General Government Policy Council

Wednesday, March 17, 2010
Morris Hall
1:00 PM – 2:00 PM

Larry Cretul
Speaker

Baxter Troutman
Chairman

Council Meeting Notice

HOUSE OF REPRESENTATIVES

General Government Policy Council

Start Date and Time: Wednesday, March 17, 2010 01:00 pm

End Date and Time: Wednesday, March 17, 2010 02:00 pm

Location: Morris Hall (17 HOB)
Duration: 1.00 hrs

Consideration of the following bill(s):

CS/CS/HB 149 Florida Industrial and Phosphate Research Institute by State Universities & Private Colleges Appropriations Committee, Agriculture & Natural Resources Policy Committee, McKeel
CS/HB 233 Vessel Safety by Agriculture & Natural Resources Policy Committee, Kiar
CS/HB 435 Marketable Record Title by Agriculture & Natural Resources Policy Committee, Abruzzo
CS/HB 569 Landfills by Agriculture & Natural Resources Policy Committee, Poppell
HB 707 International Banking Corporations by Grady
HB 1377 Telecommunications Companies by Fresen
HM 1535 American Clean Energy and Security Act by Adams

NOTICE FINALIZED on 03/15/2010 16:21 by TUCK.SHIRLEY

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 149 Florida Institute of Phosphate Research
SPONSOR(S): State Universities & Private Colleges Appropriations Committee, Agriculture & Natural Resources Committee, McKeel
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Agriculture & Natural Resources Policy Committee	12 Y, 0 N, As CS	Thompson	Reese
2)	State Universities & Private Colleges Appropriations Committee	12 Y, 0 N, As CS	Smith	Trexler
3)	General Government Policy Council		Thompson JT	Hamby
4)				
5)				

SUMMARY ANALYSIS

The bill replaces section 378.101, Florida Statutes, with section 1004.346, Florida Statutes, establishing the Florida Institute of Phosphate Research (FIPR) within the University of South Florida (USF) Polytechnic and providing for a revised name, the Florida Industrial and Phosphate Research Institute (FIPR), to reflect said affiliation. The bill, in part:

- Provides for a type two transfer, pursuant to section 20.06(2), Florida Statutes, of the FIPR to the proposed FIPR within the USF Polytechnic.
- Revises the membership of the board of directors; names it the "Phosphate Research and Activities Board"; and directs the board to monitor the expenditure of funds.
- Provides for administrative rules of procedure for the Phosphate Research and Activities Board.
- Provides for an institute executive director.
- Provides for specific duties and authority of the proposed FIPR.
- Repeals section 378.102, Florida Statutes, and amends section 211.31, Florida Statutes, to make conforming changes.

Many of the bill's provisions will have no direct fiscal impact. Some of the provisions are expected to have an indirect fiscal impact on state and local governments and on the private sector. For details, see the FISCAL COMMENTS section of the analysis.

The bill will take effect upon becoming law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Institute of Phosphate Research

The United States is the largest producer and consumer of phosphate rock in the world and the leading producer and supplier of phosphate fertilizers in the world, providing approximately 75 percent of the nation's phosphate supply and approximately 25 percent of the world supply. Phosphate companies own or have mineral rights to almost 450,000 acres in Florida. Ninety percent of the phosphate rock mined in the state is used to make fertilizer. Of the remaining 10 percent, half is used in animal feed supplements. Phosphate is also used in a variety of products, including vitamins, soft drinks, toothpaste, light bulbs, film, bone china, flame resistant fabric, optical glass, and other consumer goods. There is no substitute or synthetic for phosphorus, which is essential for life in all growing things, plants and animals alike.[1]

In 1978, the Florida Legislature created the Florida Institute of Phosphate Research (FIPR)[2] to study phosphate issues and to provide phosphate information to the industry and the general public. Current law[3] directs the FIPR to conduct, or cause to be conducted, studies that would improve phosphate industry efficiency, reduce its use of water and energy resources, and enhance efforts to reclaim the land that mining and processing affects. The law requires the FIPR to educate and inform Florida citizens about the industry, its effects, and the FIPR's research findings as well as general scientific knowledge concerning the industry.

The FIPR is a state research organization located in Bartow, Florida, and is administratively attached to the University of South Florida (USF). USF provides administrative services to the Institute, including accounting, payroll, personnel, and legal and travel services; in return, the FIPR pays a fee to USF for these services. Oversight of the Institute is a function of the FIPR Board of Directors.

The FIPR has a staff of 25 full-time and part-time employees and is governed by a 5-member board of directors appointed by the Governor. The membership of the board is as follows:

- One member from the faculty of a university within the State University System;

[1] Phosphate Fact Sheet – Florida Phosphate Council
[2] s. 378.101, F.S.
[3] Id.

- One member from a major conservation group in Florida;
- One member from state government, and
- Two members from the phosphate mining or processing industry.

Current law[4] requires the Governor to make these appointments on the basis of their ability to set priorities for phosphate research. The appointees are tasked with giving direction to phosphate research efforts that address problems of the industry in which the public has substantial interest. Members serve 3-year terms and may be reappointed.

The FIPR also serves as a phosphate-related information clearinghouse. The FIPR's research concentrates on: chemical processing of phosphate rock into fertilizer (including studies on the byproduct phosphogysum), beneficiation or mineral processing to separate clay and sand from the phosphate rock, reclamation of mined lands, mining processes, and public and environmental health (including radiation) issues.[5] Other FIPR activities include holding intensive summer workshops for teachers, hosting conferences and seminars, maintaining an extensive library of information on phosphate, providing mini-grants to develop phosphate teaching units, and conducting various other strategic projects and technical advisory committees.[6]

The University of South Florida Polytechnic

The 2008 Legislature designated the Lakeland campus of USF as the "University of South Florida Polytechnic."[7] The USF Polytechnic is the newest of the four campuses in the USF system. According to the USF Polytechnic website, it is the state's only polytechnic and provides upper level undergraduate and graduate students with an opportunity for applied learning and research in a personalized setting.

The USF Polytechnic model offers degrees and certificates in many different degree programs and certificate programs, providing a multi-disciplinary focus with real-world application.[8]

Under current law,[9] USF Polytechnic is a separate organizational and budget entity from USF. The USF Polytechnic is required to have a campus board and a campus executive director. The campus board is comprised of four residents of the Lakeland campus service area who are appointed by the president of USF and one member of the USF board of trustees who is selected by the campus board. Members of the campus board serve 4-year terms and may be reappointed for one term. USF Polytechnic is administered by a campus executive officer appointed by the USF president.

Proposed Changes

The bill replaces section 378.101, Florida Statutes, with section 1004.346, Florida Statutes, establishing the FIPR within the USF Polytechnic and providing for a revised name, the Florida Industrial and Phosphate Research Institute (FIPR), to reflect said affiliation.

The bill provides for a type two transfer, pursuant to section 20.06(2), Florida Statutes, of the FIPR to the proposed FIPR within the USF Polytechnic. This includes the transfer of all powers, duties, functions, records, personnel, property, administrative authority, administrative rules, pending issues, and existing contracts of the FIPR. The transfer also includes unexpended balances of appropriations, allocations, and other funds.

---

[4] Id.
[5] Florida Senate Interim Report 2005-154, Activities Related to the Closure of Phosphate Mining Operations and the Uses of Phosphate Mining Byproducts and Closed Phosphate Lands, December 2004.
[6] Florida Senate Interim Report 2009-316, The Florida Institute of Phosphate Research, October, 2008.
[7] s. 1004.345, F.S.
[8] http://www.poly.usf.edu/
[9] s. 1004.345, F.S.

The bill creates the "Phosphate Research and Activities Board" and directs the board to ensure that funds appropriated to the university from the Phosphate Research Trust Fund are expended exclusively for the purpose of carrying out the phosphate-related activities specified in this section.

The bill requires the Governor to appoint two persons representing the phosphate mining or processing industry and one member representing a major environmental conservation group in the state. The Secretary of Environmental Protection, or his or her designee, and the Campus Executive Officer of USF Polytechnic shall also serve as board members.

The bill limits the terms of board members appointed by the Governor to three years and requires an annual election of the chairman of the board by the members. The bill also:

- Allows board members to serve until a successor is appointed, not to exceed 180 days beyond the expiration of his or her term;
- Provides that a board member is eligible for reappointment to subsequent terms; and
- Requires board members to serve without compensation but allows for reimbursement for per diem and travel expenses, as provided in section 112.061.

The bill provides for a FIPR Executive Director who is designated by, and serves at the pleasure of, the Campus Executive Officer of USF Polytechnic or his or her designee. The bill directs the FIPR Executive Director to be responsible for the daily administration of the Institute, including the expenditure of funds from all sources, and to consult with the Phosphate Research and Activities Board with regard to which projects to undertake and fund from the Phosphate Research Trust Fund.

The bill requires the proposed FIPR to:

- Establish methods for better and more efficient practices for phosphate mining and processing;
- Conduct or contract for studies on the environmental and health effects of phosphate mining and reclamation;
- Conduct or contract for studies of reclamation alternatives and technologies in phosphate mining and processing and wetlands reclamation;
- Conduct or contract for studies of phosphatic clay and phosphogypsum disposal and utilization as a part of phosphate mining and processing; and
- Provide the public with access to the results of its activities and maintain a public library related to the Institute's activities.

The bill allows the proposed FIPR to:

- Research and develop methods for better and more efficient processes and practices for commercial and industrial activities, including, but not limited to, mitigating the health and environmental effects of such activities as well as developing and evaluating reclamation alternatives and technologies;
- Secure funding from grants and other available sources for carrying out the activities authorized or required under this section;
- Enter into contracts with any firm, institution, corporation, or federal, state, local, or foreign governmental agency to carry out the activities authorized or required under this section;
- Promote the application, patenting, and commercialization of the institute's technologies, knowledge, and intellectual property in accordance with university policies and procedures;
- Educate the public about the science related to topics and issues that are within the Institute's scope of expertise;
- Hold public hearings;
- Establish public-private partnerships; and
- Provide consulting services.

The bill repeals section 378.102, Florida Statutes, and amends section 211.31, Florida Statutes, to make conforming changes.

B. SECTION DIRECTORY:

Section 1. Renumbers and amends s. 378.101, F.S.; creating s. 1004.346, F.S.; establishing the Florida Industrial and Phosphate Research Institute within the University of South Florida Polytechnic; creating the Phosphate Research and Activities Board; providing for board duties, membership, and terms; providing for the administration of the Institute; requiring the Institute to conduct and contract for specified studies and to provide public access to certain information; authorizing the Institute to conduct phosphate-related activities, secure funding, and enter into agreements with public, private, foreign, and domestic entities.

Section 2. Amends s. 211.31, F.S.; conforming a cross-reference.

Section 3. Provides for a type two transfer, pursuant to s. 20.06(2), Florida Statutes, of the Florida Institute on Phosphate Research to the proposed Florida Industrial and Phosphate Research Institute within the University of South Florida Polytechnic.

Section 4. Repeals s. 378.102, F.S., to conform to administrative changes made by the act.

Section 5. Provides this act shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments section, parts b), c), and d).

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See Fiscal Comments section, parts b), c), and d).

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments section parts b), c), and d).

D. FISCAL COMMENTS:

a) The severance taxation of solid minerals, including phosphate, was enacted into law in 1971. The tax rates and the disposition of these revenues have been amended since that time. Currently, the FIPR is funded through the Phosphate Research Trust Fund (Trust Fund), which is established in Section 211.3103, F.S., as part of the distribution of severance tax revenues.

The law[10] establishes the per ton severed tax rate at $1.945 (9.3 percent of the severance tax revenues) and levies a surcharge of $1.38 per ton severed until the surcharge revenue reaches a $60 million threshold. Beginning July 1 of the fiscal year following the date on which the surcharge revenue

[10] s. 211.3103, F.S.

reaches the $60 million threshold, the per ton severed tax rate is to be reduced to $1.51 (6.6 percent of the severance tax revenues). The surcharge revenue is designated for the closure of the Piney Point and Mulberry sites[11] and for approved reclamation of non-mandatory lands.

According to the Department of Environmental Protection (DEP), as of November 4, 2009, the surcharge revenues have not reached $60 million. The DEP suggests that if mining continues at the current rate, the surcharge has a reasonable possibility of hitting $60 million by June 30, 2010. According to the Department of Revenue, the total surcharge collected as of October 22, 2009, was $32,752,059.50. It's anticipated that $60 million will be reached around October, 2010.

Since fiscal year 2004-05, program expenditures have exceeded the Trust Fund revenues.[12] In order to cover the difference, the Trust Fund's cash balance is being depleted. According to the FIPR, the cash balance in the Trust Fund as of September 1, 2009, was $9,603,489.56.

The bill directs the Phosphate Research Activities Board to monitor the expenditure of funds appropriated to the university from the Phosphate Research Trust Fund and makes the proposed FIPR Executive Director responsible for the expenditure of funds.

b) The bill authorizes the proposed FIPR to expand its mission to include commercial and industrial activity related research. This could create positive fiscal impacts on the private sector and state and local governments.

c) The bill authorizes the proposed FIPR to enter into contracts in carrying out the activities specified in this section and to secure funding from grants and other available sources for such activities. These methods could lead to developments that may create positive fiscal impacts on the private sector and state and local governments.

d) The bill authorizes the proposed FIPR to provide consulting services, hold public hearings, provide related scientific education to the public, and establish public-private partnerships. These practices could lead to developments that may create positive fiscal impacts on the private sector and state and local governments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None

B. RULE-MAKING AUTHORITY:

   None

C. DRAFTING ISSUES OR OTHER COMMENTS:

---

[11] Mulberry Phosphates in Polk County and Piney Point in Manatee County are both former phosphate fertilizer chemical processing plants that closed in December 1999. Each site contains a process water problem associated with phosphogypsum stacks. Phosphogypsum is the radioactive byproduct of phosphate production, thus, the water used in the process can be harmful to the environment and costly in the industrial and reclamation process.

[12] Florida Senate Interim Report 2009-316, The Florida Institute of Phosphate Research, October, 2008.

None

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On February 3, 2010, the Agriculture and Natural Resources Policy Committee adopted a strike-all amendment to this bill. The amendment:

- Changes the statute number, relocating the section;
- Rewords the bill for clarification purposes;
- Changes the name of the existing institute to the Florida Institute of Phosphate Research and Industrial Activities and establishes it within the University of South Florida Polytechnic;
- Provides for a type two transfer of the Florida Institute of Phosphate Research to the new proposed institute;
- Revises the criteria for the appointment of members to the board overseeing the Institute;
- Provides for an executive director to administer the activities of the Institute;
- Clarifies the duties and authority of the Institute; and
- Makes conforming changes.

On March 10, 2010, the State Universities and Private Colleges Appropriations Committee adopted a strike-all amendment to this bill. The amendment:

- Changes the name from Florida Institute for Industrial and Phosphate Research to Florida Industrial and Phosphate Research Institute;
- Requires that FIPR's study of phosphatic clay be an ongoing duty instead of just a one-time study; and
- Revises the membership and criteria for the appointment of members to the board overseeing the Institute.

A bill to be entitled

An act relating to Florida Industrial and Phosphate Research Institute; transferring, renumbering, and amending s. 378.101, F.S.; establishing the Florida Industrial and Phosphate Research Institute within the University of South Florida Polytechnic; creating the Phosphate Research and Activities Board; providing duties, membership, and terms for the board; providing for an executive director of the institute; providing duties for the executive director; providing duties and authorized activities for the institute; amending s. 211.31, F.S.; conforming a cross-reference; providing for a type two transfer of the Florida Institute of Phosphate Research to the Florida Industrial and Phosphate Research Institute within the University of South Florida Polytechnic; repealing s. 378.102, F.S., relating to procurement of research services by the Florida Institute of Phosphate Research; providing an effective date.

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

Section 1. Section 378.101, Florida Statutes, is transferred, renumbered as section 1004.346, Florida Statutes, and amended to read:

(Substantial rewording of section. See s. 378.101, F.S., for present text.)

1004.346 Florida Industrial and Phosphate Research Institute.—

(1) INSTITUTE CREATION.—The Florida Industrial and Phosphate Research Institute is established within the University of South Florida Polytechnic.

(2) PHOSPHATE RESEARCH AND ACTIVITIES BOARD.—The Phosphate Research and Activities Board is created to monitor the expenditure of funds appropriated to the university from the Phosphate Research Trust Fund.

(a) The board shall approve an annual report, prepared by the institute executive director, which outlines the expenditure of the funds appropriated to the university from the Phosphate Research Trust Fund and describes the various phosphate-related projects and institute operations funded by those moneys.

(b) The board shall consist of five members. The Governor shall appoint two persons representing the phosphate mining or processing industry and one member representing a major environmental conservation group in the state. The Secretary of Environmental Protection or his or her designee and the Campus Executive Officer of the University of South Florida Polytechnic shall also serve as board members.

(c) Members of the board appointed by the Governor shall be appointed to 3-year terms. A board member may continue to serve until a successor is appointed, but not more than 180 days after the expiration of his or her term. A board member is eligible for reappointment to subsequent terms.

(d) Board members shall annually elect a chair from among the membership.

(e) Board members shall serve without compensation, but are entitled to reimbursement for per diem and travel expenses

as provided in s. 112.061.

(3) INSTITUTE EXECUTIVE DIRECTOR.—An executive director shall be designated by and serve at the pleasure of the Campus Executive Officer of the University of South Florida Polytechnic or his or her designee. The executive director shall be responsible for the daily administration of the institute, including the expenditure of funds from all sources. The executive director shall consult with the Phosphate Research and Activities Board on the projects that the institute expects to undertake using moneys appropriated from the Phosphate Research Trust Fund.

(4) INSTITUTE DUTIES AND AUTHORIZED ACTIVITIES.—

(a) The institute shall:

1. Establish methods for better and more efficient practices for phosphate mining and processing.

2. Conduct or contract for studies on the environmental and health effects of phosphate mining and reclamation.

3. Conduct or contract for studies of reclamation alternatives and technologies in phosphate mining and processing and wetlands reclamation.

4. Conduct or contract for studies of phosphatic clay and phosphogypsum disposal and utilization as a part of phosphate mining and processing.

5. Provide the public with access to the results of its activities and maintain a public library related to the institute's activities, which may contain special collections.

(b) The institute may:

1. Research and develop methods for better and more

efficient processes and practices for commercial and industrial activities, including, but not limited to, mitigating the health and environmental effects of such activities as well as developing and evaluating alternatives and technologies.

2. Secure funding from grants and other available sources for carrying out the activities authorized or required under this section.

3. Enter into contracts with any firm, institution, or corporation, or federal, state, local, or foreign governmental agency, to carry out the activities authorized or required under this section.

4. Promote the application, patenting, and commercialization of the institute's technologies, knowledge, and intellectual property in accordance with university policies and procedures.

5. Educate the public about the science related to topics and issues that are within the institute's scope of expertise.

6. Hold public hearings.

7. Establish public-private partnerships.

8. Provide consulting services.

Section 2. Subsection (4) of section 211.31, Florida Statutes, is amended to read:

211.31 Levy of tax on severance of certain solid minerals; rate, basis, and distribution of tax.—

(4) The expenses of administering this part and ss. 378.021, 378.031, and 1004.346 ~~378.101~~ shall be borne by the Land Reclamation Trust Fund, the Nonmandatory Land Reclamation Trust Fund, and the Phosphate Research Trust Fund.

Section 3. All powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, and other funds of the Florida Institute of Phosphate Research are transferred by a type two transfer pursuant to s. 20.06(2), Florida Statutes, to the Florida Industrial and Phosphate Research Institute within the University of South Florida Polytechnic.

Section 4. Section 378.102, Florida Statutes, is repealed.

Section 5. This act shall take effect July 1, 2010.

Amendment No.

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: General Government Policy Council

Representative McKeel offered the following:

Amendment

Remove line 121 and insert:

Section 5. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 233 Vessel Safety
SPONSOR(S): Agriculture & Natural Resources Committee, Kiar
TIED BILLS: **IDEN./SIM. BILLS:** SB 100

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Agriculture & Natural Resources Policy Committee	12 Y, 0 N, As CS	Deslatte	Reese
2)	Public Safety & Domestic Security Policy Committee	12 Y, 2 N	Krol	Cunningham
3)	General Government Policy Council		Deslatte	Hamby
4)				
5)				

SUMMARY ANALYSIS

The bill states that no person under the age of 16 can operate watercraft except under adult supervision. The bill makes it unlawful for the owner of, or any person having charge or control over a personal watercraft, to authorize or knowingly permit the watercraft to be operated by a person under 16 years of age or by a person who does not hold a boating safety identification card in compliance with current law.

The bill makes it unlawful for the owner of, or any person having charge or control over any leased, hired, or rented personal watercraft to authorize or knowingly permit the watercraft to be operated by anyone who has not received instruction in the safe handling of personal watercraft in compliance with current law, and rules established by the Fish and Wildlife Conservation Commission (FWCC).

The bill requires anyone receiving instruction in the safe handling of personal watercraft pursuant to a program established by rule of the FWCC to provide the owner of, or person having charge or control over, a leased, hired or rented personal watercraft, or a livery with a written statement attesting to the same. The requirement provides for the instruction to be pursuant to rules of the FWCC or any other program established by rule of the FWCC.

The bill requires that any agent or employee delivering information on safe operation of personal watercraft must enroll in, attend, and successfully complete, at his or her own expense, a boating safety course approved by the National Association of State Boating Law Administrators (NASBLA) and the FWCC.

The bill does not have a fiscal impact on state or local governments. There may be a fiscal impact on the private sector, although it is not anticipated to be significant. Livery personnel who have not attended a boating safety course would be required to do so before providing pre-rental or pre-ride instruction. Courses that meet this requirement cost an average of $22 per student.

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

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

According to the latest data from the FWCC, from 2004 through 2008, a total of 38 operators of personal watercraft who were 14 to less than 16 years of age were involved in reportable boating accidents, eight (8) of which were rented personal watercraft.

Currently, s. 327.395, F.S., states that any person born on or after January 1, 1988 may not operate a vessel[1] powered by a motor of 10 horsepower or greater unless such person has in his or her possession aboard the vessel photographic identification and a boater safety identification card issued by the FWCC.[2] Operators born on or after January 1, 1988 are exempt from the boating education requirement if they are:

- Licensed by the United States Coast Guard (USCG) to serve as master on a vessel;
- Operating a vessel on a private lake or pond;
- Accompanied in the vessel by a person who is exempt or who holds an identification card in compliance with this section, is 18 years of age or older, and is attendant to the operation of the vessel and responsible for the safe operation of the vessel and for any violation that occurs during the operation;
- A nonresident who has in his or her possession proof that he or she has completed a boater education course or equivalency examination in another state which meets or exceeds the requirements;
- Operating a vessel within 90 days after the purchase of that vessel and has available for inspection aboard that vessel a bill of sale meeting the requirements of s. 328.46(1), F.S.; or
- Exempted by rule of the commission.

The FWCC's rule 68D-36.104, F.A.C., specifies that boating safety courses offered by the FWCC pursuant to s. 327.395, F.S., must maintain current approval by the National Association of State

[1] Section 327.02(39) F.S., defines "vessel" as "synonymous with boat as referenced in s. 1(b), Art. VII of the State Constitution and includes every of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water description."

[2] As of January 1, 2010, the age requirement changed to a person born on or after January 1, 1988, as passed by the Legislature in the 2009 session. Each year the age range will grow by one year. For example, any person 22 years old and younger is required to have a boater safety identification card in 2010 and in 2011 the age requirement will change to any person 23 and younger.

Boating Law Administrators (NASBLA). The NASBLA[3] is a professional association representing the recreational boating authorities of all 50 states and the U.S. territories. The NASBLA's objectives are to foster partnerships among and between the states, the USCG and others, to craft model boating laws, to maintain national education and training standards, and to advocate the needs of the state boating programs before the U.S. Congress and federal agencies.

According to the FWCC, its participation with the NASBLA is aimed at maintaining national consistency and reciprocity agreements with regard to boating education, and the FWCC uses NASBLA rules as guidelines for developing rules. The Executive Director can adopt NASBLA rules by reference, but the FWCC is the final decider regarding approval of boating course content.

Florida law currently allows individuals 14 years of age or older to operate a personal watercraft on waters of the state provided they meet the boating safety education requirements specified in s. 327.395, F.S. Section 327.39, F.S., makes it a misdemeanor of the second degree[4] for any person having charge or control over a personal watercraft to knowingly let a person younger than fourteen years operate that personal watercraft.

Currently, s. 327.54, F.S., provides for regulation of livery vessels. A livery vessel is defined by s. 327.02(18), F.S., to mean any vessel leased, rented, or chartered to another for consideration. A livery may not knowingly lease, hire, or rent a vessel to any person whenever:

- The number of persons intending to use the vessel exceeds the number considered to constitute a maximum safety load for the vessel;
- The horsepower of the motor exceeds the capacity of the vessel;
- The vessel does not contain the required safety equipment;
- The vessel is not seaworthy;
- The vessel is equipped with a motor of 10 horsepower or greater, unless the livery provides pre-rental or pre-ride instruction that includes, but is not limited to, the operational characteristics of the vessel to be rented, safe vessel operation and vessel right-of-way rules, the responsibility of the vessel operator for the safe and proper operation of the vessel, and the local characteristics of the waterway where the vessel will be operated.

Any person delivering this information on behalf of the livery must have successfully completed a boater safety course approved by the NASBLA and the state. The FWCC is the state's primary agent for this course approval; however, the FWCC may appoint liveries, marinas or other persons to administer the boating safety course.[5]

Section 327.54, F.S., provides that a livery may not knowingly lease, hire, or rent a personal watercraft to any person who has not received instruction in safe handling of personal watercraft pursuant to the FWCC's rules. The person obtaining a personal watercraft from a livery must provide the livery with a written statement attesting to his or her compliance with FWCC's rules. A livery may not lease, hire, or rent a personal watercraft to any person who is less than 18 years of age.

Rule 68D-36.107 of the Florida Administrative Code (F.A.C.) provides additional requirements for liveries renting or leasing personal watercraft. The rule establishes minimum instructional requirements that persons renting or leasing personal watercraft must provide to all individuals intending to operate the personal watercraft. These requirements include:

- Operator responsibility and ethics;
- Navigation rules;
- Navigation aids, buoys and waterway markers;
- Awareness to changes in weather and water conditions;
- Water skiing and other activities specific to personal watercraft;

[3] NASBLA website, http://www.nasbla.org

[4] As punishable in ss. 775.082 or 775.083, F.S., as a term of imprisonment not exceeding 60 days and a fine of up to $500.

[5] Section 327.395(4), F.S.

- Boating accident causes, prevention, and legal requirements of the operator;
- Propulsion, steering and stopping characteristics of personal watercraft; and
- Awareness of other vessels and dangers of reckless operations, manatees, and environmental concerns.

Finally, the rule specifies that a livery may not lease or rent a personal watercraft to any person unless, prior to rental, a safe operation instructional tape is shown to the potential renter, or safe operation literature is provided and reviewed with each prospective operator. That livery must also provide an on-the-water demonstration and observe each person who will operate the personal watercraft to verify the prospective operators' ability to safely handle the personal watercraft. Any person delivering this information on behalf of the livery must have successfully completed a boater safety course approved by the NASBLA and the state.

Effect of Proposed Changes

The bill states that no person under the age of 16 can operate watercraft without adult supervision. The bill also makes it unlawful for the owner of any personal watercraft, or any person having charge over or control of a personal watercraft, to authorize or knowingly permit the watercraft to be operated by a person under 16 years of age or by a person born on or after January 1, 1988 who does not hold a boating safety identification card to operate a personal watercraft in compliance with s. 327.395, F.S.

The bill amends current law making it unlawful for the owner of, or any person having charge or control over any leased, hired, or rented personal watercraft to authorize or knowingly permit the watercraft to be operated by anyone who has not received instruction in the safe handling of personal watercraft in compliance with rules of the FWCC. The instruction must be in compliance with s. 327.54, F.S.

The bill requires anyone receiving instruction in the safe handling of personal watercraft pursuant to a program established by rule of the FWCC to provide the owner of, or person having charge or control over, a leased, hired or rented personal watercraft, or a livery with a written statement attesting to the same. The requirement provides for the instruction to be pursuant to rule 68D-36.107, F.A.C. or any other program established by rule of the FWCC.

The bill provides that a livery may not knowingly lease, hire, or rent a personal watercraft to any person who has not received instruction in the safe handling of personal watercraft pursuant to rule 68D-36.107, F.A.C. or any other rule established by the commission pursuant to chapter 120.

The bill requires that any agent or employee delivering the required instruction in the safe handling of personal watercraft enroll in, attend, and successfully complete a boating safety course that meets the minimum standards established by the FWCC and the National Association of State Boating Law Administrators (NASBLA).

B. SECTION DIRECTORY:

Section 1. Amends s. 327.39, F.S., revising certain requirements for operating personal watercraft.

Section 2. Amends s. 327.54, F.S., revising the requirements relating to the boating safety course required for leasing or renting a personal watercraft from a livery.

Section 3. Provides an effective date.

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:

According to the FWCC analysis, fiscal impacts to the private sector are not anticipated to be significant. Livery personnel who have not successfully completed a boating safety course would be required to do so before providing pre-rental or pre-ride instruction. Courses that meet this requirement cost an average of $22 per student

D. FISCAL COMMENTS:

None

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:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On February 3, 2010, the Agriculture & Natural Resources Policy Committee amended and passed HB 233 as a Committee Substitute.

The first amendment changes the word 'persons' delivering information in a livery to 'agents or employees' who work at the livery.

The second amendment deletes the increase from 14 to 16 years of age to operate a personal watercraft and states that no person under the age of 16 can operate watercraft except under adult supervision.

A bill to be entitled

An act relating to vessel safety; amending s. 327.39, F.S.; revising certain requirements for operating personal watercraft; prohibiting operation of such watercraft by certain persons except under adult supervision; amending s. 327.54, F.S.; revising the requirements relating to the boating safety course required for leasing or renting a personal watercraft from a livery; providing an effective date.

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

Section 1. Subsections (5) and (6) of section 327.39, Florida Statutes, are amended to read:

327.39 Personal watercraft regulated.—

(5) No person under the age of 14 shall operate any personal watercraft on the waters of this state, and no person under the age of 16 shall operate such watercraft without adult supervision.

(6)(a) It is unlawful for the owner of any personal watercraft or any person having charge over or control of a personal watercraft to authorize or knowingly permit the same to be operated by a person under 16 ~~14~~ years of age in violation of this section or by a person who does not hold a boating safety identification card in compliance with s. 327.395(1).

(b)1. It is unlawful for the owner of any leased, hired, or rented personal watercraft, or any person having charge over or control of a leased, hired, or rented personal watercraft, to

authorize or knowingly permit the watercraft to be operated by any person who has not received instruction in the safe handling of personal watercraft, in compliance with s. 327.54 and rules established by the commission.

2. Any person receiving instruction in the safe handling of personal watercraft pursuant to s. 327.54 and any ~~a~~ program established by rule of the commission must provide the owner of, or person having charge of or control over, a leased, hired, or rented personal watercraft with a written statement attesting to the same.

3. The commission shall have the authority to establish rules pursuant to chapter 120 prescribing the instruction to be given, which shall take into account the nature and operational characteristics of personal watercraft and general principles and regulations pertaining to boating safety.

(c) Any person who violates this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. Subsection (4) of section 327.54, Florida Statutes, is amended to read:

327.54 Liveries; safety regulations; penalty.—

(4)(a) A livery may not knowingly lease, hire, or rent a personal watercraft to any person who is under 18 years of age.

(b) A livery may not knowingly lease, hire, or rent a personal watercraft to any person who has not received instruction in the safe handling of personal watercraft pursuant to rule 68D-36.107, Florida Administrative Code, or any other rule, ~~in compliance with rules~~ established by the commission

pursuant to chapter 120.

(c) Any person receiving instruction in the safe handling of personal watercraft pursuant to rule 68D-36.107, Florida Administrative Code, or any other ~~a~~ program established by rule of the commission, must provide the livery with a written statement attesting to the same.

Any agent or employee delivering the information specified in this subsection must enroll in, attend, and successfully complete, at his or her own expense, a boating safety course approved by the National Association of State Boating Law Administrators and the commission.

Section 3. This act shall take effect July 1, 2010.

Amendment No. 1

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: General Government Policy Council

Representative(s) Kiar offered the following:

Amendment (with title amendment)

Remove line 19 and insert:

supervision. For the purposes of this section, "adult supervision" means that the adult supervisor is able to render active and immediate assistance to the PWC operator in case of an emergency. Such supervision may take place from a vessel, land, dock, seawall or other real property as long as the adult supervisor maintains visual contact of the PWC and has a method of reaching the PWC to provide immediate assistance in an emergency.

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

Remove line 5 and insert:

certain persons except under adult supervision; provides a definition for adult supervision; amending

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 435 Marketable Record Title
SPONSOR(S): Agriculture and Natural Resources Policy Committee, Abruzzo
TIED BILLS: none **IDEN./SIM. BILLS:** SB 518

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Agriculture & Natural Resources Policy Committee	13 Y, 0 N, As CS	Blalock	Reese
2)	Civil Justice & Courts Policy Committee	14 Y, 0 N	Thomas	De La Paz
3)	General Government Policy Council		Blalock AFB	Hamby JDC
4)				
5)				

SUMMARY ANALYSIS

The Marketable Record Title Act (MRTA) provides that one who holds title to land based on a root of title at least 30 years old, takes free and clear ownership of title and extinguishes all matters arising prior to the root of the title that are not referenced in the root of title. Due to the vast holdings of each of the water management districts (districts) and the Board of Trustees of the Internal Improvement Trust Fund (Board), it is a burden for the districts and the Board to expend significant resources in monitoring the status of title of all district land holdings, filing notices to protect district interests, and defending the interest in land holdings where they may be challenged based on MRTA.

This bill creates an exception to the applicability of MRTA for any right, title, or interest held by the Board of Trustees of the Internal Improvement Trust Fund, any water management district created pursuant to ch. 373, F.S., or the federal government.

This bill appears to decrease state government expenditures related to the effect of MRTA on the state's real property interests.

This bill has an effective date of July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Florida Marketable Record Title Act (MRTA) provides that one who holds title to land based on a root of title at least 30 years old, takes free and clear ownership of title and extinguishes all matters arising prior to the root of the title[1] that are not referenced in the root of title. Due to the vast holdings of each of the water management districts (districts) and the Board of Trustees of the Internal Improvement Trust Fund (Board), it is a burden for the districts and the Board to expend significant resources in monitoring the status of title of all district land holdings, filing notices to protect district interests, and defending its interest in land holdings where they may be challenged based on MRTA.

Section 712.03, F.S., identifies those interests in property that are not extinguished by marketable record title. Currently, only sovereignty submerged lands and covenants recorded under the provisions of chapter 376, F.S., or chapter 403, F.S., expressly exempt governmental interests from extinguishment. Another provision of s. 712.03, F.S., exempts easements from extinguishment when any parts of the easement are in use. The easement exception implicates governmental entities who acquire conservation easements and land protection agreements. The "easement in use" exception was originally intended to apply to visible use on the ground, by which an owner would have notice that someone else might be using the land. Conservation easements and land protection agreements, however, are not necessarily visible on the ground, so uncertainty surrounds whether the "easement in use" exception protects those interests from extinguishment by the MRTA.

Effect of the Bill

This bill creates s. 712.03(9), F.S., and amends s. 712.04, F.S., respectively, to create an exception to the applicability of MRTA for any right, title, or interest held by the Board of Trustees of the Internal Improvement Trust Fund, any water management district created pursuant to ch. 373, F.S., or the federal government. These amendments also resolve the confusion over whether conservation easements and land protection agreements were "easements in use" and prevent rights and interests acquired with public funds for public benefit from being extinguished.

[1] "Root of title" means any title transaction purporting to create or transfer the estate claimed by any person and which is the last title transaction to have been recorded at least 30 years prior to the time when marketability is being determined. Stated differently, the "root of title" for purposes of the Marketable Record Title Act is the most recent deed or other title transaction recorded in the unbroken chain of title at least 30 years in the past.

B. SECTION DIRECTORY:

Section 1. Creates s. 712.03(9), F.S., related to exceptions to the Marketable Record Title Act.

Section 2. Amends s. 712.04, F.S., providing conforming language.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Board of Trustees of the Internal Improvement Trust Fund and water management districts may see reduced litigation costs from the clarification of titles to lands vested in the state. However, these litigation savings, if any, are indeterminate.

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:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On February 17, 2010, the Agriculture and Natural Resources Committee passed one amendment that made only non-substantive changes to conform to the Senate bill.

A bill to be entitled

An act relating to marketable record title; amending s. 712.03, F.S.; revising the exceptions to marketability by including any right, title, or interest held by the Board of Trustees of the Internal Improvement Trust Fund, any water management district, or the United States; amending s. 712.04, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsection (9) is added to section 712.03, Florida Statutes, to read:

712.03 Exceptions to marketability.—Such marketable record title shall not affect or extinguish the following rights:

(9) Any right, title, or interest held by the Board of Trustees of the Internal Improvement Trust Fund, any water management district created under chapter 373, or the United States.

Section 2. Section 712.04, Florida Statutes, is amended to read:

712.04 Interests extinguished by marketable record title.—Subject to ~~the matters stated in~~ s. 712.03, a ~~such~~ marketable record title is ~~shall be~~ free and clear of all estates, interests, claims, or charges ~~whatsoever~~, the existence of which depends upon any act, title transaction, event, or omission that occurred before ~~prior to~~ the effective date of the root of title. Except as provided in s. 712.03, all such estates,

interests, claims, or charges, however denominated, whether they ~~such estates, interests, claims, or charges~~ are or appear to be held or asserted by a person sui juris or under a disability, whether such person is within or without the state, ~~whether such person is~~ natural or corporate, or ~~is~~ private or governmental, are ~~hereby~~ declared to be null and void. However, ~~except that~~ this chapter does ~~shall~~ not ~~be deemed to~~ affect any right, title, or interest of the United States, Florida, or any of its officers, boards, commissions, or other agencies reserved in the patent or deed by which the United States, Florida, or any of its agencies parted with title.

Section 3. This act shall take effect July 1, 2010.

Amendment No.

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: General Government Policy Council

Representative Grady offered the following:

Amendment (with title amendment)

Between lines 39 and 40, insert:

Section 3. Subsection (3) of section 712.06, Florida Statutes, is amended to read:

712.06 Contents of notice; recording and indexing.—

(3) The person providing the notice referred to in s. 712.05 shall:

(a) Cause the clerk of the circuit court to ~~shall, upon such filing,~~ mail by registered or certified mail to the purported owner of said property, as stated in such notice, a copy thereof and shall enter on the original, before recording the same, a certificate showing such mailing. For preparing the certificate, the claimant shall pay to the clerk the service charge as prescribed in s. 28.24(8) and the necessary costs of mailing, in addition to the recording charges as prescribed in

Amendment No.

s. 28.24(12). If the notice names purported owners having more than one address, the person filing the same shall furnish a true copy for each of the several addresses stated, and the clerk shall send one such copy to the purported owners named at each respective address. Such certificate shall be sufficient if the same reads substantially as follows:

I hereby certify that I did on this _____, mail by registered (or certified) mail a copy of the foregoing notice to each of the following at the address stated:

...(Clerk of the circuit court)...
of _____ County, Florida,
By ...(Deputy clerk)...

The clerk of the circuit court is not required to mail to the purported owner of such property any such notice that pertains solely to the preserving of any covenant or restriction or any portion of a covenant or restriction; or

(b) Publish the notice for 4 consecutive weeks on the internet website of the clerk of the circuit court in a designated section of the website that pertains to notices. Such publication shall include the official record book and page number in which such notice was recorded. The clerk of the circuit court shall record in the public records a certificate indicating that the notice was published in accordance with this subsection. The clerk of the circuit court may collect a fee from the person providing notice of up to $100 for publication

of the notice on the website and recording that the notice was published.

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

Remove line 8 and insert:

the act; amending s. 712.06, F.S.; providing requirements for a recorded notice to preserve a claim of right; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 569 Landfills
SPONSOR(S): Agriculture and Natural Resources Policy Committee, Poppell
TIED BILLS: **IDEN./SIM. BILLS:** SB 1052

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Agriculture & Natural Resources Policy Committee	12 Y, 0 N, As CS	Cunningham	Reese
2)	Military & Local Affairs Policy Committee	9 Y, 3 N	Rojas	Hoagland
3)	General Government Policy Council		Cunningham	Hamby
4)				
5)				

SUMMARY ANALYSIS

Section 403.708, F.S., currently prohibits the deposit of yard trash in lined landfills classified by the Florida Department of Environmental Protection as Class I landfills. The bill allows Class I landfills that are designed to utilize an active gas collection system, provide or arrange for beneficial use of the landfill gas collected at such facilities, and obtain a permit modification to their operating permit to accept yard trash.

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

The bill appears to have no fiscal impact on state government; however, local governments and the private sector may be affected. See Section II of this analysis for further fiscal information.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

According to chapter 62-701.340, Florida Administrative Code, landfills or solid waste disposal units are classified into one of three categories by the amount or types of wastes received.

- Class I landfills are those that receive an average of 20 tons or more of Class I waste[1] per day. There are 53 Class I landfills in Florida.
- Class II landfills (which are no longer being permitted in Florida because most facilities opt to be permitted as a Class I landfill) are those that receive an average of less than 20 tons of Class I waste per day.
- Class III landfills are those that receive only Class III waste[2]. Class III landfills cannot accept putrescible (likely to become putrid[3]) household waste. The Department of Environmental Protection (DEP) shall exempt Class III landfills from some or all of the requirements for liners, leachate controls, and water quality monitoring if the applicant demonstrates that no significant threat to the environment will result from the exemption based upon the types of waste received, methods for controlling types of waste disposed of, and the results of hydrogeological and geotechnical investigations.

Currently, section 403.708, F.S., prohibits the deposit of yard trash[4] in lined landfills classified by DEP rule as Class I landfills. Yard trash that is source separated from solid waste may be accepted at a solid waste disposal area where separate yard trash composting facilities are provided and maintained. According to DEP, many local governments have expended significant money on implementing separate collection programs for yard trash. Due to the rising cost of purchasing additional land for landfill purposes, depositing yard trash in landfills has been discouraged. There are businesses that turn yard trash into mulch and other products and cities and municipalities are encouraged to recycle yard trash. Section 403.706, F.S., requires each county to implement a plan to achieve a goal of

[1] Class I waste means solid waste that is not hazardous waste, and that is not prohibited from disposal in a lined landfill. (rule 62-701.200, F.A.C.)

[2] Class III waste means yard trash, construction and demolition debris, processed tires, asbestos, carpet, cardboard, paper, glass, plastic, furniture other than appliances, or other materials approved by DEP that are not expected to produce leachate that poses a threat to public health or the environment.

[3] www.thefreedictionary.com

[4] Yard trash is defined in rule 62-701.200, F.A.C., as vegetative matter resulting from landscaping maintenance or land clearing operations and includes materials such as tree and shrub trimmings, grass clippings, palm fronds, trees and tree stumps.

composting no less than 5% and up to 10% of organic materials that would otherwise be disposed of in a landfill.

The Energy, Climate Change and Economic Security Act of 2008 established a new statewide recycling goal of 75% by 2020. The Act directed the Florida Department of Environmental Protection (DEP) to submit to the Florida Legislature a comprehensive program to achieve this goal. On January 4, 2010, the DEP submitted the required report to the Legislature.

The information and recommendations in the report were developed based on extensive research and the contributions of stakeholders who participated in four public workshops. An even wider range of ideas were submitted through DEP's Web forum and e-mails.

According to the report, Florida generates more than 32 million tons of municipal solid waste annually, almost two tons per resident per year. Today, more than two decades after the Legislature passed Florida's first 30% recycling goal, Floridians collectively recycle only 28% of their solid waste. The report explores ways to change that fact through heightened public awareness, state leadership, development and expansion of recycling markets, and more investments throughout the local government and commercial sectors.[5]

Effect of Proposed Changes

This bill allows Class I landfills, that have an active gas collection system, provide or arrange for beneficial use of the landfill gas, and obtain a permit modification to their operating permit, to accept yard trash. The permittee must certify that gas collection and beneficial use will continue after closure of the disposal facility that is accepting yard trash. Counties and municipalities that implement separate collection programs may save money; however, this may inadvertently impact the availability of jobs.

According to DEP, 44 landfills have active gas collection systems. There are currently about 12 active landfills with active gas collection systems that beneficially use the gas. Those landfills would be affected by this bill. This bill would allow those landfills to accept yard trash for disposal once a minor permit modification to its operating permit has been obtained. There are also about 32 landfills that actively collect landfill gas but do not beneficially use the gas. Some of those landfills could install a system to beneficially use the gas and obtain a permit modification to its operating permit, and those landfills would then also be allowed to accept yard trash.

The elimination of the lined landfill yard trash ban could impact several different fronts. Combined collection with household waste might, in some cases, result in more efficient collection and possibly fewer waste-hauling trucks on the road. This, in turn, may result in a cost savings. Decreased vehicle traffic would positively impact energy consumption and greenhouse gas emissions. On the other hand, when yard trash is disposed of in a landfill, it decomposes under anaerobic conditions and generates methane, a greenhouse gas that has a global warming potential 21 times greater than carbon dioxide. If this methane is captured very efficiently and utilized to produce energy, it may result in energy savings and reduced greenhouse gas emissions. If the methane produced by the yard trash is not captured very efficiently, total greenhouse gas emissions would be expected to increase. It is not yet clear whether the active gas collection systems currently in place will operate efficiently enough to result in an overall decrease in greenhouse gas emissions.

Combining collection of household waste and yard trash would have a major impact on the waste management industry, and may impact local governments, landfill operators, haulers, yard trash facilities, biomass facilities, and compost/top soil producers. A study is currently underway as part of a DEP-funded research effort under contract with the University of Florida to evaluate the overall impacts of allowing yard trash disposal in some lined landfills. Allowing these landfills to accept yard trash will, most likely, increase the amount of landfill gas generated, resulting in greater efficiency and more alternative fuel produced. However, the amount of yard trash that is available for mulch or compost

[5] http://www.dep.state.fl.us/waste/quick_topics/publications/shw/recycling/75percent/75_recycling_report.pdf

would be reduced. Allowing yard trash to be disposed of in Class I landfills may also impede the local government's composting requirement provided for in s. 403.706, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 403.708, F.S., to allow the disposal of yard trash in specified Class I landfills; requiring such landfills to obtain a modified operating permit; requiring permittees to certify certain collection and beneficial use of land fill gas.

Section 2. Provides an effective date of July 1, 2010.

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:

   See fiscal comments section below.

2. Expenditures:

   See fiscal comments section below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Privately owned landfills may benefit from the allowance of yard trash in landfills that collect the gas and reuse it or sell it. Businesses that operate yard trash processing facilities may see a reduction in the availability of yard trash. Businesses that operate Class III landfills or construction and demolition disposal facilities could see a decrease in tipping fees if yard trash is diverted to Class I landfills. Businesses that operate a Class I landfill and elect to install a system to collect landfill gas and reuse it would incur start-up costs of the system and its installation.

D. FISCAL COMMENTS:

Non-recurring Effects: If a local government is operating a Class I landfill and elects to put in a system to beneficially use landfill gas, there would be start-up costs of installing such a system. Otherwise, none.

Recurring Effects: Many local governments have expended significant money on implementing separate collection programs for yard trash. In some cases the local government might save money if it could do away with separate collection and just take all the yard trash to the Class I landfill. In other cases the local government might find it more difficult or expensive to collect enough yard trash to continue supplying a mulching, or fuel-making operation.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require the counties or cities to spend funds or take an 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

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 3, 2010 the Agriculture and Natural Resources Policy Committee adopted a strike-all amendment to this bill. In addition to the original provisions of the bill, the amendment:

- authorizes the disposal of yard trash at specified Class I landfills;
- requires landfills to obtain a modified operating permit;
- requires permittees to certify certain collection and beneficial use of landfill gas; and
- provides an effective date.

A bill to be entitled

An act relating to landfills; amending s. 403.708, F.S.; authorizing the disposal of yard trash at specified Class I landfills; requiring such landfills to obtain a modified operating permit; requiring permittees to certify certain collection and beneficial use of landfill gas; providing an effective date.

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

Section 1. Paragraph (c) of subsection (12) of section 403.708, Florida Statutes, is amended to read:

403.708 Prohibition; penalty.—

(12) A person who knows or should know of the nature of the following types of solid waste may not dispose of such solid waste in landfills:

(c) Yard trash in lined landfills classified by department rule as Class I landfills, unless the Class I landfill uses an active gas-collection system to collect landfill gas generated at the disposal facility and provides or arranges for a beneficial use of the gas. A qualifying permitted Class I landfill shall obtain a minor permit modification to its operating permit which describes the beneficial use being made of the landfill gas and modifies the facility's operation plan before receiving yard trash as authorized by this paragraph. The permittee must certify that gas collection and beneficial use will continue after closure of the disposal facility that is accepting yard trash. Yard trash that is source separated from

solid waste may be accepted at a solid waste disposal area where separate yard trash composting facilities are provided and maintained. The department recognizes that incidental amounts of yard trash may be disposed of in Class I landfills. In any enforcement action taken pursuant to this paragraph, the department shall consider the difficulty of removing incidental amounts of yard trash from a mixed solid waste stream.

Section 2. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 707 International Banking Corporations
SPONSOR(S): Grady
TIED BILLS: **IDEN./SIM. BILLS:** SB 1264

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee	12 Y, 0 N	Barnum	Cooper
2)	Policy Council	16 Y, 0 N	Liepshutz	Ciccone
3)	General Government Policy Council		Barnum	Hamby
4)				
5)				

SUMMARY ANALYSIS

The Office of Financial Regulation (OFR) has authority to regulate entities conducting banking or trust business in Florida. An international banking corporation or other foreign institution that engages in banking activities, must be licensed by the OFR before transacting business in Florida. Although an international banking corporation may operate through a variety of business models, each of which must be separately licensed, a particular business model not addressed in Florida Statutes, and thus not subject to OFR regulation, is an "international trust company representative office."

To date, only one international trust company representative office has operated in Florida. Stanford Trust Company Limited's representative office is no longer in operation due to federal charges brought against Robert Allen Stanford for operating an $8 billion Ponzi scheme.

HB 707 defines an international trust company representative office and provides for its regulation by the OFR. An international trust company representative office will be subject to:

- Licensing and examination.
- Audit and record keeping requirements.
- Injunctions and subpoenas.
- Administrative action and fines.
- Voluntary and involuntary dissolution.

The bill stipulates that international trust company representative offices will not be authorized to accept deposits or make loans. Activities will be limited to those which are ancillary to the trust business and of a nonfiduciary nature such as marketing, soliciting business, answering questions, or providing account information.

The bill provides for a $5,000 filing fee and $2,000 annual assessment for an international trust company representative office, which is consistent with the existing requirement for an international representative office or international administrative office.

The bill expands the requirements to conduct financial institution business by an international banking corporation. It provides statutory authority for the OFR to regulate and take action against an international banking corporation based on the activities of its affiliates or subsidiaries.

The bill provides for the first increase in over 18 years to the minimum capital account requirement for international financial entities.

The bill does not appear to have a state or local government fiscal impact.

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

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background:

Chapters 655 through 667, Florida Statutes comprise the financial institution codes.[1] These provide general regulatory powers to be exercised by the Financial Services Commission[2] and the Office of Financial Regulation (OFR). The OFR is responsible for administering Florida's financial institution codes. The specific chapters are:

- Chapter 655, relating to financial institutions generally
- Chapter 657, relating to credit unions
- Chapter 658, relating to banks and trust companies
- Chapter 660, relating to trust business
- Chapter 663, relating to international banking corporations
- Chapter 665, relating to associations
- Chapter 667, relating to savings banks

While OFR has authority to regulate entities conducting banking or trust business in Florida, there are certain exceptions. These include:

- Banks chartered and regulated by other states.
- National banks, which are regulated by the Office of the Comptroller of the Currency.
- Federal thrifts, which are regulated by the Office of Thrift Supervision.
- Federal credit unions, which are regulated by the National Credit Union Administration.
- Institutions chartered and regulated by foreign countries, unless those institutions seek to "engage in the business of banking" or "engage in trust business" in Florida.

An international banking corporation, such as a foreign commercial bank, foreign merchant bank, or other foreign institution that engages in banking activities, must be licensed by OFR[3] to transact business in Florida. An international banking corporation may operate through a variety of business models, all of which must be separately licensed.[4] These authorized business models, include international bank

[1] s. 655.005(1)(j), F.S.

[2] The Financial Services Commission is composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture.

[3] ss. 663.04 and 663.05, F.S.

[4] s. 663.06(1), F.S.

agencies[5], international representative offices[6], international administrative offices[7], and international branches[8].

A business model which is not included within the definition of "financial institution", "state financial institution", or "international banking corporation" is an "international trust company representative office". An international trust company representative office conducts marketing, advertising, and customer relations activities on behalf of the international trust company, but does not render investment advice or act as a trustee. Florida's financial institution codes are silent regarding regulation of these entities. Therefore, unlike other international banking businesses operating in Florida, these offices are not subject to regulation by the OFR.

To date, only one international trust company representative office has operated in Florida. In 1998, Stanford Trust Company Limited (Stanford Trust), an international trust company domiciled in Antigua, contacted the Florida Department of Banking and Finance[9], about establishing an international trust company representative office. A Memorandum of Agreement[10] was entered into with Stanford Trust which specified terms for operation of the trust company representative office. The agreement specified permissible and prohibited business activities which were equivalent to those permitted for trust company representative offices of out-of-state domestic trust companies. Therefore, it was not considered to be engaging in banking or trust business in Florida subject to state regulation.

The Stanford Trust representative office is no longer in operation due to civil and criminal charges that have been brought against Robert Allen Stanford by federal authorities. In 2009, Mr. Stanford was charged by the U.S. Securities and Exchange Commission with operating an $8 billion Ponzi scheme involving certificates of deposit issued by Stanford International Bank, LTD, located in Antigua.[11] Mr. Stanford was subsequently arrested by federal authorities and remains in jail. OFR has an ongoing investigation into the operations of Stanford Trust's representative office in South Florida.

Current Situation:

The Office of Financial Regulations (OFR) licenses international banking corporation entities, including international bank agencies, international representative offices, international administrative offices, and international branches transacting business in Florida. Among other things, the license application must include:

- The name of the international banking corporation.
- The name of the person in charge of the business and affairs of the office.
- The total amount of the capital accounts of the international banking corporation.
- A complete and detailed statement of its financial condition as of a date within 180 days prior to the date of such application.
- A listing of any occasion within the preceding 10-year period in which either the international banking corporation or any of its directors, executive officers, or principal shareholders has been convicted of, or pled guilty or nolo contendere to, any offense with respect to which the penalties include the possibility of imprisonment for 1 year or more, or to any offense involving money laundering or otherwise related to the operation of a financial institution.
- An authenticated copy of its articles of incorporation and a copy of its bylaws, or an equivalent.
- A certificate issued by the banking or supervisory authority of the country in which the international banking corporation is chartered stating that the international banking corporation is duly organized

[5] s. 663.061, F.S.
[6] s. 663.062, F.S.
[7] s. 663.063, F.S.
[8] s. 663.064, F.S.
[9] The predecessor to the Office of Financial Regulation.
[10] Memorandum of Agreement executed December 14, 1998 on file with the Insurance, Business and Financial Affairs Policy Committee.
[11] Securities and Exchange Commission Press Release 2009-26 on file with the Insurance, Business and Financial Affairs Policy Committee.

and licensed and lawfully existing in good standing and listing any instance in which the international banking corporation has been convicted of, or pled guilty or nolo contendere to, a violation of any currency transaction reporting or money laundering law which may exist in that country.

International bank agencies and international branches are permitted to conduct activities similar to those of a domestic bank. They may make and service loans, act as a custodian, furnish investment advice, conduct foreign exchange activities and trade in securities and commercial paper. For licensure, the normal minimum capital account requirement is $25 million; however, under certain circumstances[12], a $10 million minimum could apply. As of January 1, 2010, there were 19 international bank agencies and 6 international branches licensed.[13]

International representative offices and international administrative offices are permitted more limited activities. An international representative office may solicit business, provide information to customers concerning their accounts, answer questions, receive applications for extensions of credit and other banking services, transmit documents on behalf of customers, and make arrangements for customers to transact business on their accounts. An administrative office may provide personnel administration, data processing or recordkeeping, and negotiate, approve, or service loans or extensions of credit and investments. For licensure, the normal minimum capital account requirement is $10 million for an international representative office and $25 million for an international administrative office. As of January 1, 2010, there were 10 international representative offices and 4 international administrative offices licensed.[14]

The Office of Financial Regulation (OFR) is authorized revoke a license if a home country has dissolved, terminated, or cancelled the international banking corporations' authority to operate in the home jurisdiction. The financial institution codes are silent regarding OFR's authority to revoke inactive licenses.

OFR may take possession of the business and property in this state of any international banking corporation that:

- Has violated any law.
- Has neglected or refused to comply with an order issued by the OFR.
- Is insolvent or imminently insolvent.
- Is transacting business in an unsound, unsafe, or unauthorized manner such that the corporation is threatened with imminent insolvency.
- Is in liquidation at its domicile or elsewhere.

The financial institution codes are silent regarding OFR's authority to regulate or take action against an international banking corporation based on the activities of its affiliates[15] or subsidiaries[16].

Effect of Bill:

HB 707 adds the term "international trust company representative office" to the definition of "financial institution" and "state financial institution." This will result in an international trust company representative office being subject to Office of Financial Regulation (OFR) subpoena powers, regular examinations, and the general enforcement powers of the OFR contained in ch. 655, F.S.

---

[12] s. 663.055(2)(c), F.S. The international banking corporation has been in the business of banking for at least 10 years and is ranked by the banking or supervisory authority of the country in which it is organized and licensed as one of the five largest banks in that country in terms of domestic deposits, as of the date of its most recent statement of financial condition.

[13] Office of Financial Regulation Bill Analysis dated January 22, 2010 on file with the Insurance, Business and Financial Affairs Policy Committee.

[14] Id.

[15] s. 655.005(1)(a), F.S. "Affiliate" means any financial institution holding company pursuant to federal law or any subsidiary or service corporation of such a holding company.

[16] s. 655.005(1)(q), F.S. "Subsidiary" means any organization permitted by the office which is controlled by a financial institution.

The bill amends the definition of an "international banking corporation" to include "a foreign trust company, or any similar business entity, including a foreign bank with fiduciary powers, that conducts trust business as defined in the financial institutions codes."[17]

In addition, the bill amends the definition of "international representative office" to include the affiliates and subsidiaries of an international banking corporation. Currently, only offices of the international banking corporation fall within the purview of the definition. The bill expands the definition to include offices of the affiliates or subsidiaries of the international banking corporation.

The bill defines an international trust company representative office,[18,19] and provides for its regulation. An international banking corporation desiring to establish international trust company representative office in this state will be required to:

- Hold an unrestricted license to conduct trust business in the foreign country under the laws of which it is organized and chartered.
- Be authorized by the foreign country's trust business regulatory authority to establish the proposed international trust company representative office.
- Be adequately supervised by the central bank or trust regulatory agency in the foreign country in which it is organized and chartered.
- Meet all requirements under Florida's financial institutions codes for the operation of a trust company or trust department as if it was a state-chartered trust company or bank authorized to exercise fiduciary powers, including being subject to:
    - Licensing, examination and regulation by the OFR.
    - Administrative action and fines.
    - Anti-money laundering provisions.
    - Outside audit requirements.
    - Record keeping requirements.
    - Injunctions and subpoenas.
    - Voluntary and involuntary dissolution.
- Meet a minimum capital account requirement of $20 million.

The bill stipulates that international trust company representative offices will not be authorized to accept deposits or make loans. Representatives and employees at such offices will be prohibited from acting as a fiduciary, which includes, but is not limited to, accepting a fiduciary appointment, executing fiduciary documents that create a fiduciary relationship, or making discretionary decisions regarding the investment or distribution of fiduciary accounts. Activities will be limited to engaging in non-fiduciary activities that are ancillary to the trust business of the international banking corporation, such as:

- Advertising, marketing, and soliciting for fiduciary business on behalf of an international banking corporation or trust company;
- Contacting existing or potential customers;
- Answering questions and providing information about matters related to customer accounts;
- Serving as a liaison in Florida between the international banking corporation or trust company and its existing or potential customers.

---

[17] s. 658.12(20), F.S. "Trust business" means the business of acting as a fiduciary when such business is conducted by a bank, state or federal association, or a trust company, and also when conducted by any other business organization as its sole or principal business.

[18] "An office of an international banking corporation or trust company organized and licensed under the laws of a foreign country that is established or maintained in this state for the purpose of engaging in non-fiduciary activities described in s. 663.0625, or any affiliate, subsidiary, or other person who engages in such activities, on behalf of such international banking corporation or trust company, from an office located in this state."

[19] The definition is consistent with 12 CFR s. 9.2(k), which defines a "trust representative office" as it relates to a national bank, in part, as follows: "Trust representative office" means an office of a national bank, other than a main office, branch, or trust office, at which the bank performs activities ancillary to its fiduciary business, **but does not engage in any of the activities specified in § 9.7(d)**. Examples of ancillary activities include advertising, marketing, and soliciting for fiduciary business; contacting existing or potential customers, answering questions, and providing information about matters related to their accounts; acting as a liaison between the trust office and the customer. . . . (emphasis supplied). The activities which are specified in § 9.7(d) and which are prohibited include: accepting a fiduciary appointment, executing documents that create the fiduciary relationship, and making discretionary decisions regarding the investment or distribution of fiduciary assets.

- Such other activities as may be approved by the OFR or rules of the Financial Services Commission.

The bill provides that the filing fee to establish an international trust company representative office is $5,000 followed by an annual assessment is $2,000.

The bill increases the minimum capital account requirements for international bank agencies, international branches, and international administrative offices from $25 million to $40 million. Under certain circumstances,[20] a $20 million minimum could apply. The minimum capital account requirement for an international representative office is increased from $10 million to $20 million.

The bill expands the requirements for carrying on financial institution business to include capital account minimums, and requires that the organization is not:

- Insolvent or imminently insolvent.
- In bankruptcy, conservatorship, liquidation, or similar status.
- Is not operating under the direct control of the government, regulatory, or supervisory authority of the jurisdiction of its incorporation.
- Has not been in such status or control at anytime within the 7 years preceding the date of application of the license.

Furthermore, it requires disclosure of any felony arrest or charge involving any director, executive officer, or principal shareholder,[21] and disclosure of any financial offense involving facilitating or furthering terrorism or fraud.

The bill provides statutory authority for the OFR to regulate and take action against an international banking corporation based on the activities of its affiliates or subsidiaries. The bill provides that the OFR may take possession of the business and property in this state of any international banking corporation or licensed office upon a finding that the corporation is dissolved or otherwise terminated in the jurisdiction of its incorporation, is in bankruptcy or similar status under the laws of any country, or is operating through government intervention or any other extraordinary actions. It requires the OFR to revoke a license if it determines that a licensed office has been substantially inactive for six months or greater.

The bill removes the requirement that an authenticated copy of the articles of incorporation and the bylaws of an international banking corporation be submitted to the OFR. The remaining provisions of current law[22] are sufficient to determine whether the applicant is duly organized, licensed and in good standing.

The bill authorizes the OFR, by order, to allow an international banking corporation to make any loan or investment or exercise any power which it could make or exercise if it were operating in this state as a federal agency under federal law. The bill retains current law authority for the Financial Services Commission to take this same action by rule.[23]

B. SECTION DIRECTORY:

Section 1. Amends s. 655.005, F.S., by revising and expanding definitions.

Section 2. Amends s. 663.01, F.S., by revising and expanding definitions.

Section 3. Amends s. 663.02, F.S., by expanding and clarifying the applicability of state banking laws.

---

[20] s. 663.055(2)(c), F.S. The international banking corporation has been in the business of banking for at least 10 years and is ranked by the banking or supervisory authority of the country in which it is organized and licensed as one of the five largest banks in that country in terms of domestic deposits, as of the date of its most recent statement of financial condition.

[21] This language is consistent with FDIC Form 3064-0006, *Interagency Biographical and Financial Report*, which is incorporated by reference in *69U-100.03852* and *69U-105.202, Florida Administrative Code*, as Form OFR-U-10.

[22] An applicant must submit a certificate issued by the banking or supervisory authority of the country in which the applicant is chartered stating that the applicant is duly organized, licensed, and in good standing.

[23] s. 663.061(3), F.S.

Section 4. Amends s. 663.04, F.S., by expanding the requirements for carrying on financial institution business.

Section 5. Amends s. 663.05, F.S., by revising and expanding licensure requirements.

Section 6. Amends s. 663.055, F.S., by increasing capital accounts requirements.

Section 7. Amends s. 663.06, F.S., by revising and clarifying permissible activities.

Section 8. Amends s. 663.061, F.S., by revising permissible activities.

Section 9. Amends s. 663.062, F.S., by revising permissible activities.

Section 10. Creates s. 663.0625, F.S., providing for international trust company representative offices, permissible activities, and requirements.

Section 11. Amends s. 663.064, F.S., by revising requirements and permissible activities.

Section 12. Amends s. 663.065, F.S., by correcting a cross-reference.

Section 13. Amends s. 663.11, F.S., by revising requirements for continuing to conduct business.

Section 14. Amends s. 663.12, F.S., by providing international trust company representative office licensing and fee requirements.

Section 15. Amends s. 663.16, F.S., by conforming language.

Section 16. Amends s. 663.17, F.S., by clarifying application and conforming language.

Section 17. Amends s. 663.171, F.S., by conforming language.

Section 18. Amends s. 663.172, F.S., by conforming language.

Section 19. Provides for a July 1, 2010 effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None or negligible.[24]

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

[24] With a $5,000 initial application fee and a $2,000 annual assessment, and with only one entity to date ever having expressed an interest in this business model, it is doubtful there will be any revenue.

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

HB 707 creates a new license type. The filing fee for establishing an "international trust company representative office" will be $5,000 and the annual assessment will be $2,000. The same fee structure currently applies to an international representative office or international administrative office.

The bill increases capital account requirements for licensure of international banking corporations. The requirements have not been raised in the past 18 years. In 2001 the Legislature raised capital requirements for new banks,[25] and raised those requirements again in 2008.[26] Currently, all Florida-licensed international banking corporations, with one exception, meet the new capital requirements.[27]

To date, only one international trust company representative office[28] has expressed any interest in conducting business in Florida. At this time, no additional staffing has been requested by OFR to administer the new license type.[29]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill expands existing rule-making authority to include international trust company representative offices.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

[25] Chapter 2001-243, Laws of Florida

[26] Chapter 2008-75, Laws of Florida

[27] Banco Industrial de Venezuela (BIV) is not in compliance with the current statutory requirement . The OFR served BIV with an Administrative Complaint on October 26, 2009, seeking to revoke BIV's license to operate its Miami Agency. BIV petitioned for a DOAH hearing. The hearing is currently scheduled for March 22-26, 2010, in Miami. DOAH Docket # 09-006714.

[28] Stanford Trust

[29] Office of Financial Regulation Bill Analysis dated January 22, 2010 on file with the Insurance, Business and Financial Affairs Policy Committee.

A bill to be entitled

An act relating to international banking corporations; amending ss. 655.005 and 663.01, F.S.; revising certain definitions; amending s. 663.02, F.S.; expanding application of state banking laws to include certain international banking corporations; expanding legislative intent; prohibiting construction to authorize international banking corporation or trust companies to conduct trust business under certain circumstances; amending s. 663.04, F.S.; revising requirements for carrying on banking business to apply to certain additional financial institutions; imposing additional requirements; amending s. 663.05, F.S.; revising requirements for licensing international banking corporations; including requirements applicable to certain trust representative offices; deleting certain nonapplication provisions; amending s. 663.055, F.S.; increasing certain net capital account requirements; amending s. 663.06, F.S.; revising permissible activities requirements for licensed international banking corporations; amending s. 663.061, F.S.; revising a permissible activity requirement for international bank agencies; amending s. 663.062, F.S.; revising a permissible activity requirement for licensed international representative offices to apply to trust companies; creating s. 663.0625, F.S.; specifying permissible activities for international trust company representative offices; specifying requirements; amending

s. 663.064, F.S.; revising application of provisions of law to establishing branches of international banking corporations; amending s. 663.065, F.S.; revising application of provisions of law to organize a state-chartered investment company; amending s. 663.11, F.S.; providing for termination of an international banking corporation's charter or authority; prohibiting international banking corporations from continuing to conduct licensed business in this state under certain circumstances; amending s. 663.12, F.S.; increasing a license application filing fee; imposing an annual assessment upon certain entities; amending s. 663.16, F.S.; revising definitions to conform to changes made by the act; amending s. 663.17, F.S.; expanding criteria under which the Office of Financial Regulation may take possession of certain business and property of certain international banking corporations; revising provisions to conform to changes made by the act; amending ss. 663.171 and 663.172, F.S.; revising provisions to conform to changes made by the act; providing an effective date.

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

Section 1. Paragraphs (h) and (p) of subsection (1) of section 655.005, Florida Statutes, are amended to read:

655.005 Definitions.—

(1) As used in the financial institutions codes, unless the context otherwise requires, the term:

(h) "Financial institution" means a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation ~~organization~~, international branch, international representative office, international administrative office, international trust company representative office, or credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.

(p) "State financial institution" means a state-chartered or state-organized association, bank, investment company, trust company, international bank agency, international branch, international representative office, international administrative office, international trust company representative office, or credit union.

Section 2. Subsections (3), (6), and (8) of section 663.01, Florida Statutes, are amended, subsections (9) and (10) of that section are renumbered as subsections (10) and (11), respectively, and a new subsection (9) is added to that section, to read:

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

(3) "Foreign country" means a country other than the United States and includes any colony, dependency, or possession of such country notwithstanding any definitions in chapter 658, and any territory of the United States, including Guam, American Samoa, the Virgin Islands, and the Commonwealth of Puerto Rico.

(6) "International banking corporation" means a banking

corporation organized and licensed under the laws of a foreign country~~, or, if organized and licensed under the laws of the United States or any of the states of the United States of America, a banking corporation:~~

~~(a) Which is not a bank or bank holding company as defined in the federal Bank Holding Company Act, as amended, 12 U.S.C. ss. 1841-1850; and~~

~~(b) Which maintained, on July 1, 1981, as its only United States banking office, one state agency licensed by a state other than this state~~.

The term "international banking corporation" includes, without limitation, a foreign commercial bank, foreign merchant bank, or other foreign institution that engages in banking activities usual in connection with the business of banking in the country where such foreign institution is organized or operating, including a corporation: the sole shareholders of which are one or more international banking corporations or holding companies which own or control one or more international banking corporations which are authorized to carry on a banking business, or a central bank or government agency of a foreign country and any affiliate or division thereof; which has the power to receive deposits from the general public in the country where it is chartered and organized; and which is under the supervision of the central bank or other bank regulatory authority of such country. The term also includes foreign trust companies, or any similar business entities, including, but not limited to, foreign banks with fiduciary powers, that conduct

trust business as defined in the financial institutions codes.

(8) "International representative office" means an office of an international banking corporation organized and licensed under the laws of a foreign country that is established or maintained in this state for the purpose of engaging in the activities described in s. 663.062, or any affiliate, subsidiary, or other person that engages ~~whose primary business is to engage~~ in such activities, on behalf of such international banking corporation, from an office located in this state.

(9) "International trust company representative office" means an office of an international banking corporation or trust company organized and licensed under the laws of a foreign country which office is established or maintained in this state for the purpose of engaging in nonfiduciary activities described in s. 663.0625, or any affiliate, subsidiary, or other person that engages in such activities on behalf of such international banking corporation or trust company from an office located in this state.

Section 3. Section 663.02, Florida Statutes, is amended to read:

663.02 Applicability of state banking laws.—

(1) International banking corporations having offices in this state shall be subject to all the provisions of the financial institutions codes and chapter 655 as though such international banking corporations were state banks or trust companies, except where it may appear, from the context or otherwise, that such provisions are clearly applicable only to banks or trust companies organized under the laws of this state

or the United States. Without limiting the foregoing general provisions, it is the intent of the Legislature that the following provisions shall be applicable to such banks or corporations: s. 655.031, relating to administrative enforcement guidelines; s. 655.032, relating to investigations, subpoenas, hearings, and witnesses; s. 655.0321, relating to hearings, proceedings, and related documents and restricted access thereto; s. 655.033, relating to cease and desist orders; s. 655.037, relating to removal by the office of an officer, director, committee member, employee, or other person; s. 655.041, relating to administrative fines and enforcement; s. 655.50, relating to control of money laundering ; ~~and~~ s. 658.49, relating to loans by banks not exceeding $50,000; and any provision of law for which the penalty is increased under s. 775.31 for facilitating or furthering terrorism. International banking corporations shall not have the powers conferred on domestic banks by the provisions of s. 658.60, relating to deposits of public funds. The provisions of chapter 687, relating to interest and usury, shall apply to all loans not subject to s. 658.49.

(2) Neither an international bank agency nor an international branch shall have any greater right under, or by virtue of, this section than is granted to banks organized under the laws of this state. Legal and financial terms used herein shall be deemed to refer to equivalent terms used by the country in which the international banking corporation is organized. This chapter and the financial institutions codes may not be construed to authorize any international banking corporation or

trust company to conduct trust business, as defined in s. 658.12, from an office in this state except for those activities specifically authorized by ss. 663.061(5) and 663.0625.

Section 4. Section 663.04, Florida Statutes, is amended to read:

663.04 Requirements for carrying on financial institution ~~banking~~ business.—An ~~No~~ international banking corporation or trust company, or any affiliate, subsidiary, or other person or business entity acting as an agent for, on behalf of, or for the benefit of such international banking corporation or trust company who engages in such activities from an office located in this state, may not ~~shall~~ transact a banking or trust business, or maintain in this state any office for carrying on such business, or any part thereof, unless such corporation, trust company, affiliate, subsidiary, person, or business entity ~~has~~:

(1) Has been authorized by its charter to carry on a banking or trust business and has complied with the laws of the jurisdiction in which it is chartered.

(2) Has furnished to the office such proof as to the nature and character of its business and as to its financial condition as the commission or office requires.

(3) Has filed with the office a certified copy of that information required to be supplied to the Department of State by those provisions of chapter 607 which are applicable to foreign corporations.

(4) Has received a license duly issued to it by the office.

(5) Has capital accounts no less than the minimums

required per s. 663.055 and is not imminently insolvent or insolvent per s. 655.005(1).

(6)(a) Is not in bankruptcy, conservatorship, receivership, liquidation, or similar status under the laws of any country.

(b) Is not operating under the direct control of the government, regulatory, or supervisory authority of the jurisdiction of its incorporation through government intervention or any other extraordinary actions.

(c) Has not been in such status or control at any time within the 7 years preceding the date of application for a license.

Section 5. Section 663.05, Florida Statutes, is amended to read:

663.05 Application for license; approval or disapproval.—

(1) Every international banking corporation, before being licensed by the office to maintain any office in this state, shall subscribe and acknowledge, and submit to the office, an application which shall contain:

(a) The name of the international banking corporation.

(b) The proposed location by street and post office address and county where its business is to be transacted in this state and the name of the person who shall be in charge of the business and affairs of the office.

(c) The location where its initial registered office will be located in this state.

(d) The total amount of the capital accounts of the international banking corporation.

(e) A complete and detailed statement of its financial condition as of a date within 180 days prior to the date of such application, except that the office in its discretion may, when necessary or expedient, accept such statement of financial condition as of a date within 240 days prior to the date of such application. The office in its discretion may, when necessary or expedient, require an independent opinion audit or the equivalent satisfactory to the office.

(f) A listing of any occasion within the preceding 10-year period in which either the international banking corporation or any of its directors, executive officers, or principal shareholders has been arrested for, charged with, convicted of, or pled guilty or nolo contendere to, regardless of adjudication, any offense with respect to which the penalties include the possibility of imprisonment for 1 year or more, or to any offense involving money laundering, currency transaction reporting, facilitating or furthering terrorism, fraud, or otherwise related to the operation of a financial institution.

(2) The office shall disallow any illegally obtained currency, monetary instruments, funds, or other financial resources from the capitalization requirements of this section, and the existence of such illegally obtained resources shall be grounds for denial of the application for license.

(3) At the time an application is submitted to the office, the international banking corporation shall also submit a ~~duly authenticated copy of its articles of incorporation and a copy of its bylaws, or an equivalent thereof satisfactory to the office. Such corporation shall also submit a~~ certificate issued

by the banking or supervisory authority of the country in which the international banking corporation is chartered stating that the international banking corporation is duly organized and licensed and lawfully existing in good standing ~~and listing any instance in which the international banking corporation has been convicted of, or pled guilty or nolo contendere to, a violation of any currency transaction reporting or money laundering law which may exist in that country~~.

(4) Application shall be made on a form prescribed by the office ~~commission~~ and shall contain such information as the commission or office requires.

(5) The office may, in its discretion, approve or disapprove the application, but it shall not approve the application unless, in its opinion, the applicant meets each and every requirement of this part and any other applicable provision of the financial institutions codes. The office shall approve the application only if it has determined that the directors, executive officers, and principal shareholders of the international banking corporation are qualified by reason of their financial ability, reputation, and integrity and have sufficient banking and other business experience to indicate that they will manage and direct the affairs of the international banking corporation in a safe, sound, and lawful manner. In the processing of applications, the time limitations under the Administrative Procedure Act shall not apply as to approval or disapproval of the application.

(6) The office may ~~shall~~ not issue a license to an international banking corporation unless:

(a) It is chartered in a jurisdiction in which any bank or trust company having its principal place of business in this state may establish similar facilities or exercise similar powers; or

(b) Federal law permits the appropriate federal regulatory authority to issue a comparable license to the international banking corporation.

(7) The office may not issue a license ~~shall not be issued~~ to an international banking corporation for the purpose of operating:

(a) An international bank agency or an international branch in this state unless the ~~international banking~~ corporation:

1. ~~(a)~~ Holds an unrestricted license to receive deposits from the general public, as authorized for that international banking corporation, in the foreign country under the laws of which it is organized and chartered.

2. ~~(b)~~ Has been authorized by the foreign country's bank regulatory authority to establish the proposed international bank office.

3. ~~(c)~~ Is adequately supervised by the central bank or bank regulatory agency in the foreign country in which it is organized and chartered.

~~(8) A license shall not be issued to an international banking corporation for the purpose of operating~~

(b) An international representative office or an international administrative office in this state unless the ~~international banking~~ corporation:

1.~~(a)~~ Has been authorized by the foreign country's bank regulatory authority to establish the proposed international bank office.~~; and~~

2.~~(b)~~ Is adequately supervised by the central bank or bank regulatory agency in the foreign country in which it is organized and chartered.

(c) A trust representative office in this state unless the corporation:

1. Holds an unrestricted license to conduct trust business in the foreign country under the laws of which it is organized and chartered.

2. Has been authorized by the foreign country's trust business regulatory authority to establish the proposed international trust representative office.

3. Is adequately supervised by the central bank or trust regulatory agency in the foreign country in which it is organized and chartered.

4. Meets all requirements under the financial institutions codes for the operation of a trust company or trust department as if it was a state chartered trust company or bank authorized to exercise fiduciary powers.

(8)~~(9)~~ The commission shall establish, by rule, the general principles which shall determine the adequacy of supervision of an international banking corporation's foreign establishments. These principles shall be based upon the need for cooperative supervisory efforts and consistent regulatory guidelines and shall address, at a minimum, the capital adequacy, asset quality, management, earnings, liquidity,

internal controls, audits, and foreign exchange operations and positions of the international banking corporation. This subsection shall not require examination by the home-country regulatory authorities of any office of an international banking corporation in this state. The commission may also establish, by rule, other standards for approval of an application for a license as considered necessary to ensure the safe and sound operations of the international bank or trust representative office in this state.

~~(10) The requirements of subsection (7) shall not apply to any international banking corporation that held a license to operate an international bank agency in this state before July 1, 1992.~~

~~(11) The requirements of subsection (8) shall not apply to any international banking corporation that held a license to operate an international representative office or international administrative office in this state before July 1, 1992.~~

Section 6. Section 663.055, Florida Statutes, is amended to read:

663.055 Capital requirements.—

(1) To qualify for a license under the provisions of this part, an international banking corporation must have net ~~total~~ capital accounts, calculated according to United States generally accepted accounting principles and practices, of at least:

(a) Forty ~~Twenty-five~~ million dollars for the establishment of an international bank agency, an international branch, or an international administrative office; or

(b) Twenty ~~Ten~~ million dollars for the establishment of an international representative office or international trust representative office.

(2) Notwithstanding the provisions of paragraph (1)(a), the office may approve an application for a license to establish an international bank agency, an international branch, or an international administrative office if:

(a) The international banking corporation is licensed to receive deposits from the general public in the country where it is organized and licensed and to engage in such other activities as are usual in connection with the business of banking in such country;

(b) The office receives a certificate that is issued by the banking or supervisory authority of the country in which the international banking corporation is organized and licensed and states that the international banking corporation is duly organized and licensed and lawfully existing in good standing, and is empowered to conduct a banking business; and

(c) The international banking corporation has been in the business of banking for at least 10 years and is ranked by the banking or supervisory authority of the country in which it is organized and licensed as one of the five largest banks in that country in terms of domestic deposits, as of the date of its most recent statement of financial condition. However, in no event shall the office approve an application under this subsection for any international banking corporation with capital accounts of less than $20 ~~$10~~ million.

(3) The office may specify such other conditions as it

determines appropriate, considering the public interest, the need to maintain a safe, sound, and competitive banking system, and the preservation of an environment conducive to the conduct of an international banking business in this state. In translating the capital accounts of an international banking corporation, the office may consider monetary corrections accounts that reflect results consistent with the requirements of generally accepted accounting principles in the United States.

(4) For the purpose of this part, the capital accounts of an international banking corporation shall be determined in accordance with rules adopted by the commission. In adopting such rules, the commission shall consider similar rules adopted by bank regulatory agencies in the United States and the need to provide reasonably consistent regulatory requirements for international banking corporations which will maintain the safe and sound condition of international banking corporations doing business in this state.

Section 7. Subsections (1), (2), and (3) of section 663.06, Florida Statutes, are amended to read:

663.06 Licenses; permissible activities.—

(1) An international banking corporation licensed to operate an office in this state may engage in the business authorized by this part at the office specified in such license for an indefinite period. An international banking corporation may operate more than one licensed office ~~international bank agency, international branch, or international representative office~~, each at a different place of business, provided that

each office shall be separately licensed. No license ~~to operate an international bank office~~ is transferable or assignable. However, the location of a licensed ~~an international bank~~ office may be changed after notification of the office. Every such license shall be, at all times, conspicuously displayed in the place of business specified therein.

(2) An international banking corporation which proposes to terminate the operations of a licensed office in this state ~~its international bank agency, international branch, international representative office, or international administrative office~~ shall surrender the ~~its~~ license to the office and comply with such procedures as the commission may prescribe by rule.

(3) The ~~An international bank agency, international branch, international representative office, or international administrative office~~ license for any international banking corporation office in this state may be suspended or revoked by the office, with or without examination, upon its determination that the international banking corporation or the licensed office does not meet all requirements for original licensing. Additionally, the office shall revoke the license of any licensed office that the office determines has been inactive for 6 months or longer. The commission may by rule prescribe additional conditions or standards under which the license of an international bank agency, international branch, international representative office, international trust company representative office, or international administrative office may be suspended or revoked.

Section 8. Subsection (3) of section 663.061, Florida

Statutes, is amended to read:

663.061 International bank agencies; permissible activities.—

(3) Notwithstanding any provision of this chapter or chapter 658 to the contrary, an international banking corporation licensed under this part to operate an international bank agency may, if authorized by rule of the commission or office order, make any loan or investment or exercise any power which it could make or exercise if it were operating in this state as a federal agency under federal law. The commission and office shall, when adopting such rules or issuing such orders, consider the public interest and convenience and the need to maintain a safe, sound, and competitive state banking system. Unless otherwise provided by statute, an international bank agency may not exercise any powers that a federal agency is not authorized to exercise.

Section 9. Section 663.062, Florida Statutes, is amended to read:

663.062 International representative offices; permissible activities.—An international representative office may promote or assist the deposit-taking, lending, or other financial or banking activities of an international banking corporation. An international representative office may serve as a liaison in Florida between an international banking corporation and its existing and potential customers. Representatives and employees based at such office may solicit business for the international banking corporation and its subsidiaries and affiliates, provide information to customers concerning their accounts, answer

questions, receive applications for extensions of credit and other banking services, transmit documents on behalf of customers, and make arrangements for customers to transact business on their accounts, but a representative office may not conduct any banking or trust business in this state.

Section 10. Section 663.0625, Florida Statutes, is created to read:

663.0625 International trust company representative offices; permissible activities; requirements.—An international trust company representative office may conduct any nonfiduciary activities that are ancillary to the fiduciary business of its international banking corporation or trust company, but may not act as a fiduciary. Permissible activities include advertising, marketing, and soliciting for fiduciary business on behalf of an international banking corporation or trust company; contacting existing or potential customers, answering questions, and providing information about matters related to their accounts; serving as a liaison in this state between the international banking corporation or trust company and its existing or potential customers; and engaging in any other activities approved by the office or under rules of the commission. Representatives and employees at such office may not act as a fiduciary, including, but not limited to, accepting the fiduciary appointment, executing the fiduciary documents that create the fiduciary relationship, or making discretionary decisions regarding the investment or distribution of fiduciary accounts.

Section 11. Section 663.064, Florida Statutes, is amended to read:

663.064 International branches; permissible activities; requirements.—An international banking corporation that meets the requirements of ss. 658.26, 663.04, and 663.05 may, with the approval of the office, establish one or more branches in this state ~~to the extent permitted to banks from other states~~. An international branch shall have the same rights and privileges as a federally licensed international branch. The operations of an international branch shall be conducted pursuant to requirements determined by the office as necessary to ensure compliance with the provisions of the financial institutions codes, including requirements for the maintenance of accounts and records separate from those of the international banking corporation of which it is a branch. ~~An application to establish an international branch shall be made pursuant to s. 658.26.~~

Section 12. Subsection (3) of section 663.065, Florida Statutes, is amended to read:

663.065 State-chartered investment companies; formation; permissible activities; restrictions.—

(3) An application for approval to organize a state-chartered investment company shall be subject to the provisions of chapter 658 ~~655~~ relating to the organization of de novo financial institutions and to rules adopted by the commission as necessary to ensure that the proposed state-chartered investment company will be operated in a safe and lawful manner, except that the applicant is not required to become a member of the Federal Reserve System or the Federal Deposit Insurance

Corporation. State-chartered investment companies shall be subject to the examination and supervision of the office and are subject to the financial institutions codes to the same extent as international banking corporations pursuant to s. 663.02.

Section 13. Section 663.11, Florida Statutes, is amended to read:

663.11 Termination of charter or authority ~~Dissolution. In the event~~ An international banking corporation that ~~which~~ is licensed to maintain an office in this state may not continue to conduct its licensed business in this state if the international banking corporation is dissolved, or its authority or existence is otherwise terminated or canceled in the jurisdiction of its incorporation, is in bankruptcy, conservatorship, receivership, liquidation, or similar status under the laws of any country, or is operating under the direct control of the government or the regulatory or supervisory authority of the jurisdiction of its incorporation through government intervention or any other extraordinary actions. A certificate of the official who is responsible for records of banking corporations of the jurisdiction of incorporation of such international banking corporation, attesting to the occurrence of any such event, or a certified copy of an order or decree of a court of such jurisdiction, directing the dissolution of such international banking corporation, the termination of its existence, or the cancellation of its authority, or declaring its status in bankruptcy, conservatorship, receivership, liquidation, or similar proceedings, or other reliable documentation that the international banking corporation is operating under the direct

control of its government or a regulatory or supervisory authority, shall be delivered by the international banking corporation or its surviving officers and directors to the office. The filing of the certificate, order, documentation, or decree shall have the same effect as the revocation of the license of such international banking corporation as provided in s. 663.06.

Section 14. Paragraph (e) of subsection (1) and subsection (2) of section 663.12, Florida Statutes, are amended to read:

663.12 Fees; assessments; fines.—

(1) Each application for a license under the provisions of this part shall be accompanied by a nonrefundable filing fee payable to the office in the following amount:

(e) Five ~~Two~~ thousand dollars ~~annually~~ for establishing ~~operating~~ an international trust company representative office ~~or international administrative office~~.

(2) Each international bank agency, international branch, and state-chartered investment company shall pay to the office a semiannual assessment, payable on or before January 31 and July 31 of each year, in an amount determined by rule by the commission and calculated in a manner so as to recover the costs of the office incurred in connection with the supervision of international banking activities licensed under this part. These rules shall provide for uniform rates of assessment for all licenses of the same type, shall provide for declining rates of assessment in relation to the total assets of the licensee held in the state, but shall not, in any event, provide for rates of assessment which exceed the rate applicable to state banks

pursuant to s. 658.73, unless the rate of assessment would result in a semiannual assessment of less than $1,000. For the purposes of this subsection, the total assets of an international bank agency, international branch, or state-chartered investment company shall include amounts due the agency or branch or state investment company from other offices, branches, or subsidiaries of the international banking corporations or other corporations of which the agency, branch, or state-chartered investment company is a part or from entities related to that international banking corporation. Each international representative office, international administrative office, or international trust company representative office shall pay to the office an annual assessment in the amount of $2,000, payable on or before January 31 of each year.

Section 15. Subsections (1), (4), (5), (11), and (12) of section 663.16, Florida Statutes, are amended to read:

663.16 Definitions; ss. 663.17-663.181.—As used in ss. 663.17-663.181, the term:

(1) "Business and property in this state" includes, but is not limited to, all property of the international banking corporation, real, personal, or mixed, whether tangible or intangible:

(a) Wherever situated, constituting a part of the business of the Florida licensed office ~~agency~~ and appearing on its books as such.

(b) Situated within this state whether or not constituting part of the business of the Florida licensed office ~~agency~~ or so

appearing on its books.

(4) Except where the context otherwise requires, "international banking corporation" or "corporation" has the same meaning as that provided in s. 663.01 and includes ~~means~~ any licensed office of an international banking corporation ~~bank agency or branch~~ operating in this state.

(5) "Officer" means the agent or other person in charge of an international banking corporation licensed office.

(11) "Licensed office ~~Branch or agency~~ net obligations" means, with respect to a qualified financial contract, the amount, if any, that would have been owed by the international banking corporation to a party after netting only those transactions entered into by the licensed office ~~branch or agency~~ and such party under such qualified financial contract.

(12) "Licensed office ~~Branch or agency~~ net payments entitlement" means, with respect to a qualified financial contract, the amount, if any, that would have been owed by a party to the international banking corporation after netting only those transactions entered into by the licensed office ~~branch or agency~~ and such party under such qualified financial contract.

Section 16. Section 663.17, Florida Statutes, is amended to read:

663.17 Liquidation; possession of business and property; inventory of assets; wages; depositing collected assets; appointing agents; appointment of judges.—

(1) The office may, at its discretion, take possession of the business and property in this state of any international

banking corporation that has been licensed to operate in this state upon finding that the corporation, or any of the corporation's licensed offices ~~international bank agency~~ operating in this state has violated any law, has neglected or refused to comply with the terms of a duly issued order of the office, is insolvent or imminently insolvent, or is transacting business in an unsound, unsafe, or unauthorized manner such that the corporation is threatened with imminent insolvency, or that the corporation is dissolved, its authority or existence is otherwise terminated or canceled in the jurisdiction of its incorporation, it is in bankruptcy, conservatorship, receivership, liquidation, or similar status under the laws of any country, or it is operating under the direct control of the government or the regulatory or supervisory authority of the jurisdiction of its incorporation through government intervention or any other extraordinary actions ~~in liquidation~~ at its domicile or elsewhere. Title to such business and property shall vest by operation of law in the office upon taking possession. Thereafter, the office shall liquidate or otherwise deal with such business and property in accordance with the provisions of this part, chapter 658, and any other provision relating to the liquidation of banking corporations. The office may deal with such business and property and prosecute and defend any and all actions relating to the liquidation. Only the claims of creditors of the international banking corporation arising out of transactions those creditors had with the international banking corporation, or any of the corporation's licensed offices ~~international bank agency or~~

~~agencies~~ located in this state, shall be accepted by the office for payment out of the business and property which it has taken possession of in this state. Acceptance or rejection of such claims by the office shall not prejudice any creditor's rights to otherwise share in other assets of the international banking corporation. The following claims shall not be accepted by the office for payment out of the business and property in the office's possession in this state:

(a) Claims which would not represent an enforceable legal obligation against an international banking corporation, or any of the corporation's licensed offices located in this state, if such office was ~~bank agency if such agency were~~ a separate and independent legal entity.

(b) Amounts due and other liabilities to other offices, agencies, and branches of and affiliates of such international banking corporation.

(2) Whenever all accepted claims, together with interest on such claims, and the expenses of the liquidation have been paid in full or properly provided for, the office, upon the order of a court of competent jurisdiction, shall transfer the remaining assets to the principal office of such international banking corporation, or to the duly appointed domiciliary liquidator or receiver of such corporation. Dividends and other amounts that remain unclaimed or unpaid and are in the possession of the office for 6 months after such transfer shall be deposited by the office as provided by law.

(3) When the office takes possession of the property and business of any international banking corporation, including any

of the corporation's licensed offices located in this state, the office shall:

(a) Give notice of such fact to all corporations, unincorporated associations, partnerships, governmental entities, and other entities and individuals known by the office to hold any assets of such corporation. No corporation, unincorporated association, partnership, governmental entity, or other entity or individual having notice or knowledge that the office has taken possession of such property and business of a international banking corporation shall have a lien or charge for any payment, advance, or clearance thereafter made against any of the assets of such corporation for liability thereafter incurred.

(b) Upon written demand of the office, any corporation, unincorporated association, partnership, governmental entity, or other entity or individual holding assets of such corporation shall deliver such assets to the office and shall be discharged from liability with respect to any claim upon such assets; provided, such demand shall not affect the right of a secured creditor with a perfected security interest, or other valid lien or security interest enforceable against third parties, to retain collateral, including any right of such secured creditor under any security agreement related to a qualified financial contract to retain collateral and apply such collateral in accordance with the provisions of the financial institutions codes.

(c) Nothing in paragraphs (a) and (b) shall affect any right of setoff permitted under applicable law; provided, in

connection with the liquidation of a licensed office ~~an international bank agency~~ of any other international banking corporation pursuant to this part, no entity or individual may set off the business and property in this state of an international banking corporation being liquidated under this subsection, against the liabilities of such corporation other than those that arise out of transactions engaged in by such entity or individual with such licensed office ~~international bank agency~~. For purposes of this paragraph, liabilities shall be deemed to include, in the case of qualified financial contracts, the lesser of the two amounts calculated with respect to any such qualified financial contract pursuant to s. 663.172(3), and this paragraph shall not be deemed to authorize setoff except as otherwise permissible under applicable law.

(4) Any licensed office of an international banking corporation of which the office has taken possession or which is operating under restrictions imposed by duly constituted authority may be permitted to resume business subject to the office's discretion and any conditions that the office may impose.

(5) After the office takes possession of and determines to liquidate the property and business of any licensed office of an international banking corporation, the office shall make an inventory, in duplicate, of the assets of such licensed office ~~corporation~~. One copy of such inventory shall be filed with the office and one copy shall be filed with a court of competent jurisdiction in the county in which the licensed office ~~principal office of such corporation~~ is located.

(6) Notwithstanding s. 658.84, all wages actually owing to the employees of an international banking corporation for services rendered within 3 months prior to the date possession was taken by the office, and not exceeding $10,000 ~~$2,000~~ to each employee, shall be paid prior to the payment of any other debt or claim, and, in the discretion of the office, may be paid as soon as practicable after taking possession, except that at all times the office shall reserve such funds as will, in the office's opinion, be sufficient for the expenses of administration.

(7) The office is authorized, upon taking possession of any licensed office of an international banking corporation, to liquidate the affairs of such licensed office ~~corporation~~ and to do all acts and to make such expenditures as in the office's judgment are necessary to conserve the assets and business of the corporation. The office shall proceed to collect the debts due to the corporation. The office may, upon an order of a court of competent jurisdiction, sell, assign, compromise, or otherwise dispose of all bad or doubtful debts held by, and compromise claims against, such corporation, other than deposit claims, provided, whenever the principal amount of any such debt or claim owed by or owing to such corporation does not exceed $50,000, the office may sell, assign, compromise, or otherwise dispose of such debt or claim upon such terms as the office may deem to be in the best interests of such corporation wherever situated. When the real property of an international banking corporation, to be disposed of pursuant to this subsection, is located in a county in this state other than a county in which

an application to the court for leave to dispose is made, the office shall file a certified copy of the order of such court authorizing such disposal in the office of the clerk of the county in which such real property is located.

(8) Moneys collected by the office in liquidating a licensed office of an international banking corporation shall be:

(a) Deposited on demand, time or otherwise, in one or more banks, associations, or trust companies organized under the laws of this state and, in the case of insolvency or voluntary or involuntary liquidation of the depositary, such deposits shall be entitled to priority of payment equally with any other priority given under the financial institutions codes;

(b) Deposited on demand, time or otherwise, in one or more national banks with a principal office located in this state and with total assets exceeding $1 billion; or

(c) Invested in obligations of the United States, or obligation for which the full faith and credit of the United States is pledged to provide for the payment of interest and principal.

(9) The office may appoint one or more persons as agent or agents to assist in the liquidation of the business and affairs of any international banking corporation, or any of the corporation's licensed offices located in this state, in the office's possession. The office shall serve a copy of the ~~file a~~ certificate of such appointment to the international banking corporation ~~in the headquarters of the office~~ and shall file a certified copy of such certificate with a court of competent

jurisdiction in the county in which the licensed ~~principal~~ office of such corporation is located in this state. The office may employ such counsel and expert assistants under such titles that the office shall assign to them, and may retain such officers or employees of such corporation as the office deems necessary in the liquidation and distribution of the corporation's assets. The office may require such security as it may deem proper from the agents and assistants appointed pursuant to the provisions of this subsection.

(10) When the office has taken possession of and is liquidating the business and property in this state of any international banking corporation under the provisions of this part, the office shall be entitled to the appointment of a single judge to supervise the liquidation in the judicial circuit in which the licensed ~~principal~~ office of such corporation is located. Such judge shall have the power to order expedited or simplified procedures or order a reference whenever necessary to resolve a matter in such liquidation.

(11) The compensation of agents and any other employees appointed by the office to assist in the liquidation of an international banking corporation, or any of the corporation's licensed offices located in this state ~~bank agency~~, the distribution of its assets, or the expenses of supervision, shall be paid out of the assets of the corporation ~~agency~~ in the hands of the office. Expenses of liquidation and approved claims for fees and assessments due the office shall be given first priority among unsecured creditors.

Section 17. Section 663.171, Florida Statutes, is amended

to read:

663.171 Liquidation; repudiation of contracts.—

(1) Except as otherwise provided in this section, when the office has taken possession of the business and property in this state of an international banking corporation, or any of the corporation's licensed offices located in this state, the office may assume or repudiate any contract, including an unexpired lease, of the corporation:

(a) To which such corporation is a party.

(b) The performance of which the office, in its discretion, determines to be burdensome.

(c) The repudiation of which the office, in its discretion, determines will promote the orderly administration of the corporation's affairs.

(2) After the expiration of 90 days after the date the office takes possession of the business and property of an international banking corporation, or any of the corporation's licensed offices located in this state, any party to a contract with such corporation may demand in writing that the office assume or repudiate such contract. If the office has not assumed or repudiated the contract within 15 calendar days after the date of receipt of such demand, the affected party may bring an action in a court of competent jurisdiction in the county in which the licensed ~~principal~~ office of the corporation is located to obtain an order requiring the office to assume or repudiate the contract. If the office has not assumed or repudiated the contract by at least 1 month before the last date for filing claims against the corporation, such contract shall

be deemed repudiated.

(3) Notwithstanding subsection (2), with respect to an unexpired lease of the corporation for rental of real property under which the corporation was a lessee, if the office remains in possession of the leasehold, the office shall not be required to assume or repudiate such lease and may continue in possession of such leasehold for the remainder of the term of the lease in accordance with the terms of the lease; provided, if the office later repudiates the lease before the end of the lease term, any amounts that may be due the lessor with respect to such lease shall be calculated as provided by law.

(4) Notwithstanding any other provision of this section relating to liquidating an international banking corporation, or any of the corporation's licensed offices located in this state, the office shall not assume or repudiate any qualified financial contract that the international banking corporation ~~bank agency~~ entered into which is subject to a multibranch or multiagency netting agreement or arrangement that provides for netting present or future payment obligations or payment entitlements, including termination or closeout values relating to the obligations or entitlements, among the parties to the contract and agreement or arrangement and the office may, but shall not be required to, assume or repudiate any other qualified financial contract an international banking corporation ~~bank agency~~ entered into; provided, upon the repudiation of any qualified financial contract or the termination or liquidation of any qualified financial contract in accordance with its terms, the liability of the office under such qualified

financial contract shall be determined in accordance with s. 663.172.

Section 18. Section 663.172, Florida Statutes, is amended to read:

663.172 Liability on repudiation or termination of contracts.—

(1) Except as otherwise provided in this section, upon the repudiation or termination of any contract pursuant to s. 663.171, the liability of the office shall be limited to the actual direct compensatory damages of the parties to the contract, determined as of the date the office took possession of the business and property of the international banking corporation or the corporation's licensed offices located in this state. The office shall not be liable for any future wages other than severance payments, to the extent such payments are reasonable standards, or for payments for future service, costs of cover, or any consequential, punitive, or exemplary damages, damages for lost profits or lost opportunity, or damages for pain and suffering.

(2) Except as otherwise provided in this section, the liability of the office, upon the repudiation of any qualified financial contract or in connection with the termination or liquidation of any qualified financial contract in accordance with the terms of such contract, shall be limited as provided in subsection (1), except compensatory damages shall be deemed to include normal and reasonable costs of cover or other reasonable measures of damages used among participants in the market for qualified financial contract claims, calculated as of the date

of repudiation or the date of the termination of such qualified financial contract in accordance with the terms of the contract. Upon the repudiation of any qualified financial contract or in connection with the termination or liquidation of any qualified financial contract in accordance with the terms of such contract, the office shall be entitled to damages and such damages shall be paid to the office upon written demand from the office to the other party or parties to the contract.

(3) In the case of the liquidation of the business and property of an international banking corporation, or any of the corporation's licensed offices located in this state, ~~bank agency of an international banking corporation~~ by the office, with respect to qualified financial contracts subject to netting agreements or arrangements that provide for netting present or future payment obligations or payment entitlements, including termination or closeout values relating to the obligations or entitlements, among the parties to the contracts and agreements or arrangements, the liability of the office to any party to any such qualified financial contract upon the repudiation or in any connection with the termination or liquidation of such qualified financial contract in accordance with the terms of such contract shall be limited to the lesser of:

(a) The global net payment obligation; or

(b) The licensed office ~~branch-to-agency or agency-to-agency~~ net payment obligation.

(4) The liability of the office to a party under this section shall be reduced by any amount otherwise paid or received by the party with respect to the global net payment

obligation pursuant to such qualified financial contract which, if added to the liability of the office under subsection (1), would exceed the global net payment obligation. The liability of the office under this section to a party to a qualified financial contract also shall be reduced by the fair market value or the amount of any proceeds of collateral that secures and has been applied to satisfy the obligations of the international banking corporation to the party pursuant to such qualified financial contract. If netting under the applicable netting agreement or arrangement results in a licensed office ~~branch-to-agency~~ net payment entitlement, notwithstanding any provision in any such contract that purports to effect a forfeiture of such entitlement, the office may make written demand for and shall be entitled to receive from the party to such contract an amount not to exceed the lesser of the global net payment entitlement or the licensed office ~~branch-to-agency~~ net payment entitlement.

(5) The liability of a party under this section shall be reduced by any amount otherwise paid to or received by the office or any other liquidator or receiver of the international banking corporation or licensed office with respect to the global net payment entitlement pursuant to such qualified financial contract which, if added to the liability of the party under this section, would exceed the global net payments entitlement. The liability of a party under this section to the office pursuant to such qualified financial contract also shall be reduced by the fair market value of the amount of any proceeds of the collateral that secures and has been applied to

satisfy the obligations of the party to the international banking corporation pursuant to such qualified financial contract.

Section 19. This act shall take effect July 1, 2010.

Amendment No. 1

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: Policy Council

Representative Grady offered the following:

Amendment

Remove lines 143-144 and insert:

following provisions are ~~shall be~~ applicable to such banks or trust companies ~~corporations~~: s. 655.031, relating to administrative enforcement

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1377 Telecommunications Companies
SPONSOR(S): Fresen and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2646

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	General Government Policy Council		Keating CK	Hamby JA6
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

Prior to 1995, the Public Service Commission (PSC) regulated the rates of local exchange telecommunications companies (local telephone companies) through rate base, rate-of-return regulation similar to its regulation of monopoly utility services such as electric, water, and sewer services. In 1995, the Legislature found that competition for the provision of local exchange service would be in the public interest and opened local telephone markets to competition on January 1, 1996. The 1995 law created s. 364.051(1), F.S., which allowed incumbent local exchange companies, by specified dates, to elect "price regulation" instead of traditional rate-of-return regulation.

Section 364.051(1)(c), F.S., provides that each local exchange telecommunications company electing price regulation is exempt from rate base, rate-of-return regulation and the requirements of ss. 364.03, 364.035, 364.037, 364.05, 364.055, 364.14, 364.17, and 364.18, F.S. According to the PSC, every local exchange telecommunications company has elected price regulation, with the last rate-of-return regulated company electing price regulation in November 2008. Thus, ss. 364.03, 364.035, 364.037, 364.05, 364.055, 364.14, 364.17, and 364.18, F.S., appear to no longer be effective as they do not apply to any telecommunications company. In addition, s. 364.051(1), F.S., providing for election of price regulation, appears to no longer be necessary.

HB 1377 repeals provisions related to rate base, rate-of-return regulation of local exchange telecommunications companies which became obsolete when the last rate of return regulated company elected price regulation. The bill also repeals provisions related to the election of price regulation. The bill amends other provisions of chapter 364, F.S., to conform to the repeal of these provisions.

The bill has not fiscal impact on state or local governments or the private sector.

The effective date of the bill is July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Prior to 1995, the Public Service Commission (PSC) regulated the rates of local exchange telecommunications companies (local telephone companies) through rate base, rate-of-return regulation similar to its regulation of monopoly utility services such as electric, water, and sewer services. In 1995, the Legislature found that competition for the provision of local exchange service would be in the public interest and opened local telephone markets to competition on January 1, 1996.[1] The 1995 law created s. 364.051(1), F.S., which allowed incumbent local exchange companies, by specified dates, to elect "price regulation" instead of traditional rate-of-return regulation.

Section 364.051(1)(c), F.S., provides that each local exchange telecommunications company electing price regulation is exempt from rate base, rate-of-return regulation and the requirements of ss. 364.03, 364.035, 364.037, 364.05, 364.055, 364.14, 364.17, and 364.18, F.S. According to the PSC, every local exchange telecommunications company has elected price regulation, with the last rate-of-return regulated company electing price regulation in November 2008.[2] There is no mechanism in Chapter 364, F.S., for a company to elect to return to rate-of-return regulation. Thus, ss. 364.03, 364.035, 364.037, 364.05, 364.055, 364.14, 364.17, and 364.18, F.S., appear to no longer be effective because they do not and will not apply to any telecommunications company. In addition, s. 364.051(1), F.S., providing for election of price regulation, appears to no longer be necessary. In 2009, the PSC repealed its rules related to rate-of-return regulation.

Effect of Proposed Changes

HB 1377 repeals obsolete provisions related to rate base, rate-of-return regulation of local exchange telecommunications companies. Specifically, the bill repeals ss. 364.03, 364.035, 364.037, 364.05, 364.055, 364.14, 364.17, and 364.18, F.S. These provisions appear to no longer apply to any local exchange telecommunications company. The bill also deletes cross-references to these sections.

In addition, the bill repeals provisions of chapter 364, F.S., related to the election of price regulation. In particular, the bill repeals specific provisions of ss. 364.051 and 364.052, F.S., which specify the manner in which price regulation may be elected, and amends s. 364.051(1), F.S., to reflect that all

[1] Ch. 95-403, L.O.F.
[2] Order No. PSC-09-0136-PAA-TL, issued March 5, 2009, in Docket No. 080680-TL (acknowledging Frontier Communications of the South, LLC's election of price regulation).

local exchange telecommunications companies have elected price regulation. The bill also repeals specific provisions of ss. 364.337, 364.385, and 364.507, F.S., which make reference to the election of price regulation.

B. SECTION DIRECTORY:

Section 1. Repeals ss. 364.03, 364.035, 364.037, 364.05, 364.055, 364.14, 364.17, and 364.18, F.S.

Section 2. Amends s. 364.025, F.S., relating to universal service, to conform a cross-reference.

Section 3. Amends s. 364.051, F.S., relating to price regulation, to delete obsolete provisions.

Section 4. Amends s. 364.052, F.S., relating to regulatory methods for small local exchange telecommunications companies, to delete obsolete provisions.

Section 5. Amends s. 364.063, F.S., relating to rate adjustment orders, to delete a cross-reference to repealed s. 364.05, F.S.

Section 6. Amends s. 364.337, F.S., relating to competitive local exchange companies and intrastate interexchange telecommunications services to make conforming changes and delete cross-reference to repealed provisions.

Section 7. Amends s. 364.385, F.S., relating to savings clauses, to delete an obsolete provision.

Section 8. Amends s. 364.507, F.S., relating to legislative intent, to delete an obsolete provision.

Section 9. Provides an effective date of July 1, 2010.

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:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to telecommunications companies; repealing ss. 364.03, 364.035, 364.037, 364.05, 364.055, 364.14, 364.17, and 364.18, F.S., relating to rates, tolls, contracts, charges, rules, regulations, performance of service, and maintenance of telecommunications facilities; fixing rates by the Public Service Commission; consideration of directory advertising revenues when establishing rates; changing rates, tolls, rentals, contracts, or charges; procedures for interim rates; commission to compel by order or rule the adjustment of rates, charges, tolls, rules, or regulations or changes to practices or service or the installation of equipment or facilities; forms prescribed by the commission; and inspection by the commission of accounts and records; amending s. 364.051, F.S.; deleting a schedule for implementation of price regulation; amending ss. 364.025, 364.052, 364.063, 364.337, 364.385, and 364.507, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Sections 364.03, 364.035, 364.037, 364.05, 364.055, 364.14, 364.17, and 364.18, Florida Statutes, are repealed.

Section 2. Subsection (2) of section 364.025, Florida Statutes, is amended to read:

364.025 Universal service.—

(2) The Legislature finds that each telecommunications company should contribute its fair share to the support of the universal service objectives and carrier-of-last-resort obligations. For a transitional period not to exceed January 1, 2009, the interim mechanism for maintaining universal service objectives and funding carrier-of-last-resort obligations shall be established by the commission, pending the implementation of a permanent mechanism. The interim mechanism shall be applied in a manner that ensures that each competitive local exchange telecommunications company contributes its fair share to the support of universal service and carrier-of-last-resort obligations. The interim mechanism applied to each competitive local exchange telecommunications company shall reflect a fair share of the local exchange telecommunications company's recovery of investments made in fulfilling its carrier-of-last-resort obligations, and the maintenance of universal service objectives. The commission shall ensure that the interim mechanism does not impede the development of residential consumer choice or create an unreasonable barrier to competition. In reaching its determination, the commission shall not inquire into or consider any factor that is inconsistent with s. 364.051(1)~~(c)~~. The costs and expenses of any government program or project required in part II of this chapter shall not be recovered under this section.

Section 3. Subsection (1) of section 364.051, Florida Statutes, is amended to read:

364.051 Price regulation.—

(1) APPLICATION TO LOCAL EXCHANGE TELECOMMUNICATIONS COMPANIES ~~SCHEDULE~~.—Notwithstanding any other provisions of this chapter, all ~~the following~~ local exchange telecommunications companies are ~~shall become~~ subject to the price regulation described in this section. ~~on the following dates:~~

~~(a) For a local exchange telecommunications company with 100,000 or more access lines in service as of July 1, 1995, such company may file with the commission a notice of election to be under price regulation effective January 1, 1996, or when a competitive local exchange telecommunications company is certificated to provide local exchange telecommunications services in its service territory, whichever is later.~~

~~(b) Effective on the date of filing its election with the commission, but no sooner than January 1, 1996, any local exchange telecommunications company with fewer than 100,000 access lines in service on July 1, 1995, that elects pursuant to s. 364.052 to become subject to this section.~~

~~(c)~~ Each company subject to this section is exempt from ~~rate base, rate of return regulation, and~~ the requirements of s. ~~ss. 364.03, 364.035, 364.037, 364.05, 364.055, 364.14, 364.17, 364.18, and~~ 364.19.

Section 4. Subsection (2) of section 364.052, Florida Statutes, is amended to read:

364.052 Regulatory methods for small local exchange telecommunications companies.—

(2) ~~A small local exchange telecommunications company shall remain under rate base, rate of return regulation until the company elects to become subject to s. 364.051, or January~~

~~1, 2001, whichever occurs first. A company subject to this section, electing to be regulated pursuant to s. 364.051, will have any overearnings attributable to a period prior to the date on which the company makes the election subject to refund or other disposition by the commission. Small local exchange telecommunications companies not electing the price regulation provided for under s. 364.051 shall also be regulated pursuant to ss. 364.03, 364.035(1) and (2), 364.05, and 364.055 and other provisions necessary for rate base, rate of return regulation. If a small local exchange telecommunications company has not elected to be regulated under s. 364.051, by January 1, 2001, the company shall remain under rate base, rate of return regulation until such time as a certificated competitive local exchange company provides basic local telecommunications service in the company's territory. At such time, the small local exchange telecommunications company shall be subject to s. 364.051.~~

~~(a) The commission shall establish, by rule, ranges of basic factors for lives and salvage values to be used in developing depreciation rates for companies subject to this section. Companies shall have the option of using basic factors within the established ranges or of filing depreciation studies.~~

~~(b)~~ The commission shall adopt, by rule, streamlined procedures for regulating companies subject to this section. These procedures shall minimize the burdens of regulation with regard to audits, investigations, service standards, cost studies, reports, and other matters, and the commission shall establish, by rule, only those procedures that are cost-

justified and are in the public interest so that universal service may be promoted. Upon petition filed in this rulemaking proceeding, the commission shall review and may approve any regulations unique to the specific circumstances of a company subject to this section.

Section 5. Section 364.063, Florida Statutes, is amended to read:

364.063 Rate adjustment orders.—Any order issued by the Florida Public Service Commission adjusting general increases or reductions of the rates of a telecommunications company shall be reduced to writing, including any dissenting or concurring opinions, within 20 days after the official vote of the commission. Within such 20-day period, the commission shall also mail a copy of the order to the clerk of the circuit court of each county in which customers are served who are affected by the rate adjustment, which copy shall be kept on file and made available to the public. The commission shall notify all parties of record in the proceeding of the date of such mailing. Such an order shall not be considered rendered for purposes of appeal, rehearing, or judicial review until the order is signed and dated by the commission's designee. This provision shall not delay the effective date of the order. ~~Such an order shall be considered rendered on the date of the official vote for the purposes of s. 364.05(5).~~

Section 6. Subsections (1), (2), and (4) of section 364.337, Florida Statutes, are amended to read:

364.337 Competitive local exchange telecommunications companies; intrastate interexchange telecommunications services;

certification.—

(1) Upon this act becoming a law, a party may file an application for a certificate as a competitive local exchange telecommunications company before January 1, 1996, and the commission shall conduct its review of the application and take all actions necessary to process the application. However, an application shall become effective no sooner than January 1, 1996. The commission shall grant a certificate of authority to provide competitive local exchange service upon a showing that the applicant has sufficient technical, financial, and managerial capability to provide such service in the geographic area proposed to be served. A competitive local exchange telecommunications company may not offer basic local telecommunications services within the territory served by a company subject to s. 364.052 prior to January 1, 2001, unless the small local exchange telecommunications company is ~~elects to be~~ regulated under s. 364.051 or provides cable television programming services directly or as video dial tone applications authorized under 47 U.S.C. s. 214, except as provided for in compliance with part II. It is the intent of the Legislature that the commission act expeditiously to grant certificates of authority under this section and that the grant of certificates not be affected by the application of any criteria other than that specifically enumerated in this subsection.

(2) Rules adopted by the commission governing the provision of competitive local exchange telecommunications service shall be consistent with s. 364.01. The basic local telecommunications service provided by a competitive local

exchange telecommunications company must include access to operator services, "911" services, and relay services for the hearing impaired. A competitive local exchange telecommunications company's "911" service shall be provided at a level equivalent to that provided by the local exchange telecommunications company serving the same area. There shall be a flat-rate pricing option for basic local telecommunications services, and mandatory measured service for basic local telecommunications services shall not be imposed. A certificated competitive local exchange telecommunications company may petition the commission for a waiver of some or all of the requirements of this chapter, except ss. 364.16, 364.336, and subsections (1) and (5). The commission may grant such petition if determined to be in the public interest. Competitive local exchange telecommunications companies are not subject to the requirements of ss. ~~364.03, 364.035, 364.037, 364.05, 364.055, 364.14, 364.17, 364.18,~~ 364.33~~,~~ and 364.3381.

(4) Rules adopted by the commission governing the provision of intrastate interexchange telecommunications service must be consistent with s. 364.01. A certificated intrastate interexchange telecommunications company may petition the commission for a waiver for some or all of the requirements of this chapter, except s. 364.16, s. 364.335(3), or subsection (5). The commission may grant such petition if determined to be in the public interest. Intrastate interexchange telecommunications companies are not subject to the requirements of s. ~~ss. 364.03, 364.035, 364.037, 364.05, 364.055, 364.14, 364.17, 364.18, and~~ 364.3381.

Section 7. Subsection (2) of section 364.385, Florida Statutes, is amended to read:

364.385 Saving clauses.—

(2) All applications for extended area service, routes, or extended calling service pending before the commission on March 1, 1995, shall be governed by the law as it existed prior to July 1, 1995. Upon the approval of the application, the extended area service, routes, or extended calling service shall be considered basic services and shall be regulated as provided in s. 364.051 ~~for a company that has elected price regulation~~. Proceedings including judicial review pending on July 1, 1995, shall be governed by the law as it existed prior to the date on which this section becomes a law. No new proceedings governed by the law as it existed prior to July 1, 1995, shall be initiated after July 1, 1995. Any administrative adjudicatory proceeding which has not progressed to the stage of a hearing by July 1, 1995, may, with the consent of all parties and the commission, be conducted in accordance with the law as it existed prior to January 1, 1996.

Section 8. Subsection (2) of section 364.507, Florida Statutes, is amended to read:

364.507 Legislative intent.—

(2) It is the intent of the Legislature that all local exchange telecommunications companies~~, including those with less than 100,000 access lines in service which do not elect to be regulated under price regulation pursuant to s. 364.051,~~ should be required to provide advanced telecommunications services to eligible facilities in the absence of a competitive bid to

provide such services pursuant to s. 364.510(3). This obligation arises from the privileges granted such local exchange telecommunications companies under part I of this chapter.

Section 9. This act shall take effect July 1, 2010.

HM 1535

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 1535 American Clean Energy and Security Act
SPONSOR(S): Adams
TIED BILLS: None **IDEN./SIM. BILLS:** None

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	General Government Policy Council		Blalock AFB	Hamby JJO
2)	Rules & Calendar Council			
3)				
4)				
5)				

SUMMARY ANALYSIS

The American Clean Energy and Security Act of 2009 (ACES) is an energy bill in the 111th United States Congress (H.R.2454). The bill was approved by the House of Representatives on June 26, 2009 by a vote of 219-212, and was placed on calendar in the Senate under general orders on July 6, 2009. No further action has been taken on the bill in the U.S. Senate.

H.R. 2454:

- Requires a 17-percent emissions reduction from 2005 levels by 2020.
- Includes a cap-and-trade plan for greenhouse gases to address climate change.
- Requires electric utilities to meet 20% of their electricity demand through renewable energy sources and energy efficiency by 2020.
- Subsidizes new clean energy technologies and energy efficiency, including renewable energy ($90 billion in new subsidies by 2025), carbon capture and sequestration ($60 billion), electric and other advanced technology vehicles ($20 billion), and basic scientific research and development ($20 billion).
- Includes a renewable electricity standard (almost identical to a renewable portfolio standard, but narrowly tailored to electrical energy) requiring each electricity provider who supplies over 4 million MWh to produce 20 percent of its electricity from renewable sources (such as wind, solar, and geothermal) by 2020. There is a provision whereby 5% of this standard can be met through energy efficiency savings, as well as an additional 3% with certification of the Governor of the state in which the provider operates.
- Provides for modernization of the electrical grid
- Provides for expanded production of electric vehicles
- Mandates significant increases in energy efficiency in buildings, home appliances, and electricity generation.

This memorial does not have a fiscal impact on state or local governments.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

The American Clean Energy and Security Act of 2009 (ACES) is an energy bill in the 111th United States Congress (H.R.2454) that would establish a variant of a cap-and-trade plan for greenhouse gases to address climate change. The bill was approved by the House of Representatives on June 26, 2009, by a vote of 219-212, and was placed on calendar in the Senate under general orders on July 6, 2009. No further action has been taken on the bill in the U.S. Senate. The following is a summary of H.R. 2454 as passed by the U.S. House of Representatives. The summary is organized by subject area and details the various provisions found in the bill.

Clean Energy

- Combined efficiency and renewable electricity standard: 20% renewables by 2020. Eligible resources are wind, solar, geothermal, biomass or landfill gas, qualified (incremental) hydropower, marine and hydrokinetic renewable energy. Hydro, nuclear, and CCS generation are not included in base sales. Up to 25% of compliance obligation can be met through efficiency and states may petition to increase this to 40% (Sec. 101, pg. 28-29).
- Clean transportation
  - *Electric vehicles*: Requires utilities to plan for the integration of electric vehicles. Creates a program to fund broad demonstration of electric vehicle integration into the grid. Provides financial assistance for electric drive vehicle and battery manufacturing (Sec. 121-123, pg. 108).
  - *Large-scale vehicle electrification program use of funds*. Funds may be used to assist fleet owners in the purchase of electric vehicles and provide electric vehicle supporting infrastructure such as smart grid (Sec. 122, pg. 115).
- State Energy and Environment Development (SEED) Funds are created for each state to manage and account for federal funds given to states to support state clean energy, energy efficiency, and climate change programs (Sec. 131, pg. 137). Revenue for SEEDS is derived from the disposition of allowances under Title III, the cap and trade program.
- Transmission and distribution
  - *Smart grid*: Incorporates smart grid considerations into the federal labeling programs. Requires states or load-serving entities to establish peak demand reduction goals.

Expands rebate and public information programs to include smart grid equipment (Sec. 141, pg. 154).
    - *Transmission planning*: Calls for a regional transmission planning process to be coordinated by FERC. However, the ACES does not give FERC siting authority, as called for in other similar proposals (Sec. 151, pg. 172). In the Western Interconnection FERC may call for the construction or modification of construction facilities if the facility is multi-state, if there is no conflict concerning the need for the facility, and if the appropriate siting authority does not carry out its obligations within 1 year after the date of application (Sec. 216B, pg. 180).
- Technical corrections to energy laws: Makes a variety of amendments to 2007 EISA and 2005 EPACT (Sec. 161, pg. 200 and Sec. 162, pg. 235).
- Energy and efficiency centers: Establishes and funds regional research centers to develop renewable, transmission, water security, and efficiency technologies (Sec. 171-175, pg. 235-265).
- Nuclear and advanced technologies: Establishes energy technology deployment goals to be met through loan-guarantees and a clean energy investment fund. Applies broadly to technologies that can reduce energy sector emissions or improve energy security (Sec. 181, pg. 265).

Energy Efficiency

- Building efficiency: Requires government to update national model building codes for residential and commercial buildings every three years in line with specific efficiency targets (Sec. 201-205, pg. 320).
    - Incentives in the form of allowances from Title III are provided to states and local governments for implementing and complying with building codes.
    - Establishes Retrofits for Energy and Environmental Performance (REEP) program to facilitate energy efficient retrofits for residential and non-residential buildings.
    - Provides for rebates to owners of manufactured homes constructed prior to 1976 to use toward the purchase of an Energy Star qualified manufactured home. Establishes a building efficiency labeling program for residential and commercial markets.
    - Requires labeling program to be used in Department of Energy and Environmental Protection Agency buildings.
    - Establishes a grant program for retail power providers that partner with tree planting organizations to develop targeted tree planting programs for residences and small office buildings.
    - Under HUD, establishes Residential Energy Efficiency Block Grant Program of $2.5 billion (Sec. 123, pg. 630).
- Lighting and appliance efficiency: Provides a series of new appliance and lighting efficiency standards and makes changes to standards-setting process. Establishes a WaterSense program in EPA to identify and promote water efficient products, buildings, and landscapes. Also creates new water-efficiency purchase requirements, rebates, and labeling programs (Sec. 211-219, pg. 421).
- Transportation efficiency
    - *Vehicle performance standards*: Creates new performance standards for heavy-duty vehicles and other mobile emissions sources. See "interaction with EPA authority" section for more details.
    - *State planning*: States must create transportation emissions reduction goals incorporating strategies such as new public transit, land use and zoning policies, etc. (Sec. 841, pg. 510).
    - *Smartway transport efficiency program*: Measures and designates energy-efficient, low-greenhouse gas "SmartWay" technologies and strategies. Provides incentives for the adoption of SmartWay technologies (Sec. 822, pg. 519).
- Industrial efficiency programs: Requires DOE to establish industrial plant energy efficiency certification standards. Provides awards for electric and thermal energy efficiency. Provides rebates for efficient industrial motors. Establishes a revolving loan fund program for clean

energy technology products, including wind turbines, solar panels, and fuel cells (Sec. 241, pg. 524).

Global Warming Pollution Reduction Targets And Timetables

- Emissions cap. The ACES sets both a non-binding economy-wide GHG emission reduction goal (Sec. 702, pg. 682) as well as a mandatory cap on covered greenhouse gases (Sec. 703, pg. 682).
- The economy-wide emission reduction goals are:
  - 2012: 3% below 2005 emission levels (~12% above 1990 emission levels)
  - 2020: 20% below 2005 (~7% below 1990)
  - 2030: 42% below 2005 (~33% below 1990)
  - 2050: 83% below 2005 (~80% below 1990)
- The emission reduction cap targets are:
  - 2012: 3% below 2005 emission levels (~12% above 1990 emission levels)
  - 2020: 17% below 2005 (~4% below 1990)
  - 2030: 42% below 2005 (~33% below 1990)
  - 2050: 83% below 2005 (~80% below 1990)

The cap brings in covered sources in three phases from 2012 through 2016 (see Point of Regulation).

- A consumption cap on all HFCs. This cap is established by extending Title VI of the CAA to apply to HFCs and represents the maximum annual allowable amount of consumption. Reduction amounts are relative to average U.S. HFC consumption levels between 2004 and 2006 (Sec. 619, pg. 963).
  - 2012: 10% below
  - 2020: 33% below
  - 2030: 75% below
  - 2032 and onward: 85% below
- Scientific and programmatic review. The ACES requires the National Academies of Science (NAS) to conduct a review of climate science, technology options, and U.S. progress toward meeting the economy-wide emission reduction goals set by the proposal. The President is authorized to exercise all statutory authority to act on recommendations made by the NAS and recommend to Congress additional actions that may be necessary to meet U.S. and global GHG reduction commitments (Sec. 705, 706, pg. 684).

Point Of Regulation, Emissions Reporting And Coverage

- Covered gases: 5 Kyoto gases (not HFCs, see above) with EPA authorized to add additional GHGs in the future (Sec. 711, pg. 699).
- Mandatory reporting: Required by 2011 for all prior years through 2007. Quarterly reporting is required beginning in 2011. All covered entities plus other types of entities are required to report (Sec. 713, pg. 711).
- Point of regulation: A hybrid approach is used with sources phased in over a 5-year time frame (see definitions Sec. 700, pg. 844 and Sec. 722, pg. 734).
  - *Covered in 2012*: The ACES assumes the cap covers 66.2% of total U.S. emissions during this phase.
    - All electric power generators (downstream).
    - Natural gas liquid-, petroleum-, and coal-based liquid fuel producers/importers (upstream) whose products when combusted emit over 25,000 tonnes annually.
    - Producers and importers of fluorinated gases (upstream) except HFCs.
    - Geologic storage sites.
  - *Added to coverage in 2014*: The ACES assumes the cap covers 75.7% of total U.S. emissions during this phase.
    - Industrial sources (downstream) that annually emit 25,000 tonnes or more, not including emissions from petroleum and renewable biomass combustion; plus all sources (regardless of size) in select energy-intensive sectors (e.g., glass, ceramics).

- *Added to coverage in 2016*: The ACES assumes the cap covers 84.5% of total U.S. emissions during this phase.
    - Natural gas Local Distribution Companies (LDCs) (midstream) that deliver more than 460,000,000 cubic feet of gas annually to non-covered entities. Emissions that result from sales are regulated with measures to prevent double counting.

Carbon Market Assurance And Oversight

- FERC: The Federal Energy Regulatory Commission is given regulatory authority over allowance and offset markets and allowance derivative markets (Sec. 341, pg. 1027). The President is also delegated authority to instruct agencies to pieces of market regulation based on existing authority as long as regulations are consistent with this section. The ACES makes it a federal crime to commit fraud or manipulate any carbon market. In addition, the regulations facilitate and maintain market oversight and transparency and require market monitoring to prevent fraud, manipulation, and excessive speculation. FERC is required to set position limits and margin requirements for all participants in regulated allowance markets.
- Additional market assurance measures: Expands authority of the Commodities Futures Trading Commission (CFTC) to regulate energy derivatives and carbon market derivatives (Sec. 351, pg. 1046). Requires these derivatives to be settled and cleared on designated exchanges (Sec. 354, pg. 1060).
- Cease and desist powers: FERC and CFTC are also given cease and desist powers for offenses that have taken place or may take place in their respective jurisdictions (Sec. 359, pg. 1077).

Allowance Value Distribution

- Auction procedure: Quarterly auctions will be held to sell allowances designated for auction beginning in March 2011. Auctions will be open to all individuals. A reserve price is established for all regular auctions initially set at $10/tonne increasing at 5% above inflation in each subsequent year. All entities in possession of allowances may request that the Administrator sell their allowances on consignment (Sec. 791, pg. 943).
- Distribution of value: The ACES distributes allowance value in a number of ways to support various federal and state programs (both existing and established under the Act) and benefit energy consumers as well as giving some value to regulated entities for free. The amount of value directed to various purposes changes over time (Part H, Sec. 781-790, pg. 862-942).
- Carryover: If allowances are allocated to energy-intensive, trade-exposed industries, and the deployment of carbon capture and sequestration technology or supplemental agriculture and renewable energy are not all distributed in a vintage year, the Administrator shall use the undistributed allowances to increase, for the same vintage year, the allocation of allowances to be auctioned for deficit reduction, consumer refunds, and low-income consumers. In the following vintage year, the allocations to these programs is decreased by the same amount as it was increased the previous year, and those allowances are allocated for the purpose for which the undistributed allowances were originally allocated (Sec. 781, pg. 882).
- Future release: The Administrator shall make future year allowances available by auctioning specific amounts of allowances with vintage years 12 to 17 years after the year of auction (Sec. 781, pg. 880).

Cost Containment (Other Than Offsets)

- Trading. Unlimited trading of allowances is permitted by any party (not restricted to owners and operators of covered entities). All allowances will be tracked in an allowance tracking system (Sec. 724, pg. 752).
- Banking and borrowing:
    - *Banking of allowances and offsets is not limited* (Sec. 725, pg. 754).
    - *Borrowing without interest*: Allowances can be used for compliance for emissions in the calendar year preceding the vintage year (e.g., for compliance in 2015 a covered entity

could use an allowance from 2016). There is no limit on this type of borrowing (Sec. 725, pg. 755).
    - *Borrowing with interest*: Up to 15% of an entity's compliance obligation can be met through submission of allowances with a vintage year 1-5 years later than that calendar year. For each borrowed allowance, the borrower needs to submit additional allowances to meet an 8% annual interest fee (Sec. 725, pg. 756).
- Strategic reserve: Quarterly auctions will be held to auction strategic reserve allowances. Only covered entities will be eligible to purchase allowances from the auction (Sec. 726, pg. 757). The following percentage of allowances will be held annually by the Administrator for the auction:
    - *2012-2019*: 1% of allowances for that year
    - *2020-2029*: 2% of allowances for that year
    - *2030-2050*: 3% of allowances for that year
    - The reserve will also contain allowances not sold in previous auctions.
    - *Minimum reserve price*:
        - 2012 minimum price will be $28.
        - 2013 and 2014 price will be the price set for 2012, plus 5% above the rate of inflation
        - 2015 onward: minimum price will be 60% above a rolling 36-month average of the daily closing price for that year's allowance vintage.
    - *Quantity of allowances sold at auction*:
        - 2012-2016: not more than 5% of allowances established for that year can be sold
        - 2017-2050: not more than 10% of allowances established for that year can be sold
    - *Purchase limits*: Not more than 20% of a covered entity's compliance obligation may be purchased from the strategic reserve annually. Administrator shall establish a separate purchase limit for new entrants, starting at a minimum of 20%.
    - *Auction proceeds*: Proceeds from auction will be placed in a strategic reserve fund. The fund will be used to purchase international offset credits from reduced deforestation. The Administrator will retire those credits and establish emissions allowances equal to 80% of the number of offset credits retired. These allowances will be placed back into the strategic reserve to fill it to its original size (Sec. 726, pg. 763).
    - *Additional forest offset sales*: Under certain circumstances (very high offset use and a full exhaustion of strategic reserve allowances at any given auction), entities may sell at auction additional forest offsets above and beyond allowances sold at strategic reserve auctions. These offsets are not subject to the purchase limits in place for strategic reserve allowances or use limits in place for international offsets (Sec. 726, pg. 765).
- International emission allowances: The Administrator may by rule allow allowances from other trading programs that are at least as stringent as the U.S. program. Entities may initially use an unlimited number of international allowances for compliance, though the Administrator has the authority to restrict their use (Sec. 728, pg. 774).

Offsets

- Program administration. EPA is Administrator of the international offset program and all project types other than domestic forestry and agriculture offset projects; the Secretary of Agriculture will oversee the domestic agriculture and forestry sector (Sec. 501, pg. 1386).

    - Advisement.
        - Establishes an independent "Offsets Integrity Advisory Board" to provide guidance to EPA on project types, areas of scientific uncertainty, and acceptable qualification and quantification methodologies (for all project types other than domestic forestry and agriculture projects). The Board will also conduct a scientific review of offset program and deforestation reduction programs by 2017, and every 5 years thereafter (Sec. 731, pg. 776).
        - Also establishes a separate "USDA Greenhouse Gas Emission Reduction and Sequestration Advisory Committee" not later than 30 days after the date of

enactment. Will consist of 9 members qualified by education or training and appointed by the Secretary to make recommendations on domestic agriculture and forestry offset projects (Sec. 531, pg. 1412).

- Limits on offset use
  - *System-level offset limit*: No more than 2 billion tons of offsets annually may be used for compliance (Sec. 722, pg. 740). The President may make a recommendation to Congress regarding whether the 2 billion ton limit should be increased or decreased (Sec. 722, pg. 743).
  - *Entity-level offset limits*: Covered entities may satisfy a percentage of their compliance obligation with offsets each year. This number is divided pro rata among covered entities. This percentage limit varies year to year and is determined by the Administrator by dividing the number 2 billion by the sum of 2 billion plus the number of emission allowances in the previous year's allowance budget and multiplying that number by 100 (for example, the 2013 limit will be 30% of an entity's compliance obligation and the 2050 limit will be 66%) (Sec. 722, pg. 741).
  - *Domestic/International offset limits*: Of the total offsets allowed, not more than half can come from domestic offsets and not more than half can come from international offsets. However, if the Administrator determines that less than 0.9 billion tons of domestic offsets are available, the Administrator can increase the use of international offsets, and decrease by a corresponding amount the domestic offset limit up to a maximum of 1.5 billion international tons and a minimum of 0.5 billion domestic tons (Sec. 722, pg. 744).
- Early offset supply. One offset credit shall be issued for each ton of CO2e registered under a government-established or Administrator-approved program established before Jan. 1, 2009, as long as the project: 1) was started after Jan. 1, 2001, 2) has developed methodologies through a public consultation or peer-review process, 3) has publicly published standards that ensure emission reductions are real, additional, verifiable, and enforceable, 4) requires that all credits issued are registered in a publicly accessible registry with individual serial numbers for each ton, and 5) there is no conflict of interest between the offset project representative and the registry.
  - Retired and expired credits are not eligible.
  - Credits will only be issued for emission reductions that occur after Jan. 1, 2009, and only for 3 years after the date of enactment of the act.
  - Projects that were not established by state or tribal law, or were established after Jan. 1, 2009 but otherwise meet all other criteria can apply to the Administrator for consideration for early offset credit (Sec. 740, pg. 800).

Domestic Agriculture And Forestry Offsets

- Administration. The Secretary of Agriculture will oversee the domestic agriculture and forestry offset programs. The Secretary has 1 year from the date of enactment to establish the program governing domestic offsets (Sec. 502, pg. 1390). The Secretary shall review the program and based on updated information and the recommendations of the Advisory Board shall update and revise the offset program (Sec. 509, pg. 1410).
- General offset provisions
  - *Offset quality*. Offsets must represent additional, verifiable emission reductions, avoidance, or sequestration. Sequestration projects can only be issued for GHG reductions that result in a permanent net reduction in atmospheric GHGs (Sec. 502, pg. 1391).
  - *Offset project types*. Requires the Secretary to, within 1 year of date of enactment, consider a broad range of potential emission reduction and sequestration projects. Includes list of projects to be considered as long as they meet offset provisions in the bill. Provides a petition process for adding project types to the list (Sec. 503, pg. 1392).
  - *Offset baselines*. The Secretary shall set baselines to reflect a conservative estimate of performance or activity for the relevant type of practice (excluding previous changes in performance or activities due to the availability of offset credits) such that the baseline provides an adequate margin of safety to ensure the environmental integrity of offset credits calculated in reference to such baseline (Sec. 504, pg. 1396).

- *Additionality*. Offset projects are considered additional only to the extent that they result from activities that: 1) are not required by existing government regulation, as determined by the Secretary, 2) were not commenced prior to January 1, 2009 (with exceptions for certain types of sequestration projects that started after 2001), 3) exceed the applicable activity baseline established under paragraph 2 (Sec. 1396).
- *Crediting periods*. Offsets crediting periods are specified: 5 years for agricultural sequestration, 20 years for forestry and 10 years for other practice types. Crediting period renewals are unlimited, but can be limited for some project types by the Secretary (Sec. 504, pg.1404).

- Term offset credits. Offset projects with 5-year crediting periods approved as an offset project type under the list promulgated by the Secretary (largely agriculture sequestration projects) can be issued temporary credits that expire 1 year after this crediting period ends and must be replaced by a permanent offset credit, an emissions allowance, or another term offset credit. Reversals are only required to be accounted for during the activity crediting period (Sec. 504, pg.1403 and Sec. 722, pg.743).
- Environmental integrity. The Secretary shall apply conservative assumptions or methods to ensure the environmental integrity of the cap (Sec. 504, pg. 1405).
- Offset reversals. The bill requires that reversals of stored carbon be addressed through an offset credit and/or allowance reserve established to fully account for any reversals (with the exception of reversals of projects issued term offset credits, where reversals are only required to be accounted for during the project's crediting period) (Sec. 504, pg. 1399).
- Verification and auditing. Requires the Secretary to establish a process and requirements for periodic accreditation of third-party verifiers to ensure that those verifiers are professionally qualified and have no conflicts of interest. Requires annual, random audits of offset projects, credits, and practices of third-party verifiers (Sec. 506, pg. 1407 and Sec. 511, pg. 1412).
- Environmental considerations. Requires the Secretary to consider native species, biodiversity, and sustainable forestry practices for offset projects in the forestry sector (Sec. 510, pg. 1411).

International Offsets

- Administration. The Administrator, in consultation with the Secretary of State and Administrator of USAID, may issue international offset credits based on projects that avoid, reduce or sequester emissions in developing countries. Regulations must be promulgated within 2 years from date of enactment (Sec. 743, pg. 805).
  - *Regulation*. International offset credits may be issued only if: 1) the U.S. is a party to a bilateral or multilateral agreement that includes the country in which the project has occurred, 2) such a country is a developing country8, 3) the agreement ensures all requirements of legislation apply and provides for appropriate disposition of offsets (Sec. 743, pg. 805).
  - *Additional credit requirement*. Beginning in 2018, a covered entity must surrender 1.25 offset credits in lieu of 1 allowance for any international offset credits (Sec. 722, pg. 743).
- Project sources. Offset credits may be issued for projects identified by the Administrator under Sec. 733, through an approved international body, sectoral crediting mechanisms, or international reduced deforestation as outlined in legislation (Sec. 743, pg. 805).
  - *Sector-based credits*: Approves the issuance of offset credits based on sectoral crediting mechanisms targeted at sectors in countries that 1) have comparatively high emissions or greater levels of economic development, or 2) would be subject to a compliance obligation under section 722 if it were located in the U.S. Also outlines factors that should be taken into consideration including GDP, GHG emissions, international competitiveness, risk of leakage, etc. (Sec. 743, pg. 806).
  - *Recognition of other programs*: The Administrator can issue credits in exchange for credits issued by an international body established by the UNFCCC, a protocol to such convention or a treaty that succeeds such a convention, as long as those credits were generated through a program that creates equal or greater assurance of the environmental integrity of the U.S. program. After Jan. 1, 2016, credits cannot be issued

if the activity occurs in a country and sector covered under a sectoral crediting agreement (Sec. 743, pg. 810).
    - *Offsets from reduced deforestation*: International offset credits are allowed only if the activity occurs in a country identified by the Administrator pursuant to their ability to participate in such a program according to specific criteria as established by this Act. Offset credits can be issued relative to a national, sub-national, or activity basis (in certain instances) (Sec. 743, pg. 811).

Other Offset Related Provisions

- Agriculture incentives program. A portion of allowances are set aside to [provide incentives for] additional activities in the agriculture sector to reduce GHG emissions or sequester carbon. These must be: 1) GHG emission reduction or avoidance projects that do not meet the criteria for offsets credits as established by the bill; 2) support actions to adapt to climate change, or 3) activities that prevent conversion of land in ways that would increase GHG emissions (these can include projects and activities that complement or supplement conservation programs) (Sec. 788, pg. 938).
- Exchange for early action offset credits. Credits issued by an Administrator-approved offset program under the early offset provisions (Sec. 740) may be exchanged for allowances. The exchange value will be determined by the average monetary value of the credits during the period of Jan. 1, 2006 - Jan. 1, 2009. Only credits that have not been retired and were issued between Jan.1, 2001 and Jan. 1, 2009 are eligible to receive allowances (Sec. 795, pg. 952).

Interaction With EPA Authority Under The Clean Air Act

- Extension of CAA Title VI (stratospheric ozone protection) to include HFCs (Sec. 619, pg. 963).
    - Sets a cap on consumption of HFCs with most allowances auctioned and the rest sold to producers, importers, and consumers of HFCs (see targets and timetables section above). This cap is separate from the broader cap and trade program. No trading is permitted between programs (Sec. 619, pg. 963).
    - Imposes other requirements restricting commerce of HFCs (Sec. 619, pg. 963).
- Prohibits EPA from:
    - Classifying GHGs as criteria pollutants on the basis of their climate impacts (Sec. 831, pg. 962).
    - Designating any GHG as a hazardous air pollutant on the basis of its climate impacts (Sec. 833, pg. 963).
    - Setting New Source Review standards for GHGs on the basis of their climate impacts (Sec. 834, pg. 963).
    - Considering the climate impacts of GHG emissions when issuing operating permits under Title V of the CAA (Sec. 835, pg. 963).
- Requires EPA to:
    - Regulate black carbon or decide that any regulations set under the CAA are adequate (Sec. 851, pg. 206).
    - Set performance standards for GHGs from uncapped stationary emission sources that emit greater than 10,000 tonnes. Sources of methane from enteric fermentation are exempt from standards (Sec. 811, pg. 191).
    - Set emission standards for certain mobile sources based on costs and available technology (Sec. 821, pg. 505). Covered sources include heavy-duty vehicles not covered under existing CAA authority, aircraft, and other non-road vehicles (which may include marine vessels and other non-road vehicles and engines).
    - Set standards for CCS geologic storage sites and coal-fired power plants (see coal provisions).

Interaction With State Programs

- Temporarily prohibits States from running their own cap and trade programs. This prohibition expires after 2017. The prohibition does not apply to state LCFSs9, vehicle fleet standards such as CA cars, or most other areas of state authority (Sec. 861, pg. 1018).
    - Those who hold CA or RGGI allowances can be compensated with allowances from the federal program. Compensation is based on the cost of holding allowances, not the amount of allowances held (see allowance distribution).
    - States are permitted to require federal allowances for compliance with state air regulations that reduce GHGs.
- State cooperation on energy programs established or changed through the clean energy and energy efficiency titles of the ACES are required or encouraged. States also receive federal funds for clean energy, energy efficiency, and climate change programs (see Clean Energy and Energy Efficiency).

International Issues

- Forestry
    - *Supplemental emissions reductions from reduced deforestation*: Achieve supplemental emissions reductions of at least 720 million tons in 2020 (cumulative amount of 6 billion tons by 2025) through forestry projects in developing nations. Also builds capacity for international forest credits and preservation of existing forest carbon stocks at risk of international leakage (Sec. 751, pg. 826).
    - *Allowances for reduced deforestation*: In order to achieve the reductions called for in Sec. 751, the ACES allocates 5% from 2012-2025, 3% from 2026-2030, and 2% from 2031-2050 (Sec. 781, pg. 862).
- Adaptation: Establishes an international climate change adaptation program under State, USAID, Treasury, and EPA. The program would be administered by USAID, although 40-60% of funding should be distributed to international funds that meet specific eligibility criteria (Sec. 493, pg. 1370). This program will receive 1% of allowances between 2012 and 2021, 2% of allowances between 2022 and 2026, and 4% of allowances between 2027 and 2050 (Sec. 782, pg. 863).
- Clean technology transfer: Establishes a framework for an international technology transfer fund run by State, in consultation with DOE, EPA, USAID, and Treasury. Developing countries that have entered into an international climate agreement to which the U.S. is party and have undertaken nationally appropriate mitigation activities are eligible to receive support. Funded activities must contribute to substantial reductions, sequestration or avoidance of emissions. The Secretary of State will disburse funding through bilateral aid or through multilateral funds pursuant to the Convention (Sec. 441, pg. 1212). This program will receive 1% of allowances between 2012 and 2021, 2% of allowances between 2022 and 2026, and 4% of allowances between 2027 and 2050 (Sec. 782, pg. 864).
- Competitiveness/leakage:
    - *Rebates*: Follows Inslee-Doyle Output Based Rebating (OBR) model of providing rebates to carbon-intense manufacturers to offset their cost of compliance. Sectors are presumed eligible if they meet a 5% energy or GHG intensity threshold and 15% trade intensity, or just a 20% energy or GHG intensity threshold. Each sector is rebated at 100% of sector average direct and indirect emissions cost. Rebates are phased out beginning in 2025, unless Presidential review determines that other countries have not yet taken substantial action and leakage concerns persist (Sec. 761, pg.1081).
    - *International negotiations*: Recognizes that competitiveness concerns can be most effectively dealt with through internationally negotiated agreements. Also sets negotiating objectives including equitable emission reductions among all countries, the recognition of leakage as a concern, and the acceptance/adoption of mechanisms to address such leakage (Sec. 762, pg. 1089).
    - *International reserve allowance program*: If negotiating objectives have not been met by January 2018, the President will establish an international reserve allowance program to adjust the prices of energy-intensive imports at the border. Eligible industries will include

those sectors that are eligible for rebates (see above) as well as manufactured goods that are primarily composed of the products of those sectors. Border adjustments will take into account free allocations provided through output-based rebates (Sec. 767, pg. 1116).

Provisions For Coal

- Legal and regulatory issues around carbon capture and storage (CCS)
  - Requires interagency report that identifies legal and regulatory barriers to commercial CCS deployment. The report must provide recommendations to the President and Congress for new legislation and regulations that would address these barriers (Sec. 111, pg. 56). A task force study to design a legal framework for geologic storage sites is also established (Sec. 113, pg. 60).
  - CO2 geologic storage site regulations: Amends the CAA and the Safe Drinking Water Act (SDWA) to establish standards (Sec. 813, pg. 57). Standards must include rules on financial responsibility of injected CO2, monitoring, record keeping, public participation, and certification rules, among other things. Rules must minimize redundancy between CAA and SDWA authority. Certified and uncertified geologic storage sites are covered entities under the cap and trade program (see Point of Regulation above).
- R&D and early deployment of CCS
  - *Carbon Storage Research Corporation*: Established to oversee and direct R&D of CCS technologies by issuing grants and financial assistance. This program is identical to Rep. Rick Boucher's (D-VA) proposal (Sec. 114, pg. 63).
  - *Funding*: Secured through assessments on utility sales of electricity from fossil fuels with annual nationwide limit of $1 billion per year for no more than 10 years (Sec. 114., pg. 76).
  - *Financial assistance eligibility*: Commercial-scale projects undertaken by private, public, academic, and non-profit organizations are eligible, with an emphasis on supporting a diversity of technologies and fuels (Sec. 114, pg. 70).
  - Other provisions deal with governance, government oversight, sharing of information, and intellectual property.
- Incentives and standards for commercial deployment of CCS
  - *Incentives*: Provides fixed payments to facilities for tonnes of CO2 captured and sequestered (Sec. 786, pg. 87). Amount per tonne is set on a sliding scale based on percent captured and the amount of commercial CCS already deployed. Initial amounts are as high as $90/tonne for the highest capture rates. After 6 Gigawatts of CCS are deployed, bonus allowances are awarded through a reverse auction process. To be eligible, facilities must be fired by coal- or petroleum coke at least 50% of the time, achieve the emissions limitations set forth in Sec. 812, be an electric generating unit with 200 MW or greater nameplate capacity, or be an industrial source that will emit more than 50,000 tonnes of CO2 per year absent any emissions capture.
  - *Performance standards*: Amends the CAA to require new coal-fired power plants to meet emission performance standards (Sec. 812, pg.104). The Administrator must review standards and may tighten them depending on the performance of commercially available technology. Details include:
    - Standards apply to all plants initially permitted after Jan. 1, 2009 where 30% or more of their fuel is coal and/or petroleum coke. Standards vary based on the year in which the plant is permitted along with other factors.
    - Plants initially permitted from 2009 through 2019 must emit no more than 50% fewer GHGs on an annual basis than they would otherwise by 2025 and potentially earlier, depending on the amount of commercial CCS technology deployed.
    - Plants initially permitted from 2020 onward must emit no more than 65% fewer GHGs on an annual basis than they would otherwise.
    - The Administrator may strengthen the standards but may not relax them.

Domestic Adaptation

- State Programs. Establishes allocation of allowances to states starting in 2012 through 2050 to build resilience to climate change impacts.
    - A State must sell allowances within one year of receipt, and deposit proceeds into its State Energy and Environment Development (SEED) Fund. Requires promulgation of regulations related to submission of State climate adaptation plans not more than 2 years after date of enactment and submission of said plans every 5 years (Sec. 453, pg. 1230).
    - Requires State-level Natural Resource Adaptation Plans detailing each state's current and projected efforts to address the potential impacts of climate change and ocean acidification on natural resources and costal areas (Sec. 479, pg. 1335).
- Federal programs.
    - Establishes a National Climate Change Adaptation Panel that will include the heads of 10 federal agencies (Sec. 475, pg. 1320). Requires the development of climate change adaptation plans by each federal agency on the Climate Change Adaptation Panel (Sec. 478, pg. 1330).
    - Establishes a National Climate Service within NOAA to develop climate information and forecasts at national and regional scales. This service will also distribute information regarding climate impacts to State, local, and tribal governments (Sec. 452, pg. 1258).
    - Public health and climate change. Requires establishment of national strategic action plan to assist health professionals in preparing for and responding to the impacts of public health and climate change in the U.S. and other nations, particularly developing nations. Calls for development of a Science Advisory Board. Establishes climate change health protection and promotion fund of an unspecified amount (Sec. 461, pg. 1302).
    - Establishes a National Climate Change Adaptation Strategy that will develop reports and provide advice to key federal agencies (Sec. 476, pg. 1321).
    - Establishes a National Climate Change Adaptation Fund in the U.S. Dept. of Treasury with unspecified allowance allocation to assist regions and states in taking mitigation and adaptation actions. Allocation to States: 84.4% of funds will be made available to state wildlife agencies and 15.6% shall be made available to state coastal agencies. Allocation to federal agencies: 27.6% to Secretary of Interior, plus 8.1% for cooperative grant program, 4.9% for Indian Tribes. Land and Water Conservation Fund: 19.5%. Forest Service: 8.1%. Department of Commerce: 11.5%. EPA: 12.2% (Sec. 480, pg. 1345).

Assistance During The Transition To A Low Carbon Economy

- Additional consumer assistance
    - *Electric and natural gas LDC rate payer assistance*: Emission allowances distributed to an electricity or natural gas local distribution company shall be used exclusively for the benefit of its retail rate payers and may not be used to support electricity sales or deliveries to entities or persons other than its ratepayers (Sec. 783, pg. 886 and Sec. 784, pg. 922).
    - *Heating oil consumer assistance*: Emission allowances are distributed to states that shall use them exclusively for the benefit of consumers of oilheat fuel, propane, or kerosene for residential or commercial purposes by using the proceeds for cost-effective energy efficiency programs, rebates, or other direct financial assistance programs (Sec. 785, pg. 932).
    - *Climate change consumer fund*: The Secretary of the Treasury shall provide tax refunds on a per capita basis to each household in the United States that shall collectively equal the amount deposited into the Climate Change Consumer Refund Account (Sec. 789, pg. 941).
    - *Energy refund program for low income Americans*: Amends the Social Security Act by adding that eligible low-income households are provided cash payments to reimburse the households for the estimated loss in their purchasing power resulting from the American Clean Energy and Security Act of 2009 (Sec. 431, pg. 1194).

- Green job and worker transition
  - Establishes a competitive grant program within the Department of Education for the development of programs of study in the fields of clean energy, renewable energy, energy efficiency, climate change mitigation, and climate change adaptation.
  - Establishes an Energy Efficiency and Worker Training Fund that will provide climate change worker adjustment assistance for adversely affected sectors (Sec. 421, pg. 1127).

EFFECT OF PROPOSED MEMORIAL

This memorial urges the Congress of the United States to reject the American Clean Energy and Security Act (H.R. 2454), also known as the Waxman-Markey bill, and any other energy proposals or overreaching actions by federal agencies that will artificially raise energy prices for consumers and place an undue burden on the economy and the people of the United States for little or no environmental benefit. The memorial further directs that copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

B. SECTION DIRECTORY:

None.

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:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have

to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Staff has not had an opportunity to independently research all of the statements made in the bill's whereas clauses.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

House Memorial

A memorial to the Congress of the United States, urging Congress to reject the American Clean Energy and Security Act and other similar energy proposals.

WHEREAS, the American Clean Energy and Security Act of 2009 (H.R. 2454), also known as the Waxman-Markey bill, is pending in Congress, and

WHEREAS, there is currently a global economic recession, with unemployment rates in the United States hovering at 10 percent, and some estimates place the cost of implementing H.R. 2454 as high as $1,500 or more per household per year, and

WHEREAS, if those estimates prove correct, H.R. 2454 would represent the single largest tax increase in the history of the United States, and

WHEREAS, if fully implemented, the regulatory schemes created under H.R. 2454 are estimated to reduce global temperatures by approximately nine-hundredths of one degree Fahrenheit, and

WHEREAS, meaningful global emissions reductions cannot happen without the aggressive participation of India, China, and other developing nations, and

WHEREAS, China and India have indicated that they will not participate in mandatory emissions control, and

WHEREAS, the passage of H.R. 2454 will result in job losses for the citizens of the United States, and

WHEREAS, carbon-producing industries will be more likely to move to countries where the costs to operate will be lower and

may ultimately have a negative effect on the environment as many of those nations do not employ the environmental constraints and requirements currently administered in the United States, and

WHEREAS, H.R. 2454 establishes a cap-and-trade scheme in which 85 percent of the carbon rations are to be given away to preferred businesses, ensuring higher revenues for the recipients and a rise in energy prices for consumers, and

WHEREAS, the costs to consumers in the United States imposed by H.R. 2454 were ignored when an amendment to suspend the program if gas prices reached a disastrous $5 per gallon was defeated, and

WHEREAS, the costs to jobs in the United States imposed by H.R. 2454 were ignored when an amendment to suspend the program if unemployment reached 15 percent was also defeated, and

WHEREAS, the United States Congress has, for several years, debated and declined to grant the United States Environmental Protection Agency the authority to regulate greenhouse gases, and

WHEREAS, the United States Environmental Protection Agency has taken steps to unilaterally circumvent the legislative process to regulate greenhouse gases, citing the Clean Air Act, a document not meant to address the global environment, though it admits such authority under the Act is "absurd" and would stretch the doctrines of "administrative necessity," and

WHEREAS, the United States Environmental Protection Agency estimates such unilateral regulation would cost businesses in the United States as much as $55 billion in these tough economic times, not to mention the suffocating costs to businesses and

local and state governments associated with additional permitting, regulation, and enforcement, and

WHEREAS, the energy resources of the United States provide well-paying jobs and affordable energy for the citizens of the United States and should be bolstered, rather than undermined by transferring jobs and wealth to nations that regard this nation as an enemy, and

WHEREAS, the United States must create a diverse energy portfolio that is not only sustainable, but also efficient and reliable, and

WHEREAS, the United States should be focusing on improving technologies that will make coal, the nation's most abundant energy source, cleaner, and

WHEREAS, nuclear energy is clean, reliable, and safe, using current technology, provides long-term cost savings, and should play a constructive role in any legitimate comprehensive energy plan, and

WHEREAS, the United States can protect the environment and use the nation's energy sources, including oil, natural gas, coal, and nuclear power, to create jobs in the United States and increase national security by utilizing those resources and the ingenuity and productivity of its citizens, NOW, THEREFORE,

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

That the Congress of the United States is urged to reject the American Clean Energy and Security Act (H.R. 2454), also known as the Waxman-Markey bill, and any other energy proposals

or overreaching actions by federal agencies that will artificially raise energy prices for consumers and place an undue burden on the economy and the people of the United States for little or no environmental benefit.

BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.