" means any person, firm, corporation, or business entity that gives a warranty in connection with a new recreational vehicle or parts, accessories, or components thereof. Such term does not include service contracts, mechanical or other insurance, or extended warranties sold for separate consideration by a dealer or other person not controlled by a manufacturer.

Section 3. Section 320.3203, Florida Statutes, is created to read:

320.3203 Requirement for a written manufacturer/dealer agreement; area of sales responsibility.--

(1) A manufacturer or distributor may not sell a recreational vehicle in the state to or through a dealer without having entered into a manufacturer/dealer agreement which is signed by both parties.

(2) The manufacturer shall designate in the manufacturer/dealer agreement the area of sales responsibility exclusively assigned to a dealer and shall not change such area or establish another dealer for the same line-make in such area during the duration of the agreement.

(3) The area of sales responsibility may not be subject to review or change before 1 year after the execution of the manufacturer/dealer agreement.

(4) A motor vehicle dealer may not sell a new recreational vehicle in this state without having entered into a manufacturer/dealer agreement and may not sell outside of its designated area of sales responsibility.

(5)(a) Notwithstanding subsection (4), a dealer may sell outside of its designated area of responsibility if the dealer obtains a supplemental license pursuant to s. 320.771(7) and meets one of the following conditions:

1. For sales within another dealer's designated area of sales responsibility, the dealer must obtain in advance of the off-premise sale a written agreement signed by the dealer, the manufacturer of the recreational vehicles to be sold at the off-premise sale, and the dealer in whose designated area of sales responsibility the off-premise sale will occur. The written

agreement must:

a. Designate the recreational vehicles to be sold;

b. Set forth the time period for the off-premise sale; and

c. Affirmatively authorize the sale of the recreational vehicles.

2. The off-premise sale is not located within any dealer's designated area of sales responsibility and is in conjunction with a public vehicle show.

3. The off-premise sale is in conjunction with a public vehicle show in which more than 35 dealers are participating and is predominantly funded by manufacturers.

(b) For the purposes of this subsection, "public vehicle show" means an event sponsored by an organization approved under section 501(c)(6) of the Internal Revenue Code which has the purpose of promoting the welfare of the recreational vehicle industry and is located at a site:

1. That will be used to display and sell recreational vehicles;

2. That is not used for off-premise sales for more than 10 days in a calendar year; and

3. That is not the location set forth on any dealer's license as its place of business.

Section 4. Section 320.3204, Florida Statutes, is created to read:

320.3204 Sales of recreational vehicles by manufacturer or distributor.--Sales of recreational vehicles by manufacturers or distributors shall be in accordance with published prices, charges, and terms of sale in effect at any given time. The

manufacturer must sell products on the same basis, with respect to all rebates, discounts, and programs, to all competing dealers similarly situated.

Section 5. Section 320.3205, Florida Statutes, is created to read:

320.3205 Termination, cancellation, and nonrenewal of a manufacturer/dealer agreement.--

(1)(a) A manufacturer, directly or through any officer, agent, or employee, may not terminate, cancel, or fail to renew a manufacturer/dealer agreement without good cause, and, upon renewal, may not require additional inventory stocking requirements or increased retail sales targets in excess of the market growth in the dealer's area of responsibility.

(b) The manufacturer has the burden of showing good cause. For purposes of determining whether there is good cause for a proposed action by a manufacturer, all of the following factors must be considered:

1. The extent of the affected dealer's penetration in the relevant market area.

2. The nature and extent of the dealer's investment in its business.

3. The adequacy of the dealer's service facilities, equipment, parts, supplies, and personnel.

4. The effect of the proposed action on the community.

5. The extent and quality of the dealer's service under recreational vehicle warranties.

6. The failure to follow agreed-upon procedures or standards related to the overall operation of the dealership.

7. The dealer's performance under the terms of its manufacturer/dealer agreement.

(c) Except as provided in this section, a manufacturer shall provide a dealer at least 120 days' prior written notice of termination, cancellation, or nonrenewal of the manufacturer/dealer agreement.

1. The notice shall state all reasons for termination, cancellation, or nonrenewal and shall further state that if, within 30 days following receipt of the manufacturer's notice, the dealer provides to the manufacturer a written notice of intent to cure all claimed deficiencies, the dealer will then have 120 days after the date of the manufacturer's notice to rectify the deficiencies. If the deficiencies are rectified within 120 days, the manufacturer's notice shall be void. If the dealer fails to provide the notice of intent to cure deficiencies in the prescribed time period, the termination, cancellation, or nonrenewal shall take effect 30 days after the dealer's receipt of the manufacturer's notice unless the dealer has new and untitled inventory on hand.

2. The notice period may be reduced to 30 days if the grounds for termination, cancellation, or nonrenewal are due to:

a. Conviction of or plea of nolo contendere to a felony of a dealer or one of its owners;

b. The abandonment or closing of the business operations of the dealer for 10 consecutive business days unless the closing is due to an act of God, strike, labor difficulty, or other cause over which the dealer has no control;

c. A significant misrepresentation by the dealer; or

d. A suspension or revocation of the dealer's license, or refusal to renew the dealer's license, by the department.

3. The notice provisions of this paragraph shall not apply if the reason for termination, cancellation, or nonrenewal is insolvency, the occurrence of an assignment for the benefit of creditors, or bankruptcy.

(2) A dealer may terminate its manufacturer/dealer agreement with or without cause at any time by giving 30 days' written notice to the manufacturer. The dealer has the burden of showing good cause. Any of the following items shall be deemed good cause for a proposed action by a dealer:

(a) Conviction of or plea of nolo contendere to a felony of a manufacturer or one of its subsidiary companies.

(b) The business operations of the manufacturer have been abandoned or closed for 10 consecutive business days, unless the closing is due to an act of God, strike, labor difficulty, or other cause over which the manufacturer has no control.

(c) A significant misrepresentation by the manufacturer.

(d) A violation of ss. 320.3201-320.3211.

(e) A declaration by the manufacturer of bankruptcy, insolvency, or the occurrence of an assignment for the benefit of creditors or bankruptcy.

(3) If the manufacturer/dealer agreement is terminated, canceled, or not renewed by the manufacturer or by the dealer for cause, the manufacturer shall, at the election of the dealer and within 30 days of termination, cancellation, or nonrenewal, repurchase:

(a) All new motor vehicles, as defined by s. 319.001(8),

acquired from the manufacturer which have not been used except for demonstration purposes, altered, or damaged at 100 percent of the net invoice cost, including transportation, less applicable rebates and discounts to the dealer. In the event any of the vehicles repurchased are damaged, the amount due to the dealer shall be reduced by the cost to repair the vehicle. Damage prior to delivery to the dealer will not disqualify repurchase under this subsection;

(b) All current and undamaged manufacturer's accessories and proprietary parts sold to the dealer for resale, if accompanied by the original invoice, at 105 percent of the original net price paid to the manufacturer to compensate the dealer for handling, packing, and shipping the parts; and

(c) Any functioning diagnostic equipment, special tools, current signage, and other equipment and machinery at 100 percent of the dealer's net cost plus freight, destination, delivery, and distribution charges and sales taxes, if any, provided it was purchased by the dealer within 5 years before termination and upon the manufacturer's request and can no longer be used in the normal course of the dealer's ongoing business. The manufacturer shall pay the dealer within 30 days after receipt of the returned items.

Section 6. Section 320.3206, Florida Statutes, is created to read:

320.3206 Transfer of ownership; family succession.--

(1) If a dealer desires to make a change in its ownership by the sale of the business assets, stock transfer, or otherwise, the dealer must give the manufacturer 30 days'

written notice before the closing, including all supporting documentation as may be reasonably required by the manufacturer. The manufacturer shall not refuse consent to the proposed change or sale and may not disapprove or withhold approval of the change or sale unless the manufacturer can show that its decision is based on the manufacturer's reasonable criteria, which may include the prospective transferee's business experience, moral character, financial qualifications, and any criminal record.

(2) If the manufacturer rejects a proposed change or sale, the manufacturer shall give written notice of its reasons to the dealer within 30 days after receipt of the dealer's notification and complete documentation. If the manufacturer does not give notice of rejection, the change or sale shall be deemed approved.

(3) The manufacturer has the burden of showing that its rejection of the transfer or sale is reasonable.

(4) It is unlawful for any manufacturer to fail to provide a dealer an opportunity to designate, in writing, a family member as a successor to the dealership in the event of the death, incapacity, or retirement of the dealer. It shall be unlawful to prevent or refuse to honor the succession to a dealership by a family member of the deceased, incapacitated, or retired dealer unless the manufacturer has provided to the dealer written notice of its objections. Grounds for objection shall be lack of creditworthiness, conviction of a felony, lack of required licenses or business experience, or other condition that makes the succession unreasonable under the circumstances.

The manufacturer has the burden of showing the unreasonableness of the succession. However, no family member may succeed to a dealership if the succession involves, without the manufacturer's consent, a relocation of the business or an alteration of the terms and conditions of the manufacturer/dealer agreement.

Section 7. Section 320.3207, Florida Statutes, is created to read:

320.3207 Warranty obligations.--

(1) Each warrantor shall specify in writing to each of its dealers obligations, if any, for preparation, delivery, and warranty service on its products; compensate the dealer for warranty service required of the dealer by the warrantor; and provide the dealer the schedule of compensation to be paid and the time allowances for the performance of such work and service. In no event shall the schedule of compensation fail to include reasonable compensation for diagnostic work as well as warranty labor.

(2) Time allowances for the diagnosis and performance of warranty labor shall be reasonable for the work to be performed. The manufacturer shall authorize the dealer to undertake warranty repairs without prior approval if the repairs require less than 3 hours of labor. In no event shall the compensation of a dealer for warranty labor be less than the lowest retail labor rates actually charged by the dealer for like nonwarranty labor as long as such rates are reasonable.

(3) The warrantor shall reimburse the dealer for warranty parts at actual wholesale cost plus a minimum 30-percent

handling charge and the cost, if any, of freight to return warranty parts to the warrantor.

(4) Warranty audits of dealer records may be conducted by the warrantor on a reasonable basis, and dealer claims for warranty compensation shall not be denied except for cause, such as performance of nonwarranty repairs, material noncompliance with warrantor's published policies and procedures, lack of material documentation, fraud, or misrepresentation.

(5) The dealer must submit warranty claims within 45 days after completing work.

(6) The dealer must notify the warrantor verbally or in writing if the dealer is unable to perform material or repetitive warranty repairs as soon as is reasonably possible.

(7) The warrantor must disapprove warranty claims in writing within 30 days after the date of submission by the dealer in the manner and form prescribed by the warrantor. Claims not specifically disapproved in writing within 30 days shall be construed to be approved and must be paid within 45 days.

(8) It is a violation of ss. 320.3201-320.3211 for any warrantor to:

(a) Fail to perform any of its warranty obligations with respect to a recreational vehicle and its components;

(b) Fail to include, in written notices of factory campaigns to recreational vehicle owners and dealers, the expected date by which necessary parts and equipment, including tires and chassis or chassis parts, will be available to dealers to perform the campaign work. The manufacturer may ship parts to

the dealer to effect the campaign work, and, if such parts are in excess of the dealer's requirements, the dealer may return unused parts to the manufacturer for credit after completion of the campaign;

(c) Fail to compensate any of its dealers for authorized repairs effected by the dealer of merchandise damaged in manufacture or transit to the dealer, if the carrier is designated by the manufacturer, factory branch, distributor, or distributor branch;

(d) Fail to compensate any of its dealers for authorized warranty service in accordance with the schedule of compensation provided to the dealer pursuant to this section if performed in a timely and competent manner;

(e) Intentionally misrepresent in any way to purchasers of recreational vehicles that warranties with respect to the manufacture, performance, or design of the vehicle are made by the dealer either as warrantor or cowarrantor; or

(f) Require the dealer to make warranties to customers in any manner related to the manufacture of the recreational vehicle.

(9) It is a violation of ss. 320.3201-320.3211 for any dealer to:

(a) Fail to perform predelivery inspection functions, if required, in a competent and timely manner;

(b) Fail to perform warranty service work authorized by the warrantor in a reasonably competent and timely manner on any transient customer's vehicle of the same line-make without good cause; or

(c) Misrepresent the terms of any warranty.

(10)(a) Notwithstanding the terms of any manufacturer/dealer agreement, it is a violation of ss. 320.3201-320.3211 for any warrantor to fail to indemnify and hold harmless its dealer against any losses or damages to the extent such losses or damages are caused by the negligence or willful misconduct of the warrantor. The dealer shall not be denied indemnification for failing to discover, disclose, or remedy a defect in the design or manufacturing of the recreational vehicle. The dealer shall provide to the warrantor a copy of any suit in which allegations are made that come within this subsection within 10 days after receiving such suit.

(b) Notwithstanding the terms of any manufacturer/dealer agreement, it is a violation of ss. 320.3201-320.3211 for any dealer to fail to indemnify and hold harmless its warrantor against any losses or damages to the extent such losses or damages are caused by the negligence or willful misconduct of the dealer. The warrantor shall provide to the dealer a copy of pending suits in which allegations are made that come within this subsection within 10 days after receiving such suit.

Section 8. Section 320.3208, Florida Statutes, is created to read:

320.3208 Inspection and rejection by the dealer.--

(1) Whenever a new recreational vehicle is damaged prior to transit to the dealer or is damaged in transit to the dealer when the carrier or means of transportation has been selected by the manufacturer or distributor, the dealer shall:

(a) Notify the manufacturer or distributor of the damage

by the next business day after the date of delivery of the new recreational vehicle to the dealer or within such additional time as specified in the manufacturer/dealer agreement; and

(b) Either:

1. Request from the manufacturer or distributor authorization to replace the components, parts, and accessories damaged or otherwise correct the damage; or

2. Reject the vehicle within the timeframe set forth in subsection (3).

If the manufacturer or distributor refuses or fails to authorize repair of such damage within 10 days after receipt of notification or if the dealer rejects the recreational vehicle because of damage, ownership of the new recreational vehicle shall revert to the manufacturer or distributor.

(2) The dealer will exercise due care in custody of the damaged recreational vehicle, but the dealer shall have no other obligations, financial or otherwise, with respect to that recreational vehicle.

(3) The timeframe for inspection and rejection by the dealer shall be part of the manufacturer/dealer agreement and shall not be less than 3 business days after the physical delivery of the recreational vehicle.

(4) Any recreational vehicle that has, at the time of delivery to the dealer, an unreasonable amount of miles on its odometer, as determined by the dealer, may be subject to rejection by the dealer and reversion of the vehicle to the manufacturer or distributor.

Section 9. Section 320.3209, Florida Statutes, is created to read:

320.3209 Coercion of dealer prohibited.--

(1) A manufacturer or distributor may not coerce or attempt to coerce a dealer to:

(a) Purchase a product that the dealer did not order;

(b) Enter into an agreement with the manufacturer or distributor;

(c) Take any action which is unfair or unreasonable to the dealer; or

(d) Require a dealer to enter into an agreement that requires the dealer to submit its disputes to binding arbitration or otherwise waive rights or responsibilities under ss. 320.3201-320.3211.

(2) As used in this section, the term "coerce" includes, but is not limited to, threatening to terminate, cancel, or not renew a manufacturer/dealer agreement without good cause or threatening to withhold product lines or delay product delivery as an inducement to amending the manufacturer/dealer agreement.

Section 10. Section 320.3210, Florida Statutes, is created to read:

320.3210 Civil dispute resolution; mediation; relief.--

(1) A dealer, manufacturer, distributor, or warrantor injured by another party's violation of ss. 320.3201-320.3211 may bring a civil action in circuit court to recover actual damages. The court shall award attorney's fees and costs to the prevailing party in such an action. Venue for any civil action authorized by this section shall exclusively be in the county in

which the dealership is located. In an action involving more than one dealer, venue may be in any county in which a dealer that is party to the action is located.

(2)(a) Prior to bringing suit under this section, the party bringing suit for an alleged violation shall serve a written demand for mediation upon the offending party.

(b) The demand for mediation shall be served upon the offending party via certified mail at the address stated within the agreement between the parties. In the event of a civil action between two dealers, the demand shall be mailed to the address on the dealer's license filed with the department.

(c) The demand for mediation shall contain a brief statement of the dispute and the relief sought by the party filing the demand.

(d) Within 20 days after the date a demand for mediation is served, the parties shall mutually select an independent certified mediator and meet with that mediator for the purpose of attempting to resolve the dispute. The meeting place shall be in this state in a location selected by the mediator. The mediator may extend the date of the meeting for good cause shown by either party or upon stipulation of both parties.

(e) The service of a demand for mediation under this subsection shall stay the time for the filing of any complaint, petition, protest, or action under ss. 320.3201-320.3211 until representatives of both parties have met with a mutually selected mediator for the purpose of attempting to resolve the dispute. If a complaint, petition, protest, or action is filed before that meeting, the court shall enter an order suspending

the proceeding or action until the meeting has occurred and may, upon written stipulation of all parties to the proceeding or action that they wish to continue to mediate under this subsection, enter an order suspending the proceeding or action for as long a period as the court considers appropriate. A suspension order issued under this paragraph may be revoked upon motion of any party or upon motion of the court.

(f) The parties to the mediation shall bear their own costs for attorney's fees and divide equally the cost of the mediator.

(3) In addition to the remedies provided in this section and notwithstanding the existence of any additional remedy at law, a dealer is authorized to make application to a circuit court for the grant, upon a hearing and for cause shown, of a temporary or permanent injunction, or both, restraining any person from acting as a dealer without being properly licensed pursuant s. 320.771, from violating or continuing to violate any of the provisions of ss. 320.3201-320.3211, or from failing or refusing to comply with the requirements of ss. 320.3201-320.3211. Such injunction shall be issued without bond. A single act in violation of the provisions of ss. 320.3201-320.3211 shall be sufficient to authorize the issuance of an injunction.

Section 11. Section 320.3211, Florida Statutes, is created to read:

320.3211 Penalties.--

(1) The department shall, as it deems necessary, either suspend or revoke any license issued under s. 320.771 upon a finding that the dealer violated any provision of ss. 320.3201-

320.3211. The department is authorized to assess, impose, levy, and collect by legal process fines, in an amount not to exceed $1,000 for each violation, against any individual if it finds that he or she has violated any provision of ss. 320.3201-320.3211. Such individual is entitled to an administrative hearing pursuant to chapter 120 to contest the action or fine levied, or about to be levied, upon him or her.

(2) In addition to the civil and administrative remedies, a person who violates any provision of ss. 320.3201-320.3211 commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 12. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application and, to this end, the provisions of this act are declared severable.

Section 13. This act shall take effect July 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB EEIC 07-09 Florida Transportation Commission
SPONSOR(S): Economic Expansion & Infrastructure Council
TIED BILLS: **IDEN./SIM. BILLS:** SB 1454

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Economic Expansion & Infrastructure Council		Creamer	Tinker
1)			
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

PCB EEIC 07-09 requires the Florida Transportation Commission (FTC), as part of its primary functions, to monitor the efficiency, productivity, and management of the authorities created under chapters 343 and 348. The FTC must also conduct periodic reviews of each authority's operations and budget, acquisition of property, management of revenue and bond proceeds, and compliance with applicable laws and generally accepted accounting principles. In addition, the bill prohibits a member of the FTC from entering into the day-to-day operation of a monitored authority. The bill also includes the Executive Director of the FTC in Senior Management Services employment classification, previously classified as Selected Exempt Services.

Although the Department of Transportation (DOT) and FTC noted a potential fiscal impact, s. 20.23, F.S., requires DOT to provide to FTC, such assistance, information, and documents as are requested by the FTC to enable the FTC to fulfill its duties and responsibilities. Therefore, any fiscal impact would be absorbed within DOT through a reallocation of State Transportation Trust Fund funds.

The bill is effective July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:
Provide limited government -- Provisions in PCB EEIC 07-09 implicate this principle by authorizing the FTC to monitor the efficiency, productivity, and management of the authorities created under chapters 343 (Regional Transportation Authorities) and 348 (Expressway Authorities).

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida Transportation Commission

Section 20.23, F.S., creates the FTC to provide oversight of the Department of Transportation (DOT) and make transportation policy recommendations to the Governor and Legislature. Currently, the four employees of the FTC are classified as Selected Exempt Service personnel for the purposes of salary and benefits.

Regional Transportation Authorities (Ch. 343, F.S.)

Four regional transportation authorities are created under ch. 343, F.S. Three of the authorities, the South Florida Regional Transportation Authority (SFRTA), the Central Florida Regional Transportation Authority (LYNX), and the Tampa Bay Commuter Transit Authority (TBCTA) are primarily focused on the development, operation, and maintenance of public transit systems. The Northwest Florida Transportation Corridor Authority (NFTCA) is primarily focused on highway and bridge development.

South Florida Regional Transportation Authority

The SFRTA coordinates transit and commuter rail planning in the three participating counties of Miami-Dade, Broward, and Palm Beach. The SFRTA was created in 2003, when the Legislature re-established the Tri-County Commuter Rail Authority as the SFRTA to provide a coordinated transportation system within the three counties in order to relieve traffic congestion and move residents and tourists more efficiently throughout the area. In addition, it was believed a single organization would improve the ability to draw down federal matching dollars for public transit, rather than competing for the funds separately.

Although the Tri-Rail commuter rail system remains the authority's primary focal point, the SFRTA is empowered to construct, finance, and manage a variety of public transportation options as an integrated system. The SFRTA has numerous powers and responsibilities, including the power to:

- Acquire, sell, and lease property;
- Use eminent domain;
- Enter into purchasing agreements and other contracts;
- Enforce collection of system rates, fees, and other charges; and
- Approve revenue bonds issued on its behalf by the State Division of Bond Finance.

The SFRTA has a nine-member board comprised of:

- A county commissioner from each of the three counties, selected by his or her peers;

- A citizen selected by each county commission who must live within the county he or she is representing, be a registered voter, and, insofar as practicable, represent civic and business interests of the community;

• One of the FDOT district secretaries who is responsible for one or more of the counties within the SFRTA's boundaries, i.e., either the District 4 secretary (whose region includes Broward and Palm Beach counties) or the District 6 secretary (whose region includes Miami- Dade). At this time, the FDOT District 6 secretary serves on SFRTA;

• Two citizens appointed by the Governor who live in different counties within the SFRTA's jurisdiction, but not the same county as the FDOT district secretary. They also must be registered voters.

Central Florida Regional Transportation Authority

LYNX provides fixed-route public bus service; a door-to-door van service for medically qualified and other eligible passengers; shuttle service to special community events; commuter assistance with matching riders to car pools; and "Road Rangers" who provide roadside assistance to disabled vehicles on I-4. LYNX has numerous powers and responsibilities, including the power to:

- Acquire, sell, and lease property;
- Use eminent domain;
- Enter into purchasing agreements and other contracts;
- Enforce collection of system rates, fees, and other charges; and
- Approve revenue bonds issued on its behalf by the State Division of Bond Finance.

The LYNX has a 5-member board including:

• The chairs of the Seminole, Orange and Osceola county commissions, or another member of the commission designated by the county chair;

• The mayor of the city of Orlando, or a member of the Orlando City Council designated by the mayor;

• And the FDOT district secretary, or his or her designee, for the district within which the area served by the authority is located.

Tampa Bay Commuter Transit Authority

The TBCTA was created by the Florida Legislature in 1990 for the purposes of developing and operating a commuter rail or ferry system. The TBCTA has numerous powers and responsibilities, including the power to:

- Acquire, sell, and lease property;
- Use eminent domain;
- Enter into purchasing agreements and other contracts;
- Enforce collection of system rates, fees, and other charges; and
- Approve revenue bonds issued on its behalf by the State Division of Bond Finance.

The TBCTA's board comprises elected and citizen representatives from Hernando, Hillsborough, Manatee, Pasco, Pinellas, Polk, and Sarasota Counties, as well as the affected FDOT District Secretaries or their designees, and an appointee of the Governor. Representatives from each of the seven counties' local transit authorities serve as ex officio members. The TBCTA has directed some organizational work and feasibility studies; however, the TBCTA has been dormant for several years due to a lack of consensus among local authorities regarding the routes and design features funding the system.

Northwest Florida Transportation Corridor Authority

The NFTCA was created by the Legislature in 2005 to improve mobility, traffic safety, and economic development along the U.S. 98 corridor stretching through Escambia, Santa Rosa, Walton, Okaloosa, Bay, Gulf, Franklin, and Wakulla counties. Another goal of the NFTCA is to identify and develop hurricane evacuation routes. The NFTCA is to adopt a master plan by July 1, 2007, which:

• Identifies areas of the corridor where mobility, traffic safety, and efficient hurricane evacuation need to be improved;

• Evaluates the economic development potential of the corridor and considers strategies to develop that potential;

• Identifies methods of building partnerships with local governments, other state and federal entities, the private-sector business community, and the public in support of corridor improvements; and

• Identifies projects that will accomplish these goals and objectives.

The NFTCA has numerous powers and responsibilities including the power to:

• Build and maintain highways and other transportation facilities within the U.S. 98 corridor that will help meet its statutory goals;
• Issue revenue bonds, either on its own or through the state Division of Bond Finance.
• Set and collect tolls, fees, and other charges;
• Acquire land by purchase, donation, or eminent domain;
• Borrow money;
• Sue and be sued;
• Enter into contracts, agreements, and partnerships;
• Enter into lease-purchase agreements with FDOT to manage the U.S. 98 Corridor System;
• Enter into public-private partnerships to construct, operate, own, or finance transportation facilities that are part of the system.

The governing board is composed of a resident from each of the eight counties, to be appointed by the governor to 4-year terms. The FDOT District 3 secretary serves as an ex-officio, nonvoting member.

Expressway and Bridge Authorities (Ch. 348, F.S.)

Chapter 348, F.S., allows for the formation of expressway authorities within any county, or two or more contiguous counties. Typically, Florida expressway authorities have been formed within single counties with the power to develop, maintain, and operate an expressway system within the geographic boundaries of the county. Nine expressway authorities have been created in ch. 348, F.S., by the Florida Legislature. A tenth, the Miami-Dade County Expressway Authority, was created by the Miami-Dade County Commission pursuant to the process in Part I of ch. 348, F.S.

The purpose of these authorities is to construct, maintain, and operate tolled transportation facilities that complement the State Highway System and the Florida Turnpike Enterprise. Revenue bonds issued for expressway projects must comply with state constitutional requirements. The expressway authorities have boards of directors that typically include a combination of local-government officials or residents and Governor appointees who decide on projects and expenditure of funds.

Tampa-Hillsborough County Expressway Authority

The Tampa-Hillsborough County Expressway Authority (THCEA) was established in 1963 under Part IV of ch. 348, F.S., to build, operate, and maintain toll-financed expressways in Hillsborough County. The THCEA owns the Lee Roy Selmon Crosstown Expressway (including the elevated reversible lanes) which is currently the only expressway the THCEA operates. The THCEA originally planned the neighboring Veterans Expressway which was transferred to, and is operated by the DOT's Turnpike Enterprise. A December 2006 report from the Florida Auditor General identified a number of critically needed improvements to the THCEA's management and financial controls.

Orlando-Orange County Expressway Authority

The Orlando-Orange County Expressway Authority (OOCEA) was created under Part V of ch. 348, F.S., to develop, maintain, and operate an expressway system in Orange County. Unlike other Florida expressway authority statutes, s. 348.754, (2)(n), F.S., gives the OOCEA the ability to develop, maintain, and operate transportation facilities outside the boundaries of Orange County as long as the county with jurisdiction for the location of the facility consents. Currently, the OOCEA is conducting a corridor study in Seminole County.

Southwest Florida Expressway Authority

The Southwest Florida Expressway Authority (SWFEA) created under Part X of ch. 348, F.S., is an 8-person body including transportation officials from Lee and Collier Counties, the role of which is to raise toll revenue to widen and improve major arteries throughout both counties. Of particular priority is the needed revenue to widen I-75 beyond the 6-lane expansion due to begin in March 2007. The contract has been awarded and is on schedule to begin when the notice to proceed is issued prior to the end of March. The SWFEA is given statutory authority to expand the system into Charlotte County with the consent of the Board of County Commissioners of Charlotte, Collier, and Lee Counties. Consent for SWFEA to expand the system into Charlotte County, remains at the discussion level.

Other Expressway Authorities

The Brevard County Expressway Authority, Broward County Expressway Authority, Pasco County Expressway Authority, St. Lucie County Expressway and Bridge Authority, Seminole County Expressway Authority and the Santa Rosa Bay Bridge Authority have been created under Parts II, III, VI, VII, VIII, and IX of ch. 348, F.S., respectively. Of these other authorities, Santa Rosa Bay Bridge Authority is currently the only one active.

Proposed Changes

This bill amends s. 20.23, F.S., to require the FTC as part of its primary functions to monitor the efficiency, productivity, and management of the authorities created under chapters 343 and 348. The FTC must also conduct periodic reviews of each authority's operations and budget, acquisition of property, management of revenue and bond proceeds, and compliance with applicable laws and generally accepted accounting principles. In addition, the bill prohibits a member of the FTC from entering into the day-to-day operation of a monitored authority. The bill also revises the employment classification of the Executive Director of the FTC from Selected Exempted Services to Senior Management Services.

C. SECTION DIRECTORY:

Section 1

- Creates sub-paragraph 8 in paragraph (b) of subsection (2) of section 20.23, F.S., to direct the FTC to monitor Regional Transportation and Expressway Authorities created under sections 343 and 348, Florida Statutes.

- Revises the employment classification of the Executive Director of the FTC from Selected Exempted Services to Senior Management Services.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

The DOT and FTC estimate non-recurring expenditures of up to $36,000 and recurring expenditures of up to $600,000 (salary, benefits and travel expenses). Alternatively, DOT and FTC estimate outsourcing of the required reviews may cost up to $1 million per year.

Although DOT and FTC noted a potential fiscal impact, s. 20.23, F.S., requires the DOT to provide to FTC, such assistance, information, and documents as are requested by the FTC to enable the FTC to fulfill its duties and responsibilities. Therefore, any fiscal impact would be absorbed within DOT through a reallocation of State Transportation Trust Fund funds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

N/A

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Florida Transportation Commission; amending s. 20.23, F.S.; requiring the commission to monitor transportation authorities and conduct periodic reviews of each authority; prohibiting a member of the commission from entering into the day-to-day operation of a monitored authority; requiring that the salary and benefits of the executive director of the commission be set in accordance with the Senior Management Service; providing an effective date.

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

Section 1. Paragraphs (b), (c), and (h) of subsection (2) of section 20.23, Florida Statutes, are amended to read:

20.23 Department of Transportation.--There is created a Department of Transportation which shall be a decentralized agency.

(2)

(b) The commission shall have the primary functions to:

1. Recommend major transportation policies for the Governor's approval, and assure that approved policies and any revisions thereto are properly executed.

2. Periodically review the status of the state transportation system including highway, transit, rail, seaport, intermodal development, and aviation components of the system and recommend improvements therein to the Governor and the Legislature.

3. Perform an in-depth evaluation of the annual department

budget request, the Florida Transportation Plan, and the tentative work program for compliance with all applicable laws and established departmental policies. Except as specifically provided in s. 339.135(4)(c)2., (d), and (f), the commission may not consider individual construction projects, but shall consider methods of accomplishing the goals of the department in the most effective, efficient, and businesslike manner.

4. Monitor the financial status of the department on a regular basis to assure that the department is managing revenue and bond proceeds responsibly and in accordance with law and established policy.

5. Monitor on at least a quarterly basis, the efficiency, productivity, and management of the department, using performance and production standards developed by the commission pursuant to s. 334.045.

6. Perform an in-depth evaluation of the factors causing disruption of project schedules in the adopted work program and recommend to the Legislature and the Governor methods to eliminate or reduce the disruptive effects of these factors.

7. Recommend to the Governor and the Legislature improvements to the department's organization in order to streamline and optimize the efficiency of the department. In reviewing the department's organization, the commission shall determine if the current district organizational structure is responsive to Florida's changing economic and demographic development patterns. The initial report by the commission must be delivered to the Governor and Legislature by December 15, 2000, and each year thereafter, as appropriate. The commission may retain such experts as are reasonably necessary to effectuate

this subparagraph, and the department shall pay the expenses of such experts.

8. Monitor the efficiency, productivity, and management of the authorities created under chapters 343 and 348, including any authority formed using the provisions of part I of chapter 348. The commission shall also conduct periodic reviews of each authority's operations and budget, acquisition of property, management of revenue and bond proceeds, and compliance with applicable laws and generally accepted accounting principles.

(c) The commission or a member thereof may not enter into the day-to-day operation of the department or a monitored authority and is specifically prohibited from taking part in:

1. The awarding of contracts.

2. The selection of a consultant or contractor or the prequalification of any individual consultant or contractor. However, the commission may recommend to the secretary standards and policies governing the procedure for selection and prequalification of consultants and contractors.

3. The selection of a route for a specific project.

4. The specific location of a transportation facility.

5. The acquisition of rights-of-way.

6. The employment, promotion, demotion, suspension, transfer, or discharge of any department personnel.

7. The granting, denial, suspension, or revocation of any license or permit issued by the department.

(h) The commission shall appoint an executive director and assistant executive director, who shall serve under the direction, supervision, and control of the commission. The executive director, with the consent of the commission, shall

employ such staff as are necessary to perform adequately the functions of the commission, within budgetary limitations. All employees of the commission are exempt from part II of chapter 110 and shall serve at the pleasure of the commission. The salaries and benefits of all employees of the commission, except for the executive director, shall be set in accordance with the Selected Exempt Service; ~~provided,~~ however, the salary and benefits of the executive director shall be set in accordance with the Senior Management Service. ~~that~~ The commission shall have complete authority for fixing the salary of the executive director and assistant executive director.

Section 2. This act shall take effect July 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB EEIC 07-10 Motor Vehicle Dealers/Deceptive & Unfair Trade Practices
SPONSOR(S): Committee on Infrastructure
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Committee on Infrastructure		Owen	Tinker JBT
1)			
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) authorizes a cause of action by a consumer against a business or individuals engaging in a described deceptive or unfair trade practice that harms the consumer. Current law also lists activities and practices by a motor vehicle dealer that constitute unfair or deceptive trade practices under FDUTPA. A court should consider the amount of actual damages when evaluating an award of attorney's fees for any other of the listed violations, but otherwise current law provides no additional procedural requirements for bringing an individual FDUTPA claim against a motor vehicle dealer for such practices.

This PCB requires a consumer who seeks to sue a motor vehicle dealer under FDUTPA to first serve that dealer with a written demand at least 30 days before filing suit. The bill provides that the dealer's compliance with the demand serves as a release from further FDUTPA liability arising from the same transaction, but is not an admission of wrongdoing. The payment of or offer to pay damages can serve as a defense in any action for damages not brought under FDUTPA against the dealer arising out of the event described in the notice.

The PCB does not appear to have a fiscal impact on local or state governments.

The PCB takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Reduce Government: This PCB increases the procedural requirements related to prosecuting a civil action against a motor vehicle dealer under the Florida Deceptive and Unfair Trade Practices Act.

B. EFFECT OF PROPOSED CHANGES:

Background

Florida Deceptive and Unfair Trade Practices Act

The Florida Deceptive and Unfair Trade Practices Act ("FDUTPA")[1] was enacted "[t]o protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce."[2]

Businesses and individuals are afforded broad protection from unfair or deceptive acts or practices under FDUTPA. FDUTPA states a broad proscription, which applies through civil enforcement across industries and business conduct generally in any medium. The definition of "trade or commerce" in s. 501.203, F.S., on its face encompasses all advertising, soliciting, providing, offering, or distributing without limitation as to medium or subject matter. FDUTPA prohibits such acts in "any trade or commerce,"[3] except as specifically exempted in chapter 501, F.S.

Claims under FDUTPA can generally be brought either by the state through a state attorney or the Attorney General acting as "the enforcing authority,"[4] or by a private party who has allegedly suffered actual losses resulting from a FDUTPA violation.

Current law does not require a potential plaintiff contemplating a FDUTPA action to send a demand letter and attempt to settle the action before filing suit against a motor vehicle dealer.

Unfair or Deceptive Acts or Practices Relating to Vehicles

Part VI of chapter 501, F.S., currently consists of only ss. 501.975 and 501.976, F.S., and applies FDUTPA specifically to a motor vehicle dealer, whom s. 501.975(2), F.S., defines as being "a motor vehicle dealer as defined in s. 320.27, F.S."

Section 501.976, F.S., lists activities and practices by a motor vehicle dealer that constitute unfair or deceptive trade practices under FDUTPA. The section further provides a court should consider the amount of actual damages when evaluating an award of attorney's fees for any other of the listed violations, but otherwise provides no additional procedural requirements for bringing a private-party FDUTPA claim against a motor vehicle dealer for such practices.

Effect of Proposed Changes

In an effort to reflect the current FDUTPA provisions in the unfair or deceptive acts or practices (part VI of chapter 501, F.S.) relating to motor vehicles, the bill mirrors several sections of the FDUTPA as

[1] Sections 501.201-501.213, F.S.
[2] Section 501.202(2), F.S.
[3] Section 501.204(1), F.S.
[4] Section 501.203(2), F.S.

provided in part II, chapter 501, F.S., and creates those provisions relating to motor vehicles in part VI, of chapter 501, F.S. For instance:

- section 2 reproduces s. 501.204, F.S., relating to unlawful acts and practices, and how the section is to be construed;
- section 4 reproduces s. 501.2077, F.S., relating to violations involving a senior citizen or handicapped person, and the civil penalties for such a violation;
- section 5 largely reproduces s. 501.211, F.S., relating to other individual remedies;
- section 6 reproduces s. 501.213, F.S., relating to the effect on other remedies; and
- section 7 is essentially the same as s. 501.2105, F.S., relating to the awarding of attorney's fees and how the fees are determined.

Section 501.979, F.S., specifies that the trial court shall consider actual damages in relation to the time spent when evaluating the reasonableness of an award of attorney's fees to a private person. This language is reproduced from s. 501.975(19), F.S.

The bill also adds the requirement that an individual first send the potential defendant a demand letter prior to filing a civil action under FDUTPA against a motor vehicle dealer[5]. The applicable statute of limitations period for an action under FDUTPA is tolled by the mailing of the demand letter required by this section for 30 days for an individual claim. The language relating to the demand letter process is comparable to the language currently found in s. 627.736(11), F.S., the Personal Injury Protection statute.

Further, this bill requires the Department of Legal Affairs (DLA) to prepare a sample notice of claim to be made available to the public.

Pre-Suit Notice Process

At least 30 days before a potential claimant may sue for a FDUTPA violation, the claimant must provide a dealer with written notice of the claimant's intent to initiate litigation. This good faith written notice by the claimant must:

- Indicate it is a demand pursuant to s. 501.98, F.S.;
- State the name, address, telephone number of the claimant and the name and address of the dealer;
- Specifically describe the underlying facts and how the facts give rise to a violation of FDUTPA;
- Be accompanied by a copy of all documents upon which the claim is based; and
- Include a comprehensive and detailed statement describing each item of actual damage and the amount claimed for each item of damage, including, if applicable, the formula or basis by which each item of damage was calculated.

The notice must be sent by certified mail, return receipt requested, to the dealer. If the dealer is a corporate entity, the notice must be sent to the business's registered agent on file with the Secretary of State. In the absence of such an agent, the notice can be sent to individuals within the corporation authorized by statute to receive service of process.

If the dealer pays the claim in the notice within 30 days, together with a surcharge of 10 percent of the amount requested in the demand letter (not to exceed $500), then the plaintiff may not initiate litigation against the dealer under this section. This provision is similar to the one found in the Personal Injury Protection statute, s. 627.736(11), F.S., which provides for a penalty of 10 percent of the amount paid by the insurer, not to exceed $250, when the insurer pays an overdue claim.

A dealer is not required to pay attorney's fees if:

[5] It should be noted, however, these conditions do not apply to actions brought by a State Attorney or DLA (the enforcing authorities).

- The dealer, within 30 days after receiving the notice, notifies the claimant in writing, and a court or arbitrator agrees, the amount claimed is not supported by the facts of the transaction or by generally accepted accounting principles, or includes items not properly recoverable under this part; or
- The claimant fails to substantially comply with this section.

A payment by the dealer will be treated as being made on the date a draft or other valid instrument equivalent to payment is placed in the U.S. mail in a properly addressed, postpaid envelope, or, if not so posted, on the date of actual delivery. The claimant is not entitled to a surcharge in any proceeding initiated against a dealer under this part if the dealer rejects or ignores the notice of claim.

A dealer's offer to pay, or payment of, a claimant's actual damages does not constitute an admission of any wrongdoing and is not admissible to prove the dealer's liability or absence of liability. Moreover, such an offer or payment releases the dealer from any further liability under FDUTPA arising out of the event described in the notice.

The provisions requiring the demand letter do not apply to any claim for actual damages brought and certified as a maintainable class action or to any action brought by the enforcing authority.

If the claimant initiates litigation without having complied with the outlined procedures, the court is permitted to abate litigation until the claimant has complied with the required procedures and the dealer has been allowed the opportunity to accept or reject the demand.

The provisions found in part VI of chapter 501, F.S. do not apply to:
- An act or practice required or specifically permitted by federal or state law.
- A claim for personal injury or death or a claim for damage to property other than property that is the subject of the consumer transaction.
- Any person or activity regulated under the laws administered by the Office of Insurance Regulation.
- Any person or activity regulated under the laws administered by the Department of Financial Services.

A claim brought by a person, other than the enforcing authority, against a dealer is now precluded under part II of chapter 501, F.S., and must be pursued through part VI of chapter 501, F.S.

C. SECTION DIRECTORY:

Section 1. Amends s. 501.975, F.S., providing definitions for part VI of chapter 501, F.S., Unfair or Deceptive Acts or Practices; Vehicles.

Section 2. Creates s. 501.9755, F.S., declaring that unfair methods of competition, unconscionable acts or practices used by motor vehicle dealers are unlawful; providing legislative intent.

Section 3. Amends s. 501.976, F.S., revising language concerning actionable, unfair, or deceptive acts or practices by dealers.

Section 4. Creates s. 501.9765, F.S., describing violations against senior citizens and handicapped persons; providing civil penalties for those violations.

Section 5. Creates s. 501.977, F.S., providing additional individual remedies.

Section 6. Creates s. 501.978, F.S., providing the effect of other remedies.

Section 7. Creates s. 501.979, F.S., providing for attorney's fees.

Section 8. Creates s. 501.98, F.S., describing the demand letter provisions.

Section 9. Creates s. 501.99, F.S., providing application of certain provisions.

Section 10. Amends s. 501.212, F.S., exempting certain claims against motor vehicle dealers from the provisions of part II of chapter 501, F.S.

Section 11. Provides this bill is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that the bill allows consumer claims against motor vehicle dealers to be resolved prior to a FDUTPA suit being filed, the costs associated with litigation will be avoided.

D. FISCAL COMMENTS:

There will be minimal nonrecurring fiscal costs to the Department of Legal Affairs in FY 2007-08 related to preparing a sample notice for the public's use.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this bill does not appear to: require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to the Florida Automobile Dealers Association, prior to 2001 attorneys would send a car dealer a pre-suit demand letter affording the dealer an opportunity to resolve a customer's claim before filing a lawsuit. However, since the 2001 amendments to Florida's Deceptive and Unfair Trade Practice Act the dealers assert that pre-suit demands are seldom made.

Currently, there is no pre-suit notification requirement for claims against car dealers (as there are, for example, in medical malpractice, P.I.P. claims, and construction industry claims). The bill gives a car dealer 30 days to recognize a claim or not contest a claim, and attempt to resolve a customer's request for compensation.

D. STATEMENT OF THE SPONSOR

N/A

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

A bill to be entitled

An act relating to deceptive and unfair trade practices; amending s. 501.975, F.S.; providing definitions for part VI of ch. 501, F.S.; creating s. 501.9755, F.S.; declaring that unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices used by motor vehicle dealers are unlawful; providing legislative intent; amending s. 501.976, F.S.; revising language concerning actionable, unfair, or deceptive acts or practices by dealers; correcting a cross-reference; creating s. 501.9765, F.S.; providing definitions; providing that a motor vehicle dealer who willfully uses a method or practice that victimizes or attempts to victimize senior citizens or handicapped persons commits an unfair or deceptive trade practice; providing a civil penalty; providing for reimbursement or restitution; providing for disposition of penalties; creating s. 501.977, F.S.; providing additional remedies against a motor vehicle dealer; creating s. 501.978, F.S.; providing that the remedies of part VI of ch. 501, F.S., are in addition to remedies otherwise available for the same conduct under state or local law and do not preempt local consumer protection ordinances not in conflict with that part; creating s. 501.979, F.S.; providing for attorney's fees for a prevailing party; providing procedures for receiving attorney's fees; authorizing the Department of Legal Affairs or the office of the state attorney to receive attorney's fees and costs under certain circumstances; creating s. 501.98, F.S.; requiring that,

as a condition precedent to initiating civil litigation arising under part VI of ch. 501, F.S., a claimant give the motor vehicle dealer written notice of the claimant's intent to initiate litigation within a specified period before initiating the litigation; providing for the content of the notice and the method of delivery of the notice; providing that if the claim is paid by the dealer within a specified period after receiving the notice, with a specified surcharge, the claimant may not initiate litigation against the dealer, and the dealer is obligated to pay only a set amount for the claimant's attorney's fees; providing a cap on the surcharge; providing that a claimant is not entitled to a surcharge under certain circumstances; providing that a dealer is not obligated to pay the claimant's attorney's fees under certain circumstances; providing for the effect of payment of actual damages or an offer to pay actual damages for specified purposes; providing that the statute of limitations is tolled for a certain period upon the mailing of a specified notice; requiring the Department of Legal Affairs to prepare a specified sample demand letter and make it available to the public; permitting a court to abate litigation, without prejudice, until the claimant has complied with the required procedures and the dealer has opportunity to respond to demand; creating s. 501.99, F.S.; providing application of certain provisions; amending s. 501.212, F.S.; exempting certain claims against motor vehicle dealers from the provisions of part II of ch. 501, F.S.; providing an effective date.

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

Section 1. Section 501.975, Florida Statutes, is amended to read:

501.975 Definitions.--As used in this part ~~s. 501.976~~, the term ~~following terms shall have the following meanings~~:

(1) "Customer" includes a customer's designated agent.

(2) "Dealer" means a motor vehicle dealer as defined in s. 320.27, but does not include a motor vehicle auction as defined in s. 320.27(1)(c)4.

(3) "Replacement item" means a tire, bumper, bumper fascia, glass, in-dashboard equipment, seat or upholstery cover or trim, exterior illumination unit, grill, sunroof, external mirror and external body cladding. The replacement of up to three of these items does not constitute repair of damage if each item is replaced because of a product defect or damaged due to vandalism while the new motor vehicle is under the control of the dealer and the items are replaced with original manufacturer equipment, unless an item is replaced due to a crash, collision, or accident.

(4) "Threshold amount" means 3 percent of the manufacturer's suggested retail price of a motor vehicle or $650, whichever is less.

(5) "Vehicle" means any automobile, truck, bus, recreational vehicle, or motorcycle required to be licensed under chapter 320 for operation over the roads of Florida, but does not include trailers, mobile homes, travel trailers, or trailer coaches without independent motive power.

Section 2. Section 501.9755, Florida Statutes, is created to read:

501.9755 Unlawful acts and practices.--

(1) Unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce by a dealer are unlawful.

(2) It is the intent of the Legislature that, in construing subsection (1), due consideration and great weight be given to the interpretations of the Federal Trade Commission and the federal courts relating to s. 5(a)(1) of the Federal Trade Commission Act, as amended, 15 U.S.C. s. 45(a)(1).

Section 3. Section 501.976, Florida Statutes, is amended to read:

501.976 Actionable, unfair, or deceptive acts or practices.--In addition to acts and practices actionable under s. 501.9755, it is an unfair or deceptive act or practice, actionable under the Florida Deceptive and Unfair Trade Practices Act, for a dealer to:

(1) Represent directly or indirectly that a motor vehicle is a factory executive vehicle or executive vehicle unless the ~~such~~ vehicle was purchased directly from the manufacturer or a subsidiary of the manufacturer and the vehicle was used exclusively by the manufacturer, its subsidiary, or a dealer for the commercial or personal use of the manufacturer's, subsidiary's, or dealer's employees.

(2) Represent directly or indirectly that a vehicle is a demonstrator unless the vehicle complies with the definition of a demonstrator in s. 320.60(3).

(3) Represent the previous usage or status of a vehicle to

be something that it was not, or make usage or status representations unless the dealer has correct information regarding the history of the vehicle to support the representations.

(4) Represent the quality of care, regularity of servicing, or general condition of a vehicle unless known by the dealer to be true and supportable by material fact.

(5) Represent orally or in writing that a particular vehicle has not sustained structural or substantial skin damage unless the statement is made in good faith and the vehicle has been inspected by the dealer or his or her agent to determine whether the vehicle has incurred such damage.

(6) Sell a vehicle without fully and conspicuously disclosing in writing at or before the consummation of sale any warranty or guarantee terms, obligations, or conditions that the dealer or manufacturer has given to the buyer. If the warranty obligations are to be shared by the dealer and the buyer, the method of determining the percentage of repair costs to be assumed by each party must be disclosed. If the dealer intends to disclaim or limit any expressed or implied warranty, the disclaimer must be in writing in a conspicuous manner and in lay terms in accordance with chapter 672 and the Magnuson-Moss Warranty--Federal Trade Commission Improvement Act.

(7) Provide an express or implied warranty and fail to honor such warranty unless properly disclaimed pursuant to subsection (6).

(8) Misrepresent warranty coverage, application period, or any warranty transfer cost or conditions to a customer.

(9) Obtain signatures from a customer on contracts that are

not fully completed at the time the customer signs or which do not reflect accurately the negotiations and agreement between the customer and the dealer.

(10) Require or accept a deposit from a prospective customer prior to entering into a binding contract for the purchase and sale of a vehicle unless the customer is given a written receipt that states how long the dealer will hold the vehicle from other sale and the amount of the deposit, and clearly and conspicuously states whether and upon what conditions the deposit is refundable or nonrefundable.

(11) Add to the cash price of a vehicle as defined in s. 520.02(2) any fee or charge other than those provided in that section and in rule 69V-50.001 ~~3D-50.001~~, Florida Administrative Code. All fees or charges permitted to be added to the cash price by rule 69V-50.001 ~~3D-50.001~~, Florida Administrative Code, must be fully disclosed to customers in all binding contracts concerning the vehicle's selling price.

(12) Alter or change the odometer mileage of a vehicle.

(13) Sell a vehicle without disclosing to the customer the actual year and model of the vehicle.

(14) File a lien against a new vehicle purchased with a check unless the dealer fully discloses to the purchaser that a lien will be filed if purchase is made by check and fully discloses to the buyer the procedures and cost to the buyer for gaining title to the vehicle after the lien is filed.

(15) Increase the price of the vehicle after having accepted an order of purchase or a contract from a buyer, notwithstanding subsequent receipt of an official price change notification. The price of a vehicle may be increased after a

dealer accepts an order of purchase or a contract from a buyer if:

(a) A trade-in vehicle is reappraised because it subsequently is damaged, or parts or accessories are removed;

(b) The price increase is caused by the addition of new equipment, as required by state or federal law;

(c) The price increase is caused by the revaluation of the United States dollar by the Federal Government, in the case of a foreign-made vehicle;

(d) The price increase is caused by state or federal tax rate changes; or

(e) Price protection is not provided by the manufacturer, importer, or distributor.

(16) Advertise the price of a vehicle unless the vehicle is identified by year, make, model, and a commonly accepted trade, brand, or style name. The advertised price must include all fees or charges that the customer must pay, including freight or destination charge, dealer preparation charge, and charges for undercoating or rustproofing. State and local taxes, tags, registration fees, and title fees, unless otherwise required by local law or standard, need not be disclosed in the advertisement. When two or more dealers advertise jointly, with or without participation of the franchisor, the advertised price need not include fees and charges that are variable among the individual dealers cooperating in the advertisement, but the nature of all charges that are not included in the advertised price must be disclosed in the advertisement.

(17) Charge a customer for any predelivery service required by the manufacturer, distributor, or importer for which the

dealer is reimbursed by the manufacturer, distributor, or importer.

(18) Charge a customer for any predelivery service without having printed on all documents that include a line item for predelivery service the following disclosure: "This charge represents costs and profit to the dealer for items such as inspecting, cleaning, and adjusting vehicles, and preparing documents related to the sale."

(19) Fail to disclose damage to a new motor vehicle, as defined in s. 319.001(8), of which the dealer had actual knowledge, if the dealer's actual cost of repairs exceeds the threshold amount, excluding replacement items.

In any civil litigation resulting from a violation of this section, when evaluating the reasonableness of an award of attorney's fees to a private person, the trial court shall consider the amount of actual damages in relation to the time spent.

Section 4. Section 501.9765, Florida Statutes, is created to read:

501.9765 Violations involving a senior citizen or handicapped person; civil penalties; presumption.--

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

(a) "Handicapped person" means any person who has a mental or educational impairment that substantially limits one or more major life activities.

(b) "Major life activities" means functions associated with the normal activities of independent daily living, such as caring for oneself, performing manual tasks, walking, seeing, hearing,

speaking, breathing, learning, and working.

(c) "Mental or educational impairment" means:

1. Any mental or psychological disorder or specific learning disability.

2. Any educational deficiency that substantially affects a person's ability to read and comprehend the terms of any contractual agreement entered into.

(d) "Senior citizen" means a person who is 60 years of age or older.

(2) Any person who willfully uses, or has willfully used, a method, act, or practice in violation of this part, which method, act, or practice victimizes or attempts to victimize a senior citizen or handicapped person, and commits such violation when he or she knew or should have known that his or her conduct was unfair or deceptive is liable for a civil penalty of not more than $15,000 for each such violation.

(3) Any order of restitution or reimbursement based on a violation of this part committed against a senior citizen or handicapped person has priority over the imposition of civil penalties for violations of this section.

(4) Civil penalties collected under this section shall be deposited into the Legal Affairs Revolving Trust Fund of the Department of Legal Affairs and allocated to the Department of Legal Affairs solely for the purpose of preparing and distributing consumer education materials, programs, and seminars to benefit senior citizens and handicapped persons or to enhance efforts to enforce this section.

Section 5. Section 501.977, Florida Statutes, is created to read:

501.977 Other individual remedies.--

(1) Without regard to any other remedy or relief to which a person is entitled, anyone aggrieved by a violation of this part by a dealer may bring an action against the dealer in order to obtain a declaratory judgment that an act or practice violates this part and to enjoin a dealer who has violated, is violating, or is otherwise likely to violate this part.

(2) In any action brought by a person who has suffered a loss as a result of a violation of this part, the person may recover actual damages plus attorney's fees and court costs as provided in s. 501.979. However, damages, fees, or costs are not recoverable under this section against a dealer who has, in good faith, engaged in the dissemination of claims of a manufacturer, distributor, importer, or wholesaler without actual knowledge that doing so violates this part.

(3) In any action brought under this section, if, after the filing of a motion by the dealer, the court finds that the action is frivolous, without legal or factual merit, or brought for the purpose of harassment, the court may, after hearing evidence as to the necessity for a bond, require the party instituting the action to post a bond in the amount that the court finds reasonable to indemnify the defendant for any costs incurred, or to be incurred, including reasonable attorney's fees, in defending the claim. This subsection does not apply to any action initiated by the enforcing authority.

Section 6. Section 501.978, Florida Statutes, is created to read:

501.978 Effect on other remedies.--

(1) The remedies of this part are in addition to remedies

otherwise available for the same conduct under state or local law.

(2) This part is supplemental to, and does not preempt, local consumer protection ordinances not inconsistent with this part.

Section 7. Section 501.979, Florida Statutes, is created to read:

501.979 Attorney's fees.--

(1) In any civil litigation resulting from an act or practice involving a violation of this part, except as provided in subsection (5) and s. 501.98, the prevailing party, after judgment in the trial court and exhaustion of all appeals, if any, shall receive his or her reasonable attorney's fees and costs from the nonprevailing party. When evaluating the reasonableness of an award of attorney's fees to a private person, the trial court shall consider the actual damages in relation to the time spent.

(2) The attorney for the prevailing party shall submit a sworn affidavit of his or her time spent on the case and his or her costs incurred for all the motions, hearings, and appeals to the trial judge who presided over the civil case.

(3) The trial judge may award the prevailing party the sum of reasonable costs incurred in the action and reasonable attorney's fees for the hours actually spent on the case as sworn to in an affidavit.

(4) Any award of attorney's fees or costs becomes a part of the judgment and is subject to execution as the law allows.

(5) In any civil litigation initiated by the enforcing authority, the court may award to the prevailing party reasonable

attorney's fees and costs if the court finds that there was a complete absence of a justiciable issue of law or fact raised by the nonprevailing party or if the court finds bad faith on the part of the nonprevailing party.

(6) In any administrative proceeding or other nonjudicial action initiated by an enforcing authority, the attorney for the enforcing authority may certify by sworn affidavit the number of hours and the cost thereof to the enforcing authority for the time spent in the investigation and litigation of the case, plus costs reasonably incurred in the action. Payment to the enforcing authority of the sum of the costs may, by stipulation of the parties, be made a part of the final order or decree disposing of the matter. The affidavit shall be attached to and become a part of the order or decree.

Section 8. Section 501.98, Florida Statutes, is created to read:

501.98 Demand letter.--

(1) As a condition precedent to initiating any civil litigation arising under this part, a claimant must give the dealer written notice of the claimant's intent to initiate litigation against the dealer not less than 30 days before initiating the litigation.

(2) The notice, which must be completed in good faith, must:

(a) State that it is a demand letter under "s. 501.98, Florida Statutes";

(b) State the name, address, and telephone number of the claimant;

(c) State the name and address of the dealer;

(d) Provide the date and a description of the transaction, event, or circumstance that is the basis of the claim;

(e) Describe with specificity the underlying facts and how they give rise to an alleged violation of this part;

(f) To the extent applicable, be accompanied by all transaction or other documents upon which the claim is based or upon which the claimant is relying to assert the claim; and

(g) Include a comprehensive and detailed statement describing each item of actual damage demanded by the claimant and recoverable under this part and the amount claimed for each item of damage, including, if applicable, the formula or basis by which each item of damage was calculated.

(3)(a) The notice of the claim must be delivered to the dealer by certified or registered United States mail, return receipt requested. The postal costs shall be reimbursed to the claimant by the dealer if the dealer pays the claim and if the claimant requests reimbursement of the postal costs in the notice of claim.

(b) If the dealer is a corporate entity, the notice of claim must be sent to the registered agent of the dealer as recorded with the Department of State and, in the absence of a registered agent, any person listed in s. 48.081(1).

(4) Notwithstanding any provision of this part to the contrary, a claimant may not initiate litigation against a dealer for a claim arising under this part related to, or in connection with, the transaction or event described in the notice of claim if the dealer pays the claimant within 30 days after receiving the notice of claim:

(a) The amount requested in the demand letter as specified

in paragraph (2)(g); and

(b) A surcharge of 10 percent of the amount requested in the demand letter, not to exceed $500.

(5) For the purpose of this section, payment by a dealer is deemed paid on the date a draft or other valid instrument that is equivalent to payment is placed in the United States mail, or other nationally recognized carrier, in a properly addressed, postpaid envelope, or, if not so posted, on the date of delivery.

(6) The claimant is not entitled to a surcharge in any proceeding initiated against a dealer under this part if the dealer rejects or ignores the notice of claim.

(7) Notwithstanding any provision of this part to the contrary, a dealer is not required to pay the attorney's fees of the claimant in any civil action brought under this part if:

(a) The dealer, within 30 days after receiving the claimant's notice of claim, notifies the claimant in writing, and a court or arbitrator agrees, that the amount claimed is not supported by the facts of the transaction or event described in the notice of claim or by generally accepted accounting principles or includes items not properly recoverable under this part; or

(b) The claimant fails to substantially comply with this section.

(8) Payment of the actual damages or an offer to pay actual damages as set forth in this section:

(a) Does not constitute an admission of any wrongdoing by the dealer;

(b) Is protected by s. 90.408; and

(c) Serves to release the dealer from any suit, action, or

other action that could be brought arising out of or in connection with the transaction, event, or occurrence described in the notice of claim.

(9) The applicable statute of limitations for an action under this part is tolled for 30 days, or such other period of time as agreed to by the parties in writing, by the mailing of the notice required by this section.

(10) This section does not apply to:

(a) Any claim for actual damages brought and certified as a maintainable class action; or

(b) Any action brought by the enforcing authority.

(11) The Department of Legal Affairs shall prepare a form demand letter to incorporate the information required by subsection (2) and make it available to the public.

(12) If a claimant initiates civil litigation under this part without first complying with the requirements of this section, the court, upon a motion by the claimant, may abate the litigation, without prejudice, to permit the claimant to comply with the provisions of this part and allow the dealer the opportunity to accept or reject the demand in accordance with subsection (4).

Section 9. Section 501.99, Florida Statutes, is created to read:

501.99 Application.--This part does not apply to:

(1) An act or practice required or specifically permitted by federal or state law.

(2) A claim for personal injury or death or a claim for damage to property other than the property that is the subject of the consumer transaction.

(3) Any person or activity regulated under laws administered by the Office of Insurance Regulation of the Financial Services Commission.

(4) Any person or activity regulated under laws administered by the former Department of Insurance that are now administered by the Department of Financial Services.

Section 10. Subsection (8) is added to section 501.212, Florida Statutes, to read:

501.212 Application.--This part does not apply to:

(8) A claim brought by a person other than the enforcing authority against a dealer as defined in s. 501.975(2).

Section 11. This act shall take effect upon becoming a law.