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# **Transportation & Economic Development Appropriations Subcommittee**

**Tuesday, January 31, 2012  
12:30 PM - 3:00 PM  
306 HOB**

**Meeting Packet**

**Dean Cannon  
Speaker**

**Mike Horner  
Chair**



# **The Florida House of Representatives**

## **Appropriations Committee**

### **Transportation & Economic Development Appropriations Subcommittee**

**Dean Cannon**  
Speaker

**Mike Horner**  
Chair

**January 31, 2012**

**AGENDA**  
**12:30 PM – 3:00 PM**  
**306 HOB**

- I. Call to Order/Roll Call**
- II. Consideration of Bills**
  - HB 17 Motor Vehicle License Plates by Jenne**
  - HB 541 Administrative Procedures by Brandes**
  - CS/HB 591 Archeological Sites and Specimens by Metz**
  - CS/HB 599 Mitigation by Pilon**
  - HB 763 Motor Vehicle Registration by Rogers**
  - CS/HB 827 Limited Agricultural Associations by Porter**
  - HB 1207 Autonomous Vehicle Technology by Brandes/Corcoran**
  - HB 1287 Motor Vehicle Registration Forms by Abruzzo**
- III. Presentation on Economic Gardening/Grow FL**  
*Florida Economic Development Council*
- IV. Adjourn**

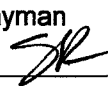
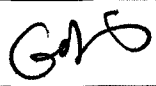


HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 17 Motor Vehicle License Plates

SPONSOR(S): Jenne and others

TIED BILLS: IDEN./SIM. BILLS: SB 310

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	15 Y, 0 N	Johnson	Kruse
2) Transportation & Economic Development Appropriations Subcommittee		Rayman 	Davis 
3) Economic Affairs Committee			

SUMMARY ANALYSIS

HB 17 creates new special use license plates for recipients of the Distinguished Service Cross, Navy Cross, Air Force Cross, and Silver Star, which are among the nation's highest military decorations for valor.

The bill provides that recipients of any of these four awards may, upon application to the Department of Highway Safety and Motor Vehicles, receive a license plate with the words "Silver Star," "Distinguished Service Cross," "Navy Cross," or "Air Force Cross," followed by the license plate serial number. The bill provides that upon application and proof of qualifications, the department shall issue the plate without payment of the license tax imposed by s. 320.08, F.S.

The fiscal impact is indeterminate negative, but likely insignificant to both state trust funds and general revenue. It is not known how many recipients of these awards reside in Florida and would submit an application for the license plate.

The bill has an effective date of October 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### *Medal of Honor; Special Use License Plate*

The Medal of Honor is the highest military decoration awarded by the United States government, awarded to members of the United States Armed Forces who distinguish themselves through "conspicuous gallantry and intrepidity at the risk of his or her life above and beyond the call of duty while engaged in an action against an enemy of the United States."<sup>1</sup> The Medal of Honor is bestowed upon an individual by the passing of a Joint Resolution of Congress and is then personally presented to the recipient or, in the case of posthumous awards, to next of kin, by the President of the United States, on behalf of the Congress, representing and recognizing the gratitude of the American people.

Section 320.0893, F.S., provides that a resident of Florida who was awarded the Medal of Honor while serving as a member of the United States Armed Forces may be issued a license plate on which is stamped the words "Medal of Honor" followed by the serial number. Upon submission of the application and proof that the applicant meets the qualifications the plate is issued without payment of the license tax imposed by s. 320.08, F.S.

##### *Motor vehicle license plates; issuance; annual license taxes*

The Department of Highway Safety and Motor Vehicles (DHSMV) administers the issuance of motor vehicle license plates as a part of the tag and registration requirements specified in ch. 320, F.S. License plates are issued for a 10-year period and are replaced upon renewal at the end of the 10-year period.<sup>2</sup> The license plate fee for both an original issuance and replacement is \$28.00.<sup>3</sup> An advance replacement fee of \$2.80 is applied to the annual vehicle registration and is credited towards the next replacement.

Section 320.08, F.S., requires the payment of an annual license tax that varies by motor vehicle type and weight; for a standard passenger vehicle weighing between 2,500 and 3,500 pounds, the annual tax is \$30.50.

Current law provides for several types of license plates in addition to plates issued for governmental or business purposes, DHSMV offers four basic types of plates to the general public:

- **Standard plates:** The standard license plate currently comes in three configurations, which include the county name designation, the state motto designation, and the state slogan designation.
- **Specialty license plates:** Specialty license plates are used to generate revenue for colleges, universities and other organizations. Organizations seeking to participate in the specialty plate program are required to make application with DHSMV, pay an application fee, and obtain authority from the Florida Legislature.<sup>4</sup> The recipient must pay applicable taxes pursuant to ss. 320.08, F.S., and 320.06(1)(b), F.S., and an additional charitable contribution as provided in section 320.08056(a) – (zzz), F.S., in order to receive a specialty license plate. The creation of new specialty license plates by DHSMV is prohibited until July 1, 2014.<sup>5</sup>

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<sup>1</sup> 10 U.S.C. s. 3741.

<sup>2</sup> Section 320.06, F.S.

<sup>3</sup> An initial issuance requires a fee of \$225, pursuant to s. 320.072, F.S.

<sup>4</sup> See generally s. 320.08056, F.S.

<sup>5</sup> The moratorium on new specialty license plates is created by s. 45, Chapter 2008-176, Laws of Florida, as amended by s. 21, Chapter 2010-223, Laws of Florida.

- **Personalized Prestige License Plates:** Personalized license plates are available to motorists who wish to personalize a license plate. Personalized license plates allow motorists to define the alpha numeric design (up to seven characters) on a standard plate that must be approved by the DHSMV. The cost for a personalized prestige license plate (in addition to the applicable tax in s. 320.08, F.S.) is \$15, pursuant to s. 320.0805, F.S.
- **Special Use License Plates:** Certain members of the general public may be eligible to apply for special use license plates if they are able to document their eligibility pursuant to various sections of ch. 320, F.S. This category of plates primarily includes special military license plates as well as plates for the handicapped. Examples include the Purple Heart, National Guard, U.S. Armed Forces, Pearl Harbor, Iraqi Freedom, and Enduring Freedom plates,<sup>6</sup> Disabled Veteran plates,<sup>7</sup> and Paralyzed Veterans of America plates.<sup>8</sup>

#### *Distinguished Service Cross, Navy Cross, Air Force Cross*

The Distinguished Service Cross is the second highest military decoration that can be awarded to a member of the United States Army for extreme gallantry and risk of life in actual combat with an armed enemy force.<sup>9</sup> Actions that merit the Distinguished Service Cross must be of such a high degree to be above those required for all other U.S. combat decorations but not meeting the criteria for the Medal of Honor.

The Navy Cross is the highest medal that can be awarded by the United States Department of the Navy<sup>10</sup> and along with the Distinguished Service Cross (U.S. Army) and the Air Force Cross, the second highest award given for valor. It is awarded to members of the United States Navy, United States Marine Corps, and United States Coast Guard.

The Air Force Cross is the second highest military decoration that can be awarded to a member of the United States Air Force.<sup>11</sup> The Air Force Cross is awarded for extraordinary heroism not justifying the award of the Medal of Honor. It may be awarded to any person who, while serving in any capacity with the U.S. Air Force, distinguishes him or herself by extraordinary heroism in combat.

#### *Silver Star Award*

The Silver Star is the third-highest military decoration that can be awarded to a member of any branch of the United States armed forces for valor in the face of the enemy.<sup>12</sup> The Silver Star is awarded for gallantry in action against an enemy of the United States not justifying one of the two higher awards – the service crosses or the Medal of Honor.

#### Proposed Changes

The bill provides that recipients of any of these awards may, upon application to DHSMV, receive a license plate with the name of the award, followed by the license plate serial number. The bill provides that upon application and proof of qualifications, DHSMV shall issue the plate without payment of the annual license tax imposed by s. 320.08, F.S. The qualifications are that the person is a United States citizen and Florida resident who have been awarded the Silver Star, Distinguished Service Cross, Navy Cross, or Air Force Cross.

<sup>6</sup> Section 320.089, F.S. Some of these plates require payment of the annual license tax in s. 320.08, F.S., while others are exempt from the tax.

<sup>7</sup> Section 320.084, F.S. The statute provides that an eligible person may receive one free Disabled Veteran license plate, although other taxes apply.

<sup>8</sup> Section 320.0845, F.S. This plate requires payment of the annual license tax in s. 320.08, F.S.

<sup>9</sup> 10 U.S.C. s. 3742.

<sup>10</sup> 10 U.S.C. s. 6242.

<sup>11</sup> 10 U.S.C. s. 8742.

<sup>12</sup> 10 U.S.C. s. 3746.

**B. SECTION DIRECTORY:**

Section 1 Creates s. 320.0892, F.S., relating to motor vehicle license plates for recipients of the Silver Star, Distinguished Service Cross, Navy Cross, or Air Force Cross.

Section 2 Provides an effective date of October 1, 2012.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

**1. Revenues:**

The fiscal impact is indeterminate negative, but likely insignificant to both state trust funds and general revenue.

For a standard size private use vehicle, net weight of 2,500 pounds or more, but less than 3,500 pounds, the annual tax is \$30.50, of which \$8 is deposited into the General Revenue Fund and the balance in the State Transportation Trust Fund. It is unclear how many Florida residents are recipients of these military decorations and would be eligible to apply for this license plate. Therefore, the revenue lost by the waiver of the license taxes under s. 320.08, F.S., is indeterminate to both the General Revenue Fund and the State Transportation Trust Fund.

**2. Expenditures:**

DHSMV estimates that the cost to produce the plates will be minimal and can be absorbed within existing resources.<sup>13</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

**1. Revenues:**

None.

**2. Expenditures:**

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Silver Star, Distinguished Service Cross, Navy Cross, and Air Force Cross recipients wishing to indicate such status on their motor vehicle license plate would be entitled to receive a plate without paying the standard license tax required by s. 320.08, F.S.

**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 action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or 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/ COMMITTEE SUBSTITUTE CHANGES

None.



HB 17

2012

1 A bill to be entitled  
 2 An act relating to motor vehicle license plates;  
 3 creating s. 320.0892, F.S.; providing for the  
 4 Department of Highway Safety and Motor Vehicles to  
 5 issue Silver Star, Distinguished Service Cross, Navy  
 6 Cross, and Air Force Cross license plates, without  
 7 payment of the license tax, to persons meeting  
 8 specified criteria; providing an effective date.

9  
 10 Be It Enacted by the Legislature of the State of Florida:

11  
 12 Section 1. Section 320.0892, Florida Statutes is created  
 13 to read:

14 320.0892 Motor vehicle license plates for recipients of  
 15 the Silver Star, Distinguished Service Cross, Navy Cross, or Air  
 16 Force Cross.—Upon receipt of an application and proof that the  
 17 applicant meets the qualifications listed in this section for  
 18 the applicable license plate, the department shall issue the  
 19 license plate without payment of the license tax imposed under  
 20 s. 320.08:

21 (1) SILVER STAR.—Any United States citizen who is a  
 22 resident of Florida and who was awarded the Silver Star while  
 23 serving as a member of the United States Armed Forces shall be  
 24 issued a license plate on which is stamped the words "Silver  
 25 Star" followed by the serial number.

26 (2) DISTINGUISHED SERVICE CROSS.—Any United States citizen  
 27 who is a resident of Florida and who was awarded the  
 28 Distinguished Service Cross while serving as a member of the

HB 17

2012

29 United States Armed Forces shall be issued a license plate on  
30 which is stamped the words "Distinguished Service Cross"  
31 followed by the serial number.

32 (3) NAVY CROSS.-Any United States citizen who is a  
33 resident of Florida and who was awarded the Navy Cross while  
34 serving as a member of the United States Armed Forces shall be  
35 issued a license plate on which is stamped the words "Navy  
36 Cross" followed by the serial number.


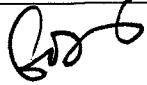
37 (4) AIR FORCE CROSS.-Any United States citizen who is a  
38 resident of Florida and who was awarded the Air Force Cross  
39 while serving as a member of the United States Armed Forces  
40 shall be issued a license plate on which is stamped the words  
41 "Air Force Cross" followed by the serial number.

42 Section 2. This act shall take effect October 1, 2012.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 541 Administrative Procedures  
**SPONSOR(S):** Brandes  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1084

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	15 Y, 0 N	Meadows	Williamson
2) Transportation & Economic Development Appropriations Subcommittee		Rayman 	Davis 
3) State Affairs Committee			

**SUMMARY ANALYSIS**

HB 541 revises provisions with respect to the *Florida Administrative Code* and the *Florida Administrative Weekly*.

The bill provides that the online version of the *Florida Administrative Code* is the official version for the state. The Department of State is no longer required to publish a printed version of the *Florida Administrative Code*.

In addition, the bill changes the name of the *Florida Administrative Weekly* to the *Florida Administrative Register*. The online version of the *Florida Administrative Register* is the official version. The Department of State may no longer provide free print copies of the *Florida Administrative Register* to federal and state government entities. A printed copy of the *Florida Administrative Register* may be made available on an annual subscription basis.

The bill provides that the Department of State is no longer responsible for reviewing entity submissions to the *Florida Administrative Register* for formatting, grammatical, or typographical errors. Entities are responsible for proofreading their documents and assume full responsibility for the accuracy of documents submitted.

Finally, the bill directs the Division of Statutory Revision to prepare a reviser's bill for the 2013 Regular Session to substitute the term *Florida Administrative Register* for the term *Florida Administrative Weekly* throughout the Florida Statutes.

The bill will likely reduce the workload on the Department of State, but this impact is indeterminate.

The bill provides an effective date of October 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

The *Florida Administrative Code* (FAC) is the official compilation of administrative rules for the State of Florida. The Department of State (DOS or department) oversees the publishing of the FAC and the monthly supplements. The online, unofficial version of the FAC is updated weekly on the department's rulemaking website.

DOS is required to publish the FAC, which contains all rules adopted by agencies, together with references to rulemaking authority and history notes.<sup>1</sup> The FAC must be supplemented at least monthly.<sup>2</sup> DOS currently contracts with LexisNexis for the printing of the FAC.<sup>3</sup> Current law provides that the printed version of the FAC is the official version.<sup>4</sup>

Under current law, DOS is required to publish notices and various other materials filed by the state's administrative agencies in the *Florida Administrative Weekly* (FAW).<sup>5,6</sup> The FAW must contain:

- Notice of adoption of, and an index to, all rules filed during the preceding week;
- All notices required by s. 120.54(3)(a), F.S., concerning agency rulemaking, showing the text of all rules proposed for consideration or a reference to the location in the FAW where the text of the proposed rules is published;
- All notices of public meetings, hearings, and workshops, including a statement of the manner in which a copy of the agenda may be obtained;
- A notice of each request for authorization to amend or repeal an existing uniform rule or for the adoption of new uniform rules;
- Notice of petitions for declaratory statements or administrative determinations;
- A summary of each objection to any rule filed by the Administrative Procedures Committee during the preceding week; and
- Any other material required or authorized by law or deemed useful by the department.<sup>7</sup>

Responsibility for the grammatical editing of the FAW is statutorily assigned to DOS.<sup>8</sup> Additionally, DOS is required to adopt rules prescribing the style and form required for rules submitted for filing and establishing the form for rule certification.<sup>9</sup>

DOS contracts with LexisNexis for publication of the FAW in a printed format.<sup>10</sup> The FAW is published on Fridays and distributed for free to administrative agencies, courts, libraries, law schools, and legislative offices.<sup>11,12</sup> According to DOS, the FAW has approximately 191 paid subscribers, who pay

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<sup>1</sup> Section 120.55(1)(a)1., F.S.

<sup>2</sup> *Id.*

<sup>3</sup> Information provided by telephone on December 9, 2011, by Mr. Pierce Schuessler, Legislative Affairs Director, Department of State.

<sup>4</sup> Section 120.55(1)(a)1., F.S.

<sup>5</sup> Section 120.55(1)(b), F.S.

<sup>6</sup> According to DOS, approximately 300 entities in the state publish notices in the Florida Administrative Weekly. These entities include state agencies, other units of state and local government, and nongovernmental entities.

<sup>7</sup> Section 120.55(1)(b), F.S.

<sup>8</sup> Section 120.55(1)(e), F.S.

<sup>9</sup> Section 120.55(1)(d), F.S.

<sup>10</sup> Information provided by telephone on December 9, 2011, by Mr. Pierce Schuessler, Legislative Affairs Director, Department of State.

<sup>11</sup> Section 120.55(7)(a)1., F.S., requires the department to furnish the FAW, without charge and upon request, as follows:

- One subscription to each federal and state court having jurisdiction over the residents of the state, the Legislative Library, each state university library, the State Library, each depository library designated pursuant to s. 257.05, F.S., and each standing committee of the Senate and House of Representatives and each state legislator;
- Two subscriptions to each state department;

an annual subscription fee of \$307 per year.<sup>13</sup> Subscription fees charged to FAW subscribers are retained by the publisher as compensation for printing the FAW.<sup>14</sup> In addition to producing the paper version of the FAW, DOS posts copies of the FAW in Adobe Acrobat Portable Document Format (PDF) at [www.flrules.org](http://www.flrules.org), which may be accessed by the public for free.<sup>15</sup> Additionally, printed copies of the FAC are sold by LexisNexis. The majority of revenues from the sale of the FAC are retained by the company as compensation for printing the code. DOS receives a small amount in royalties.<sup>16</sup>

Current law requires all fees and moneys collected by DOS under the Administrative Procedure Act (APA)<sup>17</sup> to be deposited in the Records Management Trust Fund for the purpose of paying for the publication of the FAC and FAW, and for associated costs incurred by the department in administering the APA's requirements.<sup>18</sup> Revenue collected includes the space rate, known as the line charge, at \$1.24 per line.

### **Effect of Proposed Changes**

The bill revises provisions with respect to the *Florida Administrative Code* and the *Florida Administrative Weekly*.

#### Florida Administrative Code

The bill amends s. 120.55, F.S., to provide that the online version of the FAC is the official version for the state. In addition, DOS is no longer required to publish a print version of the FAC. DOS may contract for the publication of a print version of the FAC, but the print version is not the official publication.

The bill also requires that adopted rules and material incorporated by reference be filed in an electronic format.

#### Florida Administrative Weekly

The bill amends s. 120.55, F.S., to change the name of that the *Florida Administrative Weekly* to the *Florida Administrative Register*. The bill provides that the online version of the *Florida Administrative Register* (FAR) is the official version, and is available at [www.flrules.org](http://www.flrules.org). DOS must continually revise the online version of the FAR, rather than on a weekly basis. The bill removes the requirement that the internet website for FAR must contain notices of adoption of, and an index to, all rules filed during the preceding week. It also removes the requirement that the internet website include a cumulative list of all rules that have been filed but not filed for adoption.

DOS may contract with a publishing firm to provide a print version of the FAR, but the print version is not the official publication. DOS may no longer provide free print copies of the FAR to federal and state government entities. A printed copy of the FAR may be made available on an annual subscription basis.

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- Three subscriptions to the library of the Supreme Court of Florida, the library of each state district court of appeal, the division, the library of the Attorney General, each law school library in Florida, the Secretary of the Senate, and the Clerk of the House of Representatives; and
  - Ten subscriptions to the committee.

<sup>12</sup> As of April 15, 2011, there are 145 subscriptions that are comped for federal, state, and local government entities. Information provided by electronic mail on December 16, 2011, by Mr. Pierce Schuessler, Legislative Affairs Director, Department of State. (On file with the Government Operations Subcommittee.)

<sup>13</sup> Information provided by telephone on December 16, 2011, by Mr. Pierce Schuessler, Legislative Affairs Director, Department of State.

<sup>14</sup> Information provided by budget office on January 20, 2012, and by Mr. Pierce Schuessler, Legislative Affairs Director, Department of State.

<sup>15</sup> Section 120.55(2), F.S.

<sup>16</sup> Information provided by budget office on January 20, 2012, and by Mr. Pierce Schuessler, Legislative Affairs Director, Department of State.

<sup>17</sup> Chapter 120, F.S.

<sup>18</sup> Section 120.55(8)(a), F.S.

In addition, the bill provides that DOS is not responsible for reviewing agency and other entities submissions to the FAR for formatting and numbering requirements, grammatical errors, and typographical errors. Entities are responsible for proofreading documents before submitting them electronically in a word processing format. The submitting entity assumes full responsibility for the document's accuracy when submitted.

Finally, the bill directs the Division of Statutory Revision to prepare a reviser's bill for the 2013 Regular Session to substitute the term *Florida Administrative Register* for the term *Florida Administrative Weekly* throughout the Florida Statutes.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 120.55, F.S., revising provisions with respect to the revision and publication of the *Florida Administrative Code* and the *Florida Administrative Weekly*.

Section 2. Provides a directive to the Division of Statutory Revision to prepare a reviser's bill.

Section 3. Provides an effective date of October 1, 2012.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None. This bill does not address or change the current revenue stream collected by DOS for administering APA requirements.

2. Expenditures:

Indeterminate. The bill will likely reduce the workload for staff of the DOS.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The bill will reduce the workload related to current weekly reporting for DOS and entities using the FAC and FAW. The Department of State indicates creating a continuous or "live" publication system (FAR) will reduce the timeline needed to advertise public meetings and workshops while maintaining the current statutory timelines for effective public notice.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

Not applicable. The bill does not appear to affect county or municipal governments.

**2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

The bill expands the current rule-making authority for the Department of State. It authorizes the department to prescribe by rule the electronic form for agencies to file adopted rules.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.



HB 541

2012

1                                   A bill to be entitled  
 2       An act relating to administrative procedures; amending  
 3       s. 120.55, F.S.; revising provisions with respect to  
 4       the revision and publication of the Florida  
 5       Administrative Code to provide that the Department of  
 6       State is not required to publish a printed version of  
 7       the code but may contract with a publishing firm for a  
 8       printed publication; providing that the electronic  
 9       version of the code is the official compilation of the  
 10      administrative rules of the state; providing for  
 11      adopted rules and material incorporated by reference  
 12      to be filed in electronic forms; renaming the "Florida  
 13      Administrative Weekly" as the "Florida Administrative  
 14      Register"; requiring a continuous revision and  
 15      publication of the Florida Administrative Register on  
 16      an Internet website managed by the Department of  
 17      State; revising content and website search  
 18      requirements; deleting a requirement to provide  
 19      printed copies of the Florida Administrative Register  
 20      to certain federal and state entities; providing a  
 21      directive to the Division of Statutory Revision;  
 22      providing an effective date.

23  
 24       Be It Enacted by the Legislature of the State of Florida:

25  
 26           Section 1.   Section 120.55, Florida Statutes, is amended to  
 27       read:  
 28           120.55   Publication.—

29 (1) The Department of State shall:  
 30 (a)1. Through a continuous revision and publication  
 31 system, compile and publish electronically, on an Internet  
 32 website managed by the department, the "Florida Administrative  
 33 Code." The Florida Administrative Code shall contain all rules  
 34 adopted by each agency, citing the grant of rulemaking authority  
 35 and the specific law implemented pursuant to which each rule was  
 36 adopted, all history notes as authorized in s. 120.545(7),  
 37 complete indexes to all rules contained in the code, and any  
 38 other material required or authorized by law or deemed useful by  
 39 the department. The electronic code shall display each rule  
 40 chapter currently in effect in browse mode and allow full text  
 41 search of the code and each rule chapter. The department ~~shall~~  
 42 ~~publish a printed version of the Florida Administrative Code and~~  
 43 may contract with a publishing firm for a such printed  
 44 publication; however, the department shall retain responsibility  
 45 for the code as provided in this section. ~~Supplementation of the~~  
 46 ~~printed code shall be made as often as practicable, but at least~~  
 47 ~~monthly.~~ The electronic ~~printed~~ publication shall be the  
 48 official compilation of the administrative rules of this state.  
 49 The Department of State shall retain the copyright over the  
 50 Florida Administrative Code.  
 51 2. Rules general in form but applicable to only one school  
 52 district, community college district, or county, or a part  
 53 thereof, or state university rules relating to internal  
 54 personnel or business and finance shall not be published in the  
 55 Florida Administrative Code. Exclusion from publication in the  
 56 Florida Administrative Code shall not affect the validity or

57 | effectiveness of such rules.

58 |         3. At the beginning of the section of the code dealing  
 59 | with an agency that files copies of its rules with the  
 60 | department, the department shall publish the address and  
 61 | telephone number of the executive offices of each agency, the  
 62 | manner by which the agency indexes its rules, a listing of all  
 63 | rules of that agency excluded from publication in the code, and  
 64 | a statement as to where those rules may be inspected.

65 |         4. Forms shall not be published in the Florida  
 66 | Administrative Code; but any form which an agency uses in its  
 67 | dealings with the public, along with any accompanying  
 68 | instructions, shall be filed with the committee before it is  
 69 | used. Any form or instruction which meets the definition of  
 70 | "rule" provided in s. 120.52 shall be incorporated by reference  
 71 | into the appropriate rule. The reference shall specifically  
 72 | state that the form is being incorporated by reference and shall  
 73 | include the number, title, and effective date of the form and an  
 74 | explanation of how the form may be obtained. Each form created  
 75 | by an agency which is incorporated by reference in a rule notice  
 76 | of which is given under s. 120.54(3)(a) after December 31, 2007,  
 77 | must clearly display the number, title, and effective date of  
 78 | the form and the number of the rule in which the form is  
 79 | incorporated.

80 |         5. The department shall allow adopted rules and material  
 81 | incorporated by reference to be filed in electronic form as  
 82 | prescribed by department rule. When a rule is filed for adoption  
 83 | with incorporated material in electronic form, the department's  
 84 | publication of the Florida Administrative Code on its Internet

85 website must contain a hyperlink from the incorporating  
 86 reference in the rule directly to that material. The department  
 87 may not allow hyperlinks from rules in the Florida  
 88 Administrative Code to any material other than that filed with  
 89 and maintained by the department, but may allow hyperlinks to  
 90 incorporated material maintained by the department from the  
 91 adopting agency's website or other sites.

92 (b) Electronically publish on an Internet website managed  
 93 by the department a continuous revision and ~~weekly~~ publication  
 94 entitled the "Florida Administrative Register ~~Weekly~~," which  
 95 shall serve as the official ~~Internet website for such~~  
 96 publication and must contain:

97 ~~1. Notice of adoption of, and an index to, all rules filed~~  
 98 ~~during the preceding week.~~

99 1.2. All notices required by s. 120.54(3)(a), showing the  
 100 text of all rules proposed for consideration.

101 2.3. All notices of public meetings, hearings, and  
 102 workshops conducted in accordance with ~~the provisions of~~ s.  
 103 120.525, including a statement of the manner in which a copy of  
 104 the agenda may be obtained.

105 3.4. A notice of each request for authorization to amend  
 106 or repeal an existing uniform rule or for the adoption of new  
 107 uniform rules.

108 4.5. Notice of petitions for declaratory statements or  
 109 administrative determinations.

110 5.6. A summary of each objection to any rule filed by the  
 111 Administrative Procedures Committee ~~during the preceding week.~~

112 ~~7. A cumulative list of all rules that have been proposed~~

113 | ~~but not filed for adoption.~~

114 |       6.8. Any other material required or authorized by law or  
115 | deemed useful by the department.

116 |  
117 | The department may contract with a publishing firm for a printed  
118 | publication shall publish a printed version of the Florida  
119 | Administrative Register Weekly and make copies available on an  
120 | annual subscription basis. ~~The department may contract with a~~  
121 | ~~publishing firm for printed publication of the Florida~~  
122 | ~~Administrative Weekly.~~

123 |       ~~(c) Review notices for compliance with format and~~  
124 | ~~numbering requirements before publishing them on the Florida~~  
125 | ~~Administrative Weekly Internet website.~~

126 |       (c)-(d) Prescribe by rule the style and form required for  
127 | rules, notices, and other materials submitted for filing.

128 |       ~~(c) Correct grammatical, typographical, and like errors~~  
129 | ~~not affecting the construction or meaning of the rules, after~~  
130 | ~~having obtained the advice and consent of the appropriate~~  
131 | ~~agency, and insert history notes.~~

132 |       (d)-(f) Charge each agency using the Florida Administrative  
133 | Register Weekly a space rate to cover the costs related to the  
134 | Florida Administrative Register Weekly and the Florida  
135 | Administrative Code.

136 |       (e)-(g) Maintain a permanent record of all notices  
137 | published in the Florida Administrative Register Weekly.

138 |       (2) The Florida Administrative Register Weekly Internet  
139 | website must allow users to:

140 |       (a) Search for notices by type, publication date, rule

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141 | number, word, subject, and agency.~~†~~

142 |       (b) Search a database that makes available all notices  
143 | published on the website for a period of at least 5 years.~~†~~

144 |       (c) Subscribe to an automated e-mail notification of  
145 | selected notices to be sent out before or concurrently with  
146 | ~~weekly~~ publication of the ~~printed and~~ electronic Florida  
147 | Administrative Register ~~Weekly~~. Such notification must include  
148 | in the text of the e-mail a summary of the content of each  
149 | notice.~~†~~

150 |       (d) View agency forms and other materials submitted to the  
151 | department in electronic form and incorporated by reference in  
152 | proposed rules.~~†~~ ~~and~~

153 |       (e) Comment on proposed rules.

154 |       (3) Publication of material required by paragraph (1)(b)  
155 | on the Florida Administrative Register ~~Weekly~~ Internet website  
156 | does not preclude publication of such material on an agency's  
157 | website or by other means.

158 |       (4) Each agency shall provide copies of its rules upon  
159 | request, with citations to the grant of rulemaking authority and  
160 | the specific law implemented for each rule.

161 |       (5) Any publication of a proposed rule promulgated by an  
162 | agency, whether published in the Florida Administrative Register  
163 | ~~Code~~ or elsewhere, shall include, along with the rule, the name  
164 | of the person or persons originating such rule, the name of the  
165 | agency head who approved the rule, and the date upon which the  
166 | rule was approved.

167 |       (6) Access to the Florida Administrative Register ~~Weekly~~  
168 | Internet website and its contents, including the e-mail

169 notification service, shall be free for the public.

170 ~~(7) (a) Each year the Department of State shall furnish the~~  
 171 ~~Florida Administrative Weekly, without charge and upon request,~~  
 172 ~~as follows:~~

173 ~~1. One subscription to each federal and state court having~~  
 174 ~~jurisdiction over the residents of the state; the Legislative~~  
 175 ~~Library; each state university library; the State Library; each~~  
 176 ~~depository library designated pursuant to s. 257.05; and each~~  
 177 ~~standing committee of the Senate and House of Representatives~~  
 178 ~~and each state legislator.~~

179 ~~2. Two subscriptions to each state department.~~

180 ~~3. Three subscriptions to the library of the Supreme Court~~  
 181 ~~of Florida, the library of each state district court of appeal,~~  
 182 ~~the division, the library of the Attorney General, each law~~  
 183 ~~school library in Florida, the Secretary of the Senate, and the~~  
 184 ~~Clerk of the House of Representatives.~~

185 ~~4. Ten subscriptions to the committee.~~

186 ~~(b) The Department of State shall furnish one copy of the~~  
 187 ~~Florida Administrative Weekly, at no cost, to each clerk of the~~  
 188 ~~circuit court and each state department, for posting for public~~  
 189 ~~inspection.~~

190 (7)(8) (a) All fees and moneys collected by the Department  
 191 of State under this chapter shall be deposited in the Records  
 192 Management Trust Fund for the purpose of paying for costs  
 193 incurred by the department in carrying out this chapter.

194 (b) The unencumbered balance in the Records Management  
 195 Trust Fund for fees collected pursuant to this chapter may not  
 196 exceed \$300,000 at the beginning of each fiscal year, and any

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197 | excess shall be transferred to the General Revenue Fund.

198 |       Section 2. The Division of Statutory Revision of the  
 199 | Office of Legislative Services is requested to prepare a  
 200 | reviser's bill for the 2013 Regular Session of the Legislature  
 201 | to substitute the term "Florida Administrative Register" for the  
 202 | term "Florida Administrative Weekly" throughout the Florida  
 203 | Statutes."

204 |       Section 3. This act shall take effect October 1, 2012.





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 591 Archeological Sites and Specimens  
**SPONSOR(S):** Community & Military Affairs Subcommittee, Metz  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 868

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	15 Y, 0 N, As CS	Nelson	Hoagland
2) Transportation & Economic Development Appropriations Subcommittee		Rayman <i>SR</i>	Davis <i>[Signature]</i>
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The "State Policy Relative to Historic Properties" provides that the rich and unique heritage of historic properties in this state, representing more than 10,000 years of human presence, is an important legacy to be valued and conserved for present and future generations. The destruction of these nonrenewable historical resources is acknowledged to engender a significant loss to the state's quality of life, economy, and cultural environment.

This policy also provides that all treasure trove, artifacts and objects having intrinsic or historical and archaeological value, which have been abandoned on state-owned lands or state-owned sovereignty submerged lands, belong to the state with the title thereto vested in the Division of Historical Resources (Division) of the Department of State for the purposes of administration and protection.

Currently, Florida law prohibits persons from conducting archaeological field investigations on, or removing or attempting to remove, or deface, destroy, or otherwise alter any archaeological site or specimen located upon any land owned or controlled by the state or within the boundaries of a designated state archaeological landmark or landmark zone, except under the authority of a permit granted by the division. Persons engaging in these activities can face criminal penalties, administrative fines, and the forfeiture of any collected materials.

CS/HB 591 expands the area where unauthorized archaeological activity is prohibited to include state sovereignty submerged land and land owned by political subdivisions, and authorizes the Division to issue permits for archaeological research at these locations.

The fiscal impact is insignificant on state funds.

The bill has an effective date of July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### State Policy Relative to Historic Properties

Section 267.061, F.S., provides the "State Policy Relative to Historic Properties." This policy acknowledges that the rich and unique heritage of historic properties in this state, representing more than 10,000 years of human presence, is an important legacy to be valued and conserved for present and future generations, and that the destruction of these nonrenewable historical resources will engender a significant loss to the state's quality of life, economy, and cultural environment. It is the policy of the state to:

- provide leadership in the preservation of the state's historic resources;
- administer state-owned or state-controlled historic resources in a spirit of stewardship and trusteeship;
- contribute to the preservation of non-state-owned historic resources and to give encouragement to organizations and individuals undertaking preservation by private means;
- foster conditions, using measures that include financial and technical assistance, for a harmonious coexistence of society and state historic resources;
- encourage the public and private preservation and utilization of elements of the state's historically built environment; and
- assist local governments to expand and accelerate their historic preservation programs and activities.

This policy also provides that all treasure trove, artifacts and objects having intrinsic or historical and archaeological value, which have been abandoned on state-owned lands or state-owned sovereignty submerged lands, belong to the state with the title thereto vested in the Division of Historical Resources of the Department of State for the purposes of administration and protection.<sup>1</sup>

##### State Archaeological Landmarks and Landmark Zones

The Division of Historical Resources (Division) may designate an archaeological site of significance to the scientific study or public representation of the state's historical, prehistoric, or aboriginal past as a "state archaeological landmark." In addition, the division may designate an interrelated grouping of significant archaeological sites as a "state archaeological landmark zone." No site or grouping of sites can be designated without the express written consent of a private owner. Upon designation of an archaeological site, the owners and occupants are given written notification by the Division. Once so designated, no person may conduct field investigation activities on the site without first securing a permit from the Division.<sup>2</sup>

##### Archaeological Research Permits

The Division may issue permits for excavation and surface reconnaissance on state lands or lands within the boundaries of designated state archaeological landmarks or landmark zones to institutions which the Division deems to be properly qualified to conduct such activity, subject to Division rules and regulations, provided such activity is undertaken by reputable museums, universities, colleges, or other historical, scientific, or educational institutions or societies that possess or will secure the

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<sup>1</sup> Section 267.061(1)(b), F.S.

<sup>2</sup> Section 267.11, F.S.

archaeological expertise for the performance of systematic archaeological field research, comprehensive analysis, and interpretation in the form of publishable reports and monographs.

Those state institutions considered by the Division to permanently possess the required archaeological expertise to conduct the archaeological activities permissible under the provisions of a permit may be designated as accredited institutions. These institutions are allowed to conduct archaeological field activities on state-owned or controlled lands or within the boundaries of any designated state archaeological landmark or any landmark zone without obtaining an individual permit for each project. The institutions are required to give prior written notice of all anticipated archaeological field activities, together with such information as may reasonably be required by the Division to ensure the proper preservation, protection, and excavation of archaeological resources. However, no archaeological activity can be commenced by the accredited institution until the Division determines that the planned project is in conformity with guidelines, regulations, and criteria. Such determination is made by the Division within 15 days from the date of notification.<sup>3</sup>

### **Prohibited Archaeological Practices and Penalties**

Any person who by means other than excavation conducts archaeological field investigations on, or removes or attempts to remove, or defaces, destroys, or otherwise alters any archaeological site or specimen located upon land owned or controlled by the state or within the boundaries of a designated state archaeological landmark or landmark zone, except in the course of activities pursued under the authority of a permit granted by the Division or under procedures relating to accredited institutions, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S., and, in addition, forfeits to the state all specimens, objects and materials collected, together with all photographs and records relating to such material.<sup>4</sup>

A person who engages in the same conduct by means of excavation commits a felony of the third degree, punishable as provided in ss. 775.082, s. 775.083, or s. 775.084, F.S., and any vehicle or equipment used in connection with the violation is subject to forfeiture to the state. Such person may be ordered by the court to make restitution to the state for the archaeological or commercial value and cost of restoration and repair.<sup>5</sup> Individuals also are prohibited, and subject to criminal penalties, for selling or procuring archaeological objects which have been collected in violation of state law.<sup>6</sup>

The Division additionally has authority to institute administrative proceedings to impose an administrative fines of not more than \$500 a day on, and apply to a court of competent jurisdiction for injunctive relief against, any person or business organization that, without written permission of the Division, explores for, salvages, or excavates treasure trove, artifacts, sunken or abandoned ships, or other objects having historical or archaeological value located on state-owned or state-controlled lands, including state sovereignty submerged lands.<sup>7</sup>

### **Effect of Proposed Changes**

The bill expands the provisions contained in s. 267.13, F.S., related to prohibited archaeological practices and penalties to include state sovereignty submerged land and land owned by political subdivisions as defined by s. 1.01(8), F.S.<sup>8</sup> Any specimens, objects and materials collected in violation of the law are forfeited to the state. The bill also amends s. 267.12, F.S., to provide the Division of Historical Resources with the authority to issue permits for archaeological research permits at these locations.

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<sup>3</sup> Section 267.12., F.S.

<sup>4</sup> Section 267.13(1)(a), F.S.

<sup>5</sup> Section 267.13(1)(b), F.S.

<sup>6</sup> Section 267.13(1)(c), F.S.

<sup>7</sup> Section 267.13(2), F.S.

<sup>8</sup> See, s. 1.01(8), F.S., which defines "political subdivisions" to include counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state.

Currently, the statutes only apply to land owned or controlled by the state, or within the boundaries of a designated state archaeological landmark or landmark zone. Thus, the bill affords other public landowners, who are not covered by current laws and limited to other remedies such as trespass after warning,<sup>9</sup> greater ability to deter persons from searching for archeological finds on their property, while allowing permitting for legitimate archaeological research.

The bill has an effective date of July 1, 2012.

**B. SECTION DIRECTORY:**

Section 1. Amends subsections 267.12 (1) and (2), F.S., relating to archaeological research permits.

Section 2. Amends subsections 267.13 (1) and (2), F.S., relating to archaeological site and specimen prohibited practices and penalties.

Section 3. Provides an effective date of July 1, 2012.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

**1. Revenues:**

Expanding the prohibition of specified activities relating to archaeological sites and resources could result in the collection of additional fines. Between 2004 and 2006, a total of \$6,493.13 was collected pursuant to s. 267.13, F.S. However, no fines have been collected since 2006.<sup>10</sup>

**2. Expenditures:**

Insignificant impact. Clarifying the prohibition of specified activities relating to archaeological sites and resources could result in the need for additional workload and resources related to the fine. Current law allows for an administrative hearing to challenge the imposition of the fine after service of notice.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

**1. Revenues:**

None.

**2. Expenditures:**

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

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<sup>9</sup> See, s. 810.09, F.S.

<sup>10</sup> Department of State analysis of HB 591, dated November 19, 2011.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable. The 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:**

Section 267.13(2)(e), F.S., requires the Division to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement that section.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 18, 2012, the Community & Military Affairs Subcommittee adopted a strike-all amendment that makes technical changes to the bill. Additionally, the amendment deletes the reference to "special districts created by the Legislature" as those entities are included in the definition of the term "political subdivision." The amendment also adds language that authorizes the Division to issue permits for archaeological research on state sovereignty land and land owned by political subdivisions.

This analysis is drafted to the Committee Substitute.

1                                   A bill to be entitled  
 2           An act relating to archeological sites and specimens;  
 3           amending s. 267.12, F.S.; authorizing the Division of  
 4           Historical Resources of the Department of State to  
 5           issue permits for excavation, surface reconnaissance,  
 6           and archaeological activities on land owned by a  
 7           political subdivision; amending s. 267.13, F.S.;  
 8           providing that specified activities relating to  
 9           archaeological sites and specimens located upon land  
 10          owned by a political subdivision are prohibited and  
 11          subject to penalties; authorizing the division to  
 12          impose an administrative fine on and seek injunctive  
 13          relief against certain entities; providing an  
 14          effective date.

15  
 16   Be It Enacted by the Legislature of the State of Florida:

17  
 18           Section 1. Subsections (1) and (2) of section 267.12,  
 19           Florida Statutes, are amended to read:

20           267.12 Research permits; procedure.—  
 21           (1) The division may issue permits for excavation and  
 22           surface reconnaissance on land owned or controlled by the state,  
 23           including state sovereignty submerged land, land owned by a  
 24           political subdivision as defined by s. 1.01(8), ~~lands~~ or land  
 25           ~~lands~~ within the boundaries of a designated state archaeological  
 26           landmark ~~landmarks~~ or landmark zone ~~zones~~ to institutions which  
 27           the division deems ~~shall deem~~ to be properly qualified to  
 28           conduct such activity, subject to such rules and regulations as

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29 the division may prescribe, provided such activity is undertaken  
 30 by reputable museums, universities, colleges, or other  
 31 historical, scientific, or educational institutions or societies  
 32 that possess or will secure the archaeological expertise for the  
 33 performance of systematic archaeological field research,  
 34 comprehensive analysis, and interpretation in the form of  
 35 publishable reports and monographs, such reports to be submitted  
 36 to the division.

37 (2) Those state institutions considered by the division  
 38 permanently to possess the required archaeological expertise to  
 39 conduct the archaeological activities allowed under ~~the~~  
 40 ~~provisions of~~ the permit may be designated as accredited  
 41 institutions which will be allowed to conduct archaeological  
 42 field activities on land owned or controlled by the state,  
 43 including state sovereignty submerged land, land owned by a  
 44 political subdivision as defined by s. 1.01(8), ~~state-owned or~~  
 45 ~~controlled lands~~ or land within the boundaries of a ~~any~~  
 46 designated state archaeological landmark or ~~any~~ landmark zone  
 47 without obtaining an individual permit for each project, except  
 48 that those accredited institutions will be required to give  
 49 prior written notice of all anticipated archaeological field  
 50 activities on land owned or controlled by the state, including  
 51 state sovereignty submerged land, land owned by a political  
 52 subdivision as defined by s. 1.01(8), ~~state-owned or controlled~~  
 53 ~~lands~~ or land within the boundaries of a ~~any~~ designated state  
 54 archaeological landmark or landmark zone to the division,  
 55 together with such information as may reasonably be required by  
 56 the division to ensure the proper preservation, protection, and



57 excavation of the archaeological resources. However, ~~ne~~  
 58 archaeological activity may not be commenced by the accredited  
 59 institution until the division has determined that the planned  
 60 project will be in conformity with the guidelines, regulations,  
 61 and criteria adopted pursuant to ss. 267.11-267.14. Such  
 62 determination will be made by the division and notification to  
 63 the institution given within ~~a period of~~ 15 days after ~~from the~~  
 64 ~~time of~~ receipt of the prior notification by the division.

65 Section 2. Subsections (1) and (2) of section 267.13,  
 66 Florida Statutes, are amended to read:

67 267.13 Prohibited practices; penalties.—

68 (1)(a) Any person who by means other than excavation  
 69 ~~either~~ conducts archaeological field investigations on, or  
 70 removes or attempts to remove, or defaces, destroys, or  
 71 otherwise alters any archaeological site or specimen located  
 72 upon, ~~any~~ land owned or controlled by the state, including state  
 73 sovereignty submerged land, land owned by a political  
 74 subdivision as defined by s. 1.01(8), or land within the  
 75 boundaries of a designated state archaeological landmark or  
 76 landmark zone, except in the course of activities pursued under  
 77 the authority of a permit or under procedures relating to  
 78 accredited institutions granted by the division, commits a  
 79 misdemeanor of the first degree, punishable as provided in s.  
 80 775.082 or s. 775.083, and, in addition, shall forfeit to the  
 81 state all specimens, objects, and materials collected, together  
 82 with all photographs and records relating to such material.

83 (b) Any person who by means of excavation ~~either~~ conducts  
 84 archaeological field investigations on, or removes or attempts

85 to remove, or defaces, destroys, or otherwise alters any  
 86 archaeological site or specimen located upon, ~~any~~ land owned or  
 87 controlled by the state, including state sovereignty submerged  
 88 land, land owned by a political subdivision as defined by s.  
 89 1.01(8), or land within the boundaries of a designated state  
 90 archaeological landmark or landmark zone, except in the course  
 91 of activities pursued under the authority of a permit or under  
 92 procedures relating to accredited institutions granted by the  
 93 division, commits a felony of the third degree, punishable as  
 94 provided in s. 775.082, s. 775.083, or s. 775.084, and any  
 95 vehicle or equipment of any person used in connection with the  
 96 violation is subject to forfeiture to the state if it is  
 97 determined by any court of law that the vehicle or equipment was  
 98 involved in the violation. Such person shall forfeit to the  
 99 state all specimens, objects, and materials collected or  
 100 excavated, together with all photographs and records relating to  
 101 such material. The court may also order the defendant to make  
 102 restitution to the state for the archaeological or commercial  
 103 value and cost of restoration and repair as defined in  
 104 subsection (4).

105 (c) Any person who offers for sale or exchange any object  
 106 with knowledge that it has previously been collected or  
 107 excavated in violation of any of the terms of ss. 267.11-267.14,  
 108 or who procures, counsels, solicits, or employs any other person  
 109 to violate any prohibition contained in ss. 267.11-267.14 or to  
 110 sell, purchase, exchange, transport, receive, or offer to sell,  
 111 purchase, or exchange any archaeological resource excavated or  
 112 removed from ~~any~~ land owned or controlled by the state,

113 including state sovereignty submerged land, land owned by a  
 114 political subdivision as defined by s. 1.01(8), or land within  
 115 the boundaries of a designated state archaeological landmark or  
 116 landmark zone, except with the express consent of the division,  
 117 commits a felony of the third degree, punishable as provided in  
 118 s. 775.082, s. 775.083, or s. 775.084, and any vehicle or  
 119 equipment of any person used in connection with the violation is  
 120 subject to forfeiture to the state if it is determined by any  
 121 court of law that such vehicle or equipment was involved in the  
 122 violation. All specimens, objects, and material collected or  
 123 excavated, together with all photographs and records relating to  
 124 such material, shall be forfeited to the state. The court may  
 125 also order the defendant to make restitution to the state for  
 126 the archaeological or commercial value and cost of restoration  
 127 and repair as defined in subsection (4).

128 (2)(a) The division may institute an administrative  
 129 proceeding to impose an administrative fine of not more than  
 130 \$500 a day on any person or business organization that, without  
 131 written permission of the division, explores for, salvages, or  
 132 excavates treasure trove, artifacts, sunken or abandoned ships,  
 133 or other objects having historical or archaeological value  
 134 located upon land owned or controlled by the state ~~on state-~~  
 135 ~~owned or state-controlled lands,~~ including state sovereignty  
 136 submerged land, or land owned by a political subdivision as  
 137 defined by s. 1.01(8) lands.

138 (b) The division shall institute an administrative  
 139 proceeding by serving written notice of a violation by certified  
 140 mail upon the alleged violator. The notice shall specify the law

141 or rule allegedly violated and the facts upon which the  
 142 allegation is based. The notice shall also specify the amount of  
 143 the administrative fine sought by the division. The fine is  
 144 ~~shall not become~~ due until after service of notice and an  
 145 administrative hearing. However, the alleged violator has ~~shall~~  
 146 ~~have~~ 20 days after ~~from~~ service of notice to request an  
 147 administrative hearing. Failure to respond within that time  
 148 constitutes ~~shall constitute~~ a waiver, and the fine becomes  
 149 ~~shall become~~ due without a hearing.

150 (c) The division may enter its judgment for the amount of  
 151 the administrative penalty imposed in a court of competent  
 152 jurisdiction, pursuant to s. 120.69. The judgment may be  
 153 enforced as any other judgment.

154 (d) The division may apply to a court of competent  
 155 jurisdiction for injunctive relief against any person or  
 156 business organization that explores for, salvages, or excavates  
 157 treasure trove, artifacts, sunken or abandoned ships, or other  
 158 objects having historical or archaeological value located upon  
 159 ~~on state-owned or state-controlled~~ land owned or controlled by  
 160 the state, including state sovereignty submerged land, or land  
 161 owned by a political subdivision as defined by s. 1.01(8)  
 162 without the written permission of the division.

163 (e) The division shall adopt rules pursuant to ss.  
 164 120.536(1) and 120.54 to administer ~~implement the provisions of~~  
 165 this section.

166 Section 3. This act shall take effect July 1, 2012.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 599 Mitigation Requirements for Transportation Projects  
**SPONSOR(S):** Transportation & Highway Safety Subcommittee, Pilon  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 824

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	12 Y, 0 N, As CS	Kiner	Kruse
2) Agriculture & Natural Resources Subcommittee	13 Y, 1 N	Deslatte	Blalock
3) Transportation & Economic Development Appropriations Subcommittee		Miller <i>BM</i>	Davis <i>GD</i>
4) Economic Affairs Committee			

### SUMMARY ANALYSIS

The bill relates to environmental mitigation efforts to offset the impacts of transportation projects proposed by the Florida Department of Transportation ("DOT"). The bill amends current Florida law to provide DOT the option to choose between water management districts ("WMDs") and private mitigation banks when undertaking mitigation efforts for transportation projects. The bill makes this change by:

- Revising legislative intent to encourage the use of public and private mitigation banks and other mitigation options that satisfy state and federal requirements;
- Providing an opt-out clause authorizing DOT (and WMDs and participating transportation authorities) to exclude projects from the statutory mitigation plan carried out by WMDs provided specified criteria have been met and specified investigations have been conducted;
- Providing that funds held in escrow for the benefit of a WMD may be released if the associated transportation project is excluded in whole or in part from the mitigation plan;
- Requiring that mitigation plans be approved by the Florida Department of Environmental Protection ("DEP"), in addition to current WMD approval, before implementation; and
- Revising the circumstances under which a governmental entity may create or provide mitigation for a project other than its own.

The bill has an indeterminate but likely insignificant fiscal impact on state government. See the Fiscal Analysis for specific details.

The bill is effective upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### ***Background, Legislative Intent and Purpose***

Environmental mitigation as it relates to wetlands regulatory programs is generally defined as the creation, restoration, preservation or enhancement of wetlands to compensate for permitted wetlands losses.<sup>1</sup> Mitigation banking is a concept designed to increase the success of environmental mitigation efforts and reduce costs to developers of individual mitigation projects.<sup>2</sup>

Section 373.4135, F.S., as part of the Environmental Reorganization Act of 1993, directs the Florida Department of Environmental Protection ("DEP") and water management districts ("WMDs") to participate in and encourage the establishment of private and public mitigation banks and offsite regional mitigation.<sup>3</sup> Section 404 of the federal Clean Water Act<sup>4</sup> and early Florida law attempted to regulate wetlands impacts. However, these pieces of legislation did not specifically establish a wetlands protection program. As such, the Florida Legislature responded to the lack of both a comprehensive policy and a regulatory framework to handle environmental mitigation efforts with passage of s. 373.4135, F.S.<sup>5</sup> With few exceptions, it was intended that the provisions for establishing mitigation banks, creating and providing mitigation would apply equally to both public and private entities.<sup>6</sup> Among the exceptions is that DEP and the WMDs may treat public (or governmental) and private entities differently, by rule, with respect to financial assurances required.<sup>7</sup>

##### ***Mitigation Banking Process***

In 1994, rules were adopted to govern the establishment and use of mitigation banks.<sup>8</sup> The substantive aspects of these rules, which were later codified<sup>9</sup> in s. 373.4136, F.S., and further specified in Ch. 62-342.700, F.A.C., address the following:

- The establishment of mitigation banks by governmental, nonprofit or for-profit entities;
- Requirements to ensure the financial responsibility of nongovernmental, private entities<sup>10</sup> proposing to develop mitigation banks – including the requirement that these entities show financial responsibility (effective prior to release of any mitigation credits) through a surety or performance bond, irrevocable letter of credit, or trust fund for the construction, implementation and perpetual management phases of the project (equal to 110% of the cost);
- Requirements to ensure the financial responsibility of governmental entities<sup>11</sup> proposing to develop mitigation banks – including the requirement that a governmental entity provide

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<sup>1</sup> John J. Fumero, *Environmental Law: 1994 Survey of Florida Law – At a Crossroads in Natural Resource Protection and Management in Florida*, 19 Nova L. Rev. 77, 101 (1994).

<sup>2</sup> Id. at 103.

<sup>3</sup> Section 29., Ch. 93-213, Laws of Florida.

<sup>4</sup> 33 U.S.C. s. 1344

<sup>5</sup> John J. Fumero, *Environmental Law: 1994 Survey of Florida Law – At a Crossroads in Natural Resource Protection and Management in Florida*, 19 Nova L. Rev. 77, 103 (1994).

<sup>6</sup> Section 373.4135, F.S.

<sup>7</sup> Section 373.4135(1)(a), F.S.

<sup>8</sup> The rules have been amended several times and may now be found in Ch. 62-342.700, F.A.C., effective May, 2001.

<sup>9</sup> In 1996, the Florida Legislature revised the statutes on mitigation banking and the substantive sections of the rules were placed in s. 373.4136, F.S. See the "Legal Authority" section of the Florida Department of Environmental Protection's website on the Mitigation Banking Rule and Synopsis. This information may be viewed at <http://www.dep.state.fl.us/water/wetlands/mitigation/synopsis.htm> (Last viewed 1/12/2012). Chapter 62-342, F.A.C. was subsequently revised in May, 2001, providing, among other things, specific financial assurance requirements.

<sup>10</sup> These requirements may be found in Ch. 62-342.700(1)-(11), F.A.C.

<sup>11</sup> These requirements may be found in Ch. 62-342.700(12), F.A.C.

“reasonable assurances” that it can meet the construction and implementation requirements in the mitigation bank permit and establish a trust fund for the perpetual management of the mitigation bank;

- Circumstances in which mitigation banking is appropriate or desirable: only when onsite mitigation is determined not to have comparable long-term viability and the bank itself would improve ecological value more than on-site mitigation;
- A framework for determining the value of a mitigation bank through the issuance of credits;
- Criteria for withdrawal of mitigation credits by projects within or outside the regional watershed where the bank is located;
- Measures to ensure the long-term management and protection of mitigation banks; and
- Criteria governing the contribution of funds or land to an approved mitigation bank.<sup>12</sup>

A ‘banker’ is an entity that creates, operates, manages, or maintains a mitigation bank.<sup>13</sup> A banker must apply for a mitigation bank permit before establishing and operating a mitigation bank.<sup>14</sup> Mitigation banks are permitted by DEP or one of the WMDs that have adopted rules based on the location of the bank and activity-based considerations, such as whether the ecological benefits will preserve wetlands losses resulting from development or land use activities or will offset losses to threatened and endangered species.<sup>15</sup> The mitigation bank permit authorizes the implementation and operation of the mitigation bank and sets forth the rights and responsibilities, including financial responsibilities, of the banker and DEP for its implementation, management, maintenance and operation.<sup>16</sup> Specific state mitigation bank permit requirements are contained within s. 373.4136, F.S., Ch. 62-342.450, F.A.C., and Ch. 342.700, F.A.C. Mitigation banks must also go through a federal permitting process overseen by the United States Army Corps of Engineers.

There are separate and distinct requirements for mitigation efforts related to transportation projects.

### ***Mitigation Requirements for Specified Transportation Projects***

In 1996,<sup>17</sup> the Florida Legislature found that environmental mitigation efforts related to transportation projects proposed by the Florida Department of Transportation (“DOT”) or transportation authorities could be more effectively achieved through regional, long-range mitigation planning rather than on a project-by-project basis. As such, s. 373.4137, F.S., requires DOT to fund mitigation efforts to offset the adverse impacts of transportation projects on wetlands, wildlife and other aspects of the natural environment. Mitigation efforts are required to be carried out by a combination of WMDs and through the use of mitigation banks.

### ***DOT’s Role in the Mitigation Process***

Section 373.4137, F.S., requires DOT (and transportation authorities) to annually submit (by July 1<sup>st</sup>) a copy of its adopted work program along with an environmental impact inventory of affected habitats (WMDs are responsible for ensuring compliance with federal permitting requirements). The environmental impact inventory must be submitted to the WMDs and must include the following:

- A description of habitats impacted by transportation projects, including location, acreage and type;
- A statement of the water quality classification of impacted wetlands and other surface waters;
- Identification of any other state or regional designations for the habitats; and

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<sup>12</sup> John J. Fumero, *Environmental Law: 1994 Survey of Florida Law – At a Crossroads in Natural Resource Protection and Management in Florida*, 19 Nova L. Rev. 77, 104 (1994).

<sup>13</sup> Ch. 62-342.200(1), F.A.C. (2001).

<sup>14</sup> Ch. 62-342.200(1), F.A.C. (2001).

<sup>15</sup> See the Florida Department of Environmental Protection’s website on the Mitigation and Banking Rule and Procedure Synopsis at <http://www.dep.state.fl.us/water/wetlands/mitigation/synopsis.htm>. (Last viewed 12/9/2011).

<sup>16</sup> Id.

<sup>17</sup> Section 1., Ch. 96-238, Laws of Florida



- A survey of threatened species, endangered species and species of special concern affected by the proposed project.

### ***WMDs Decision to Involve Mitigation Banks in the Mitigation Process***

By March 1<sup>st</sup> of each year, each WMD must develop a mitigation plan in consultation with DEP, the United States Army Corps of Engineers, DOT, transportation authorities and various other federal, state and local governmental entities and submit the plan to its governing board for review and approval.<sup>18</sup> This plan is, in part, based off of the information provided in the environmental impact inventory and compiled in coordination with mitigation bankers.<sup>19</sup> Among other things, WMDs are required to consider the purchase of credits from properly permitted public or private mitigation banks when developing the plan and shall include this information in the plan when the purchase would:

- Offset the impact of the transportation project;
- Provide equal benefits to the water resources than other mitigation options being considered; and
- Provide the most cost-effective mitigation option.<sup>20</sup>

For each transportation project with a funding request for the next fiscal year, the mitigation plan must include a brief explanation of why a mitigation bank was or was not chosen as a mitigation option, including an estimation of identifiable costs of the mitigation bank and nonbank options to the extent practicable. Currently, factors such as time saved, liability for success of the mitigation and long-term maintenance are not required.

Florida law also provides that a specific project may be excluded from the mitigation plan in certain instances if DOT, the applicable transportation authority and WMD agree that the efficiency or timeliness of the planning or permitting process would be hampered were the project included. Additionally, a WMD may unilaterally exclude a project from the mitigation plan if appropriate mitigation for the project is not identifiable.<sup>21</sup> At this time, Florida law does not allow DOT to unilaterally elect which projects to include or exclude from the mitigation plan.

### ***Mitigation Credits***

Each quarter, DOT and transportation authorities must transfer sufficient funds into escrow accounts within the State Transportation Trust Fund to pay for mitigation of projected acreage impacts resulting from projects identified in the approved mitigation plan. By statute, the amount transferred must correspond to \$75,000/acre of acreage projected to be impacted and must be spent down through the use of 'mitigation credits' throughout the fiscal year. This \$75,000/acre statutory figure was originally based on estimates of the historical average cost per acre that DOT was spending on mitigation on a project-by-project basis in the early 1990's (usually this mitigation was conducted strictly on-site to restore or enhance wetlands directly linked to the impacted area). Over time, the process has changed. Now, this amount is adjusted on July 1<sup>st</sup> of each year based on the percentage change in the average of the Consumer Price Index. For fiscal year 2011-2012, the adjusted amount is \$104,701 per acre. As defined by statute, a 'mitigation credit' is a unit of measure which represents the increase in ecological value resulting from mitigation efforts on a proposed project or projects.<sup>22</sup> One mitigation credit equals the ecological value gained by successfully creating one acre of wetlands.<sup>23</sup>

At the end of each quarter, the projected acreage impacts are compared to the actual acreage impacts and escrow balances are adjusted accordingly. Pursuant to the process, and with limited exceptions, WMDs may request a release of funds from the escrow accounts no sooner than 30 days prior to the

<sup>18</sup> Section 373.4137(4), F.S.

<sup>19</sup> Section 373.4137(4), F.S.

<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> Section 373.403(20), F.S.

<sup>23</sup> Ch. 62-342.200(5), F.A.C.

date the funds are needed to pay for costs associated with the development or implementation of the mitigation efforts. Associated costs relate to, but are not limited to, the following:

- Design costs;
- Engineering costs;
- Production costs; and
- Staff support.

### ***Mitigation Expenditures***

From 2007 to 2011, DOT's mitigation expenditures have totaled \$169,921,562. WMDs have received \$116,456,080 (68.54%) of the total expenditures, while public and private mitigation banks have received \$38,107,600 (22.43%) of the total expenditures.<sup>24</sup> During this time, DOT also carried out its own mitigation in cases where mitigation banks were unavailable or the WMD could not identify the appropriate amount of mitigation within the existing statutory scheme. These related expenditures amount to \$15,357,882 (9.04%) of total expenditures.

From inception of the DOT mitigation program in 1996 through present time, many acres of wetlands impacts have been – or plan to be – offset across the state. According to its 2011 DOT Mitigation Plan, the St. John's River Water Management District has, as of September 30, 2010, provided 35,036.68 acres of mitigation to offset 1305 acres of wetlands and other surface waters impacts. This total includes the mitigation acreage associated with 132.09 mitigation bank credits. The Southwest Florida Water Management District, according to its draft 2012 DOT Mitigation Plan, has provided (including proposed projects) a total of 814 acres of wetlands impacts.<sup>25</sup> This total includes mitigation acreage associated with 44.01 mitigation bank credits purchased from four mitigation banks and two local government regional off-site mitigation areas.<sup>26</sup>

### ***Statewide Anticipated Mitigation Inventory for Fiscal Year 2012-2013***

For fiscal year 2012-2013,<sup>27</sup> the total anticipated mitigation inventory is \$20,068,232. It is anticipated that WMDs will receive \$10,374,303 of the total, while public and private mitigation banks are anticipated to receive \$9,643,929 of the total. DOT also anticipates it will carry out its own mitigation totaling \$50,000.

### **Effect of Proposed Changes**

The bill amends current Florida law to provide DOT the option to choose between water management districts ("WMDs") and private mitigation banks when undertaking mitigation efforts for transportation projects. The bill makes this change by:

- Revising legislative intent to encourage the use of public and private mitigation banks and other mitigation options that satisfy state and federal requirements;
- Providing an opt-out clause authorizing DOT (and WMDs and participating transportation authorities) to exclude projects from the statutory mitigation plan carried out by WMDs provided specified criteria have been met and specified investigations have been conducted;
- Providing that funds held in escrow for the benefit of a WMD may be released if the associated transportation project is excluded in whole or in part from the mitigation plan;
- Requiring that mitigation plans be approved by the Florida Department of Environmental Protection ("DEP"), in addition to current WMD approval, before implementation; and

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<sup>24</sup> According to DOT, "itemizing mitigation bank purchases by project is not readily available because of the ability to purchase advance mitigation credits and the ability to lump various projects within a single mitigation bank credit purchase."

<sup>25</sup> This plan is projected to be approved by the Southwest Florida Water Management District Governing Board on January 31, 2012. The draft plan may be viewed at <http://www.swfwmd.state.fl.us/projects/mitigation/> (Last viewed 1/5/2012).

<sup>26</sup> Id.

<sup>27</sup> According to DOT, these figures are current as of 11/17/2011 and are subject to change based on DOT work program changes and/or coordination with WMDS and the U.S. Army Corps of Engineers

- Revising the circumstances under which a governmental entity may create or provide mitigation for a project other than its own.

### ***Revising Legislative Intent to Encourage the Use of Public and Private Mitigation Banks***

The bill amends s. 373.4137(1), F.S., by revising legislative intent to encourage the use of public and private mitigation banks and any other mitigation options that satisfy state and federal requirements. The effect of the proposed change is a removal of legislative intent specifically referencing that mitigation projects be carried out by WMDs. However, the proposed change does not completely remove WMDs from the process. WMDs will still be involved in the statutory program to the following extent:

- The Department of Transportation must submit to the WMDs a list of projects in DOT's adopted work program (along with an environmental impact inventory) which may be impacted by DOT's plan of construction for transportation projects in the next 3 years of the tentative work program;
- The Department of Transportation and participating transportation authorities will still transfer funds held in escrow to the WMDs to carry out mitigation efforts;
- Water management districts will still develop mitigation plans in consultation with DOT and various other agencies;
- The governing board(s) of the WMDs will still be required to review and approve the mitigation plan(s);
- Mitigation plans will require approval by DEP, which has supervisory authority<sup>28</sup> over all WMDs, before the plans may be implemented;
- Water management districts will be given authority to elect to opt-out of the statutory program provided specified criteria has been met and specified investigations have been conducted; and
- Water management districts will be required to ensure that DOT's environmental impact inventory and implementation of the mitigation plan meet federal permitting requirements.

Legislative intent related to DOT's funding of these projects is left unchanged.

### ***Release of Funds Held in Escrow for the Benefit of WMDs When Projects are Excluded***

The bill amends s. 373.4137(3)(c), F.S., providing that funds identified for or maintained in an escrow account for the benefit of a WMD may be released if the associated transportation project is excluded in whole or in part from the mitigation plan. The proposed change is in line with the opt-out clause authorizing DOT, a participating transportation authority or a WMD to unilaterally exclude a project from the mitigation plan.

### ***DEP Approval of Mitigation Plan before Implementation***

The bill amends s. 373.4137(4), F.S., to require mitigation plans to be submitted to and approved by DEP before implementation. The effect of the proposed change adds an additional requirement that the plan be approved above and beyond the already required approval from the governing board of the applicable WMD. DEP approval of the mitigation plan was a requirement eliminated during the 2005 Regular Legislative Session.<sup>29</sup>

### ***Opt-out Clause Allowing Projects to be Excluded from the Mitigation Plan(s)***

The bill amends s. 373.4137(4)(b), F.S., to provide an opt-out clause authorizing DOT, an applicable transportation authority or the appropriate WMD to unilaterally choose to exclude a project from the mitigation plan provided specified criteria has been met and specified investigations have been conducted. The proposed change strikes the condition precedent that an agreement be reached among DOT, an applicable transportation authority and the appropriate WMD that the efficiency of the planning or permitting process would be hampered were a specified project included. The proposed change also

<sup>28</sup> Section 373.026(7), F.S.

<sup>29</sup> Chapter 2005-281, Laws of Florida (HB 1681).

eliminates a WMD's authority to unilaterally choose to exclude a project in whole or in part if the WMD is unable to identify mitigation that would offset impacts of the project. Instead, s. 373.4137(4)(c), F.S., provides specified criteria that must be used in determining which projects to include or exclude from the mitigation plan. The specified criteria require the following:

- A cost-effectiveness investigation (including a written analysis), which uses credits from a private mitigation bank and considers various factors, such as the nominal cost of using a private mitigation bank compared to the nominal cost of other included (or proposed) projects;
- The value of complying with federal requirements for federal aid projects;
- The value private mitigation banks provide through expedited approval during the federal permitting process as overseen by the U.S. Army Corps of Engineers; and
- The value private mitigation banks provide with regard to state and federal liability for the success of the mitigation project.

### ***Mitigation by a Governmental Entity for a Project Other Than its Own***

The bill creates a new subparagraph (b) in s. 373.4135, F.S., to provide that a governmental entity may not create or provide mitigation for a project other than its own, unless the governmental entity uses land that was not previously purchased for conservation and unless the governmental entity provides the same financial assurances as required for mitigation banks permitted under s. 373.4136, F.S., and regional offsite mitigation areas.

The proposed change only applies when a governmental entity enters the market and acts similarly to a private mitigation bank. To mirror private mitigation bank requirements, a governmental entity must:

- Show financial responsibility (effective prior to release of any mitigation credits) for the construction and implementation phase of the bank, equal to 110% of the cost, through a surety or performance bond, irrevocable letter of credit, or trust fund<sup>30</sup>;
- Show financial responsibility for the perpetual management phase of the bank through a surety or performance bond, irrevocable letter of credit, trust fund or standby trust fund, in an amount sufficient to be reasonably expected to generate annual revenue equal to the annual cost of perpetual management at an assumed average rate of return of six percent per annum<sup>31</sup>.

The proposed change does not apply to the following:

- Mitigation banks permitted prior to December 31, 2011;
- Off-site regional mitigation areas established prior to December 31, 2011;
- Mitigation for transportation projects proposed by the Department of Transportation;
- Mitigation for impacts from mining activities; or
- Mitigation provided for single family lots or homeowners.

### ***Effective Date***

The bill is effective upon becoming a law.

## **B. SECTION DIRECTORY:**

Section 1: Revises legislative intent; provides an opt-out clause authorizing exclusion of projects from the mitigation plan in certain instances; provides for the release of funds held in escrow for excluded projects; requires that mitigation plans be approved by DEP before implementation.

Section 2: Revises circumstances under which a governmental entity may create or provide mitigation.

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<sup>30</sup> Rule 62-342.700

<sup>31</sup> *Id.*

Section 3: Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

Expenditures:

Indeterminate. The bill has a potentially negative fiscal impact on DEP and DOT. DEP will be required to approve a WMD's mitigation plan before it can be implemented. DOT, when determining which projects to include or exclude from the mitigation plan, must provide an analysis of the cost-effectiveness of using private mitigation bank credits as an alternative to including a project in the mitigation plan. However, any possible negative fiscal impact to DEP or DOT appears to be insignificant.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

The bill has a potentially negative fiscal impact on local government entities that wish to provide mitigation for projects that are not their own by requiring the local government entity to supply additional financial assurances for such mitigation efforts. The financial assurances are identical to those required for a permitted mitigation bank.

See also Fiscal Comments.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has a potentially positive fiscal impact for mitigation bankers.

### D. FISCAL COMMENTS:

To the extent the bill results in the exclusion of mitigation projects from the statutory mitigation plan, due to the use of purchasing mitigation bank credits, the bill could result in a decrease in revenues received by WMDs from DOT, and thus WMDs will have a corresponding decrease in associated expenditures.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect municipal or county government. The bill does not appear to require 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/ COMMITTEE SUBSTITUTE CHANGES

On January 11, 2012, the Transportation & Highway Safety Subcommittee adopted one amendment which made the following corrections:

- Made a technical change to correct an error in terminology on line 185. The bill as originally filed referred to "the department" on line 185 and was intended to be a reference to the Department of Transportation. However, "the department" as defined in s. 373.019(4), refers to "the Department of Environmental Protection or its successor agency or agencies." The adopted amendment corrected this error by changing "the department" to "the Department of Transportation."
- Moved and revised proposed language prohibiting a governmental entity from creating or providing mitigation outside of the statutory program established by s. 373.4137, F.S., to s. 373.4135, F.S. The revised language now provides the circumstances under which a governmental entity may create or provide mitigation for a project other than its own.
- Changed the effective date from "July 1, 2012," to "upon becoming a law."

1                                   A bill to be entitled  
 2           An act relating to mitigation; amending s. 373.4137,  
 3           F.S.; revising legislative intent to encourage the use  
 4           of other mitigation options that satisfy state and  
 5           federal requirements; providing the Department of  
 6           Transportation or a transportation authority the  
 7           option of participating in a mitigation project;  
 8           requiring the Department of Transportation or a  
 9           transportation authority to submit lists of its  
 10          projects in the adopted work program to the water  
 11          management districts; requiring a list rather than a  
 12          survey of threatened or endangered species and species  
 13          of special concern affected by a proposed project;  
 14          providing conditions for the release of certain  
 15          environmental mitigation funds; prohibiting a  
 16          mitigation plan from being implemented unless the plan  
 17          is submitted to and approved by the Department of  
 18          Environmental Protection; providing additional factors  
 19          that must be explained regarding the choice of  
 20          mitigation bank; removing a provision requiring an  
 21          explanation for excluding certain projects from the  
 22          mitigation plan; providing criteria that the  
 23          Department of Transportation must use in determining  
 24          which projects to include in or exclude from the  
 25          mitigation plan; amending s. 373.4135, F.S.;  
 26          authorizing a governmental entity to create or provide  
 27          mitigation for projects other than its own under  
 28          specified circumstances; providing applicability;

29 providing an effective date.

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

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33 Section 1. Subsections (1) and (2), paragraph (c) of  
 34 subsection (3), and subsections (4) and (5) of section 373.4137,  
 35 Florida Statutes, are amended to read:

36 373.4137 Mitigation requirements for specified  
 37 transportation projects.—

38 (1) The Legislature finds that environmental mitigation  
 39 for the impact of transportation projects proposed by the  
 40 Department of Transportation or a transportation authority  
 41 established pursuant to chapter 348 or chapter 349 can be more  
 42 effectively achieved by regional, long-range mitigation planning  
 43 rather than on a project-by-project basis. It is the intent of  
 44 the Legislature that mitigation to offset the adverse effects of  
 45 these transportation projects be funded by the Department of  
 46 Transportation and be carried out by ~~the water management~~  
 47 ~~districts, including~~ the use of mitigation banks and any other  
 48 mitigation options that satisfy state and federal requirements  
 49 ~~established pursuant to this part.~~

50 (2) Environmental impact inventories for transportation  
 51 projects proposed by the Department of Transportation or a  
 52 transportation authority established pursuant to chapter 348 or  
 53 chapter 349 shall be developed as follows:

54 (a) By July 1 of each year, the Department of  
 55 Transportation or a transportation authority established  
 56 pursuant to chapter 348 or chapter 349 which chooses to



57 | participate in the program shall submit to the water management  
 58 | districts a list ~~copy~~ of its projects in the adopted work  
 59 | program and an environmental impact inventory of habitats  
 60 | addressed in the rules adopted pursuant to this part and s. 404  
 61 | of the Clean Water Act, 33 U.S.C. s. 1344, which may be impacted  
 62 | by its plan of construction for transportation projects in the  
 63 | next 3 years of the tentative work program. The Department of  
 64 | Transportation or a transportation authority established  
 65 | pursuant to chapter 348 or chapter 349 may also include in its  
 66 | environmental impact inventory the habitat impacts of any future  
 67 | transportation project. The Department of Transportation and  
 68 | each transportation authority established pursuant to chapter  
 69 | 348 or chapter 349 may fund any mitigation activities for future  
 70 | projects using current year funds.

71 | (b) The environmental impact inventory shall include a  
 72 | description of these habitat impacts, including their location,  
 73 | acreage, and type; state water quality classification of  
 74 | impacted wetlands and other surface waters; any other state or  
 75 | regional designations for these habitats; and a list ~~survey~~ of  
 76 | threatened species, endangered species, and species of special  
 77 | concern affected by the proposed project.

78 | (3)

79 | (c) Except for current mitigation projects in the  
 80 | monitoring and maintenance phase and except as allowed by  
 81 | paragraph (d), the water management districts may request a  
 82 | transfer of funds from an escrow account no sooner than 30 days  
 83 | before ~~prior to~~ the date the funds are needed to pay for  
 84 | activities associated with development or implementation of the

85 approved mitigation plan described in subsection (4) for the  
 86 current fiscal year, including, but not limited to, design,  
 87 engineering, production, and staff support. Actual conceptual  
 88 plan preparation costs incurred before plan approval may be  
 89 submitted to the Department of Transportation or the appropriate  
 90 transportation authority each year with the plan. The conceptual  
 91 plan preparation costs of each water management district will be  
 92 paid from mitigation funds associated with the environmental  
 93 impact inventory for the current year. The amount transferred to  
 94 the escrow accounts each year by the Department of  
 95 Transportation and participating transportation authorities  
 96 established pursuant to chapter 348 or chapter 349 shall  
 97 correspond to a cost per acre of \$75,000 multiplied by the  
 98 projected acres of impact identified in the environmental impact  
 99 inventory described in subsection (2). However, the \$75,000 cost  
 100 per acre does not constitute an admission against interest by  
 101 the state or its subdivisions and ~~nor~~ is not ~~the cost~~ admissible  
 102 as evidence of full compensation for any property acquired by  
 103 eminent domain or through inverse condemnation. Each July 1, the  
 104 cost per acre shall be adjusted by the percentage change in the  
 105 average of the Consumer Price Index issued by the United States  
 106 Department of Labor for the most recent 12-month period ending  
 107 September 30, compared to the base year average, which is the  
 108 average for the 12-month period ending September 30, 1996. Each  
 109 quarter, the projected acreage of impact shall be reconciled  
 110 with the acreage of impact of projects as permitted, including  
 111 permit modifications, pursuant to this part and s. 404 of the  
 112 Clean Water Act, 33 U.S.C. s. 1344. The subject year's transfer

113 of funds shall be adjusted accordingly to reflect the acreage of  
 114 impacts as permitted. The Department of Transportation and  
 115 participating transportation authorities established pursuant to  
 116 chapter 348 or chapter 349 are authorized to transfer such funds  
 117 from the escrow accounts to the water management districts to  
 118 carry out the mitigation programs. Environmental mitigation  
 119 funds that are identified for or maintained in an escrow account  
 120 for the benefit of a water management district may be released  
 121 if the associated transportation project is excluded in whole or  
 122 part from the mitigation plan. For a mitigation project that is  
 123 in the maintenance and monitoring phase, the water management  
 124 district may request and receive a one-time payment based on the  
 125 project's expected future maintenance and monitoring costs. Upon  
 126 disbursement of the final maintenance and monitoring payment,  
 127 the escrow account for the project established by the Department  
 128 of Transportation or the participating transportation authority  
 129 may be closed. Any interest earned on these disbursed funds  
 130 shall remain with the water management district and must be used  
 131 as authorized under this section.

132 (4) Before ~~Prior to~~ March 1 of each year, each water  
 133 management district, in consultation with the Department of  
 134 Environmental Protection, the United States Army Corps of  
 135 Engineers, the Department of Transportation, participating  
 136 transportation authorities established pursuant to chapter 348  
 137 or chapter 349, and other appropriate federal, state, and local  
 138 governments, and other interested parties, including entities  
 139 operating mitigation banks, shall develop a plan for the primary  
 140 purpose of complying with the mitigation requirements adopted

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141 | pursuant to this part and 33 U.S.C. s. 1344. In developing such  
 142 | plans, the districts shall use ~~utilize~~ sound ecosystem  
 143 | management practices to address significant water resource needs  
 144 | and shall focus on activities of the Department of Environmental  
 145 | Protection and the water management districts, such as surface  
 146 | water improvement and management (SWIM) projects and lands  
 147 | identified for potential acquisition for preservation,  
 148 | restoration, or enhancement, and the control of invasive and  
 149 | exotic plants in wetlands and other surface waters, to the  
 150 | extent that the ~~such~~ activities comply with the mitigation  
 151 | requirements adopted under this part and 33 U.S.C. s. 1344. In  
 152 | determining the activities to be included in the ~~such~~ plans, the  
 153 | districts shall ~~also~~ consider the purchase of credits from  
 154 | public or private mitigation banks permitted under s. 373.4136  
 155 | and associated federal authorization and shall include the ~~such~~  
 156 | purchase as a part of the mitigation plan when the ~~such~~ purchase  
 157 | would offset the impact of the transportation project, provide  
 158 | equal benefits to the water resources than other mitigation  
 159 | options being considered, and provide the most cost-effective  
 160 | mitigation option. The mitigation plan shall be submitted to the  
 161 | water management district governing board, or its designee, for  
 162 | review and approval. At least 14 days before ~~prior to~~ approval,  
 163 | the water management district shall provide a copy of the draft  
 164 | mitigation plan to any person who has requested a copy. The plan  
 165 | may not be implemented until it is submitted to and approved by  
 166 | the Department of Environmental Protection.

167 | (a) For each transportation project with a funding request  
 168 | for the next fiscal year, the mitigation plan must include a

169 | brief explanation of why a mitigation bank was or was not chosen  
 170 | as a mitigation option, including an estimation of identifiable  
 171 | costs of the mitigation bank and nonbank options and other  
 172 | factors such as time saved, liability for success of the  
 173 | mitigation, and long-term maintenance ~~to the extent practicable.~~

174 |       (b) Specific projects may be excluded from the mitigation  
 175 | plan, in whole or in part, and are ~~shall~~ not ~~be~~ subject to this  
 176 | section upon the election agreement of the Department of  
 177 | Transportation, ~~or~~ a transportation authority if applicable, or  
 178 | ~~and~~ the appropriate water management district ~~that the inclusion~~  
 179 | ~~of such projects would hamper the efficiency or timeliness of~~  
 180 | ~~the mitigation planning and permitting process. The water~~  
 181 | ~~management district may choose to exclude a project in whole or~~  
 182 | ~~in part if the district is unable to identify mitigation that~~  
 183 | ~~would offset impacts of the project.~~

184 |       (c) When determining which projects to include in or  
 185 | exclude from the mitigation plan, the Department of  
 186 | Transportation shall investigate using credits from a permitted  
 187 | private mitigation bank before those projects are submitted to,  
 188 | or are allowed to remain in, the plan.

189 |           1. The investigation shall include the cost-effectiveness  
 190 | of private mitigation bank credits.

191 |           2. The cost-effectiveness analysis must be in writing and  
 192 | consider:

193 |           a. How the nominal cost of the private mitigation bank  
 194 | credits compares with the nominal cost for any given project to  
 195 | be included in the plan;

196 |           b. The value of complying with federal transportation

197 policies for federal aid projects;

198 c. The value that private mitigation bank credits provide  
 199 as the result of the expedited approvals by the Army Corps of  
 200 Engineers when private mitigation banks are used; and

201 d. The value that private mitigation banks provide to the  
 202 state and its residents as a result of the state and federal  
 203 liability for the success of the mitigation transferring to the  
 204 private mitigation bank when credits are purchased from the  
 205 private mitigation bank.

206 (5) The water management district shall ensure ~~be~~  
 207 ~~responsible for ensuring~~ that mitigation requirements pursuant  
 208 to 33 U.S.C. s. 1344 are met for the impacts identified in the  
 209 environmental impact inventory described in subsection (2), by  
 210 implementation of the approved plan described in subsection (4)  
 211 to the extent funding is provided by the Department of  
 212 Transportation, or a transportation authority established  
 213 pursuant to chapter 348 or chapter 349, if applicable. During  
 214 the federal permitting process, the water management district  
 215 may deviate from the approved mitigation plan in order to comply  
 216 with federal permitting requirements.

217 Section 2. Paragraphs (b) through (e) of subsection (1) of  
 218 section 373.4135, Florida Statutes, are redesignated as  
 219 paragraphs (c) through (f), respectively, and a new paragraph  
 220 (b) is added to that subsection to read:

221 373.4135 Mitigation banks and offsite regional  
 222 mitigation.—

223 (1) The Legislature finds that the adverse impacts of  
 224 activities regulated under this part may be offset by the

225 creation, maintenance, and use of mitigation banks and offsite  
 226 regional mitigation. Mitigation banks and offsite regional  
 227 mitigation can enhance the certainty of mitigation and provide  
 228 ecological value due to the improved likelihood of environmental  
 229 success associated with their proper construction, maintenance,  
 230 and management. Therefore, the department and the water  
 231 management districts are directed to participate in and  
 232 encourage the establishment of private and public mitigation  
 233 banks and offsite regional mitigation. Mitigation banks and  
 234 offsite regional mitigation should emphasize the restoration and  
 235 enhancement of degraded ecosystems and the preservation of  
 236 uplands and wetlands as intact ecosystems rather than alteration  
 237 of landscapes to create wetlands. This is best accomplished  
 238 through restoration of ecological communities that were  
 239 historically present.

240 (b) Notwithstanding subsection (5), a governmental entity  
 241 may not create or provide mitigation for a project other than  
 242 its own unless the governmental entity uses land that was not  
 243 previously purchased for conservation and unless the  
 244 governmental entity provides the same financial assurances as  
 245 required for mitigation banks permitted under s. 373.4136 and  
 246 regional offsite mitigation areas permitted under subsection  
 247 (6). This paragraph does not apply to:

- 248 1. Mitigation banks permitted prior to December 31, 2011,  
 249 under s. 373.4136;
- 250 2. Offsite regional mitigation areas established prior to  
 251 December 31, 2011, under subsection (6);
- 252 3. Mitigation for transportation projects under ss.

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2012

253 | 373.4137 and 373.4139;

254 |       4. Mitigation for impacts from mining activities under s.

255 | 373.41492; or

256 |       5. Mitigation provided for single-family lots or

257 | homeowners under subsection (7).

258 |       Section 3. This act shall take effect upon becoming a law.



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 599 (2012)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

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1 Committee/Subcommittee hearing bill: Transportation & Economic  
2 Development Appropriations Subcommittee  
3 Representative Pilon offered the following:

4  
5 **Amendment**

6 Remove lines 55-57 and insert:  
7 Transportation, or a transportation authority established  
8 pursuant to chapter 348 or chapter 349 which chooses to  
9 participate in the program, shall submit to the water management  
10

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 599 (2012)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Transportation & Economic  
2 Development Appropriations Subcommittee  
3 Representative Pilon offered the following:

4  
5  
6  
7  
8  
9

**Amendment**

Remove line 165 and insert:  
may not be implemented until it is submitted to and approved, in  
part or in its entirety, by

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 599 (2012)

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Transportation & Economic  
2 Development Appropriations Subcommittee  
3 Representative Pilon offered the following:  
4

5 **Amendment**

6 Remove lines 240-257 and insert:

7 (b) Notwithstanding the provisions of this section, a  
8 governmental entity may not create or provide mitigation for a  
9 project other than its own unless the governmental entity uses  
10 land that was not previously purchased for conservation and  
11 unless the governmental entity provides the same financial  
12 assurances as required for mitigation banks permitted under s.  
13 373.4136. This paragraph does not apply to:

14 1. Mitigation banks permitted prior to December 31, 2011,  
15 under s. 373.4136;

16 2. Offsite regional mitigation areas established prior to  
17 December 31, 2011, under subsection (6);

18 3. Mitigation for transportation projects under ss.  
19 373.4137 and 373.4139;

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 599 (2012)

Amendment No. 3

20 4. Mitigation for impacts from mining activities under s.

21 373.41492;

22 5. Mitigation provided for single-family lots or

23 homeowners under subsection (6);

24 6. Entities authorized in chapter 98-492, Laws of Florida;

25 7. Mitigation provided for electric utility impacts

26 certified under part II of chapter 403; or

27 8. Mitigation provided on sovereign submerged lands under

28 subsection (6).

29



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 763 Motor Vehicle Registration  
SPONSOR(S): Rogers  
TIED BILLS: IDEN./SIM. BILLS: SB 1068

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	15 Y, 0 N	Kiner	Kruse
2) Transportation & Economic Development Appropriations Subcommittee		Rayman <i>SR</i>	Davis <i>GD</i>
3) Economic Affairs Committee			

SUMMARY ANALYSIS

HB 763 clarifies existing statute that a vehicle may not be operated on the roads of this state after expiration of the renewal period, or at midnight on the registrant owner's birthday.

The bill also authorizes a refund of the license taxes assessed in s. 320.08, F.S., to a motor vehicle registrant who has renewed a motor vehicle registration during the advance renewal period (up to three months before the actual registration period begins) and who surrenders the vehicle license plate before the end of the renewal period. Accordingly, this will extend the refund period beyond the advanced period to the end of the renewal period.

The bill has an indeterminate but likely minimal negative fiscal impact, attributable to a possible increase in the issuance of refunds.

The bill has an effective date of July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### ***Expiration of Registration and Required Renewal***

Section 320.07(1), F.S., provides that the registration of a motor vehicle or mobile home expires at midnight on the last day of the registration or extended registration period. In addition, this subsection states that a vehicle shall not be operated on the roads after expiration of the renewal period (which is midnight of the birthday of the registrant owner)<sup>1</sup> unless the registration has been renewed according to law.

##### ***Advance Registration Renewal***

Section 320.071, F.S., authorizes advance registration renewals. Specifically, an owner of any motor vehicle, mobile home, or apportioned motor vehicle currently registered in the state may apply for renewal of the registration with the Department of Highway Safety and Motor Vehicles ("DHSMV") any time during the three months preceding the date of expiration of the registration period.

##### ***Registration Credit***

Section 320.15, F.S., entitles a resident owner of a motor vehicle or mobile home to receive a credit applicable to the registration (for the unexpired period) of any other vehicle registered in his or her name when his or her motor vehicle or mobile home has been destroyed or permanently removed from the state. The following stipulations apply:

- the amount of the credit must be \$3 or more;
- the registered owner must make an application to DHSMV for the credit; and
- the registered owner must surrender the vehicle's sticker.

A credit for surrendered "for-hire" license plates may not be more than one-half of the annual license tax. A credit is not valid after the expiration date of the license plate which is current on the date of the credit.

Currently s. 320.15, F.S., is silent with regard to providing a refund to a motor vehicle registrant who renews during the advance renewal period, but surrenders the license plate prior to the first day of his or her birth month. In this scenario, the registrant does not owe taxes to DHSMV because the registrant has not yet entered the registration period. Section 215.26(1)(b), F.S., however, authorizes a refund of any moneys paid into the State Treasury when no tax, license, or account is due. According to DHSMV, "this applies to the situation where . . . a motor vehicle registrant who renewed during the advance renewal period and surrendered the license plate before the first day of his or her birth month."<sup>2</sup> In these instances, the registrant should be entitled to a refund.

##### Effect of Proposed Changes

##### ***Individual Registration Expiration***

The bill amends s. 320.07(1), F.S., clarifying existing statute that a vehicle may not be operated on the roads of this state after expiration of the renewal period, or at midnight on the registrant owner's birthday. According to the DHSMV, this has been the historical interpretation of this section. The effect

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<sup>1</sup> Section 320.055(1)(a), F.S.

<sup>2</sup> Department of Highway Safety and Motor Vehicles, 2012 Agency Bill Analysis: HB 763.

of the proposed change may be useful information for motorists as it distinguishes between a company and an individual.

### **Registration Credit**

The bill amends s. 320.15, F.S., to provide a motor vehicle registrant who has renewed a motor vehicle registration during the advance renewal period (up to three months before the actual registration period begins) and who surrenders the vehicle license plate before the end of the renewal period may apply for a refund of the license taxes assessed in s. 320.08, F.S. Accordingly, this will extend the refund period beyond the advanced period to the end of the renewal period.

### **Effective Date**

The bill has an effective date of July 1, 2012.

#### **B. SECTION DIRECTORY:**

- Section 1. Amends s. 320.07(1), F.S., to clarify that the registration period for a motor vehicle or mobile home registered to an individual expires at midnight on the registrant owner's birthday.
- Section 2. Amends s. 320.15, F.S., to provide a motor vehicle registrant a registration credit in certain instances.
- Section 3. Provides an effective date of July 1, 2012.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

DHSMV anticipates a possible increase in the issuance of refunds. The exact number of refunds is indeterminate, but estimated to be minimal.<sup>3</sup>

##### **2. Expenditures:**

According to DHSMV, Information Systems Administration (ISA) will require approximately 40 programming hours in order to implement the bill's provisions. These hours can be incorporated within ISA's operational workload.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

None.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill extends the refund period beyond the advanced period to the end of the renewal period, which is midnight on an individual registrant owner's birthday.



**D. FISCAL COMMENTS:**

According to the department, the current practice allows for the refund of registration up to the vehicle owner's date of birth. This bill conforms the law to what is widely believed to be true by the general public, most tax collectors, and the Division of Motorist Services, thus the fiscal impact is likely minimal.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

None.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

1                                   A bill to be entitled  
 2       An act relating to motor vehicle registration;  
 3       amending s. 320.07, F.S.; specifying that a vehicle  
 4       may not be operated after expiration of the renewal  
 5       period or, for a natural person, after midnight on the  
 6       owner's birthday unless the registration was renewed  
 7       before then; amending s. 320.15, F.S.; authorizing a  
 8       person who has renewed a vehicle registration during  
 9       an early registration period to apply for a refund of  
 10      specified license taxes upon surrendering the  
 11      registration license plate before the end of the  
 12      renewal period; providing an effective date.

13  
 14 Be It Enacted by the Legislature of the State of Florida:

15  
 16       Section 1. Subsection (1) of section 320.07, Florida  
 17 Statutes, is amended to read:

18       320.07 Expiration of registration; renewal required;  
 19 penalties.—

20       (1) The registration of a motor vehicle or mobile home  
 21 expires at midnight on the last day of the registration or  
 22 extended registration period. A vehicle may ~~shall~~ not be  
 23 operated on the roads of this state after expiration of the  
 24 renewal period, or, for a natural person, at midnight on the  
 25 owner's birthday, unless the registration has been renewed  
 26 according to law.

27       Section 2. Section 320.15, Florida Statutes, is amended to  
 28 read:

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29 | 320.15 Refund of license tax.—

30 | (1) Any resident owner of a motor vehicle or mobile home  
 31 | that has been destroyed or permanently removed from the state  
 32 | shall, upon application to the department and surrender of the  
 33 | license plate or mobile home sticker issued for such vehicle, be  
 34 | entitled to a credit to apply to registration of any other  
 35 | vehicle in the name of the owner, if the amount is \$3 or more,  
 36 | for the unexpired period of the license. However, if the license  
 37 | plate surrendered is a "for-hire" license plate, the amount of  
 38 | credit may not be more than one-half of the annual license tax  
 39 | amount. A credit will not be valid after the expiration date of  
 40 | the license plate which is current on the date of the credit, as  
 41 | provided in s. 320.07.


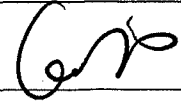
42 | (2) A motor vehicle registrant who has renewed a motor  
 43 | vehicle registration during the advance renewal period pursuant  
 44 | to s. 320.071 and surrenders the license plate for the vehicle  
 45 | before the end of the renewal period may apply for a refund of  
 46 | the license taxes assessed in s. 320.08.

47 | Section 3. This act shall take effect July 1, 2012.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 827 Limited Agricultural Associations  
**SPONSOR(S):** Agriculture & Natural Resources Subcommittee, Porter  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 222

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	14 Y, 0 N, As CS	Cunningham	Blalock
2) Transportation & Economic Development Appropriations Subcommittee		Rayman 	Davis 
3) State Affairs Committee			

### SUMMARY ANALYSIS

Limited agricultural associations (LAAs) have existed in Florida since the 1940's and mostly consist of the 60 county farm bureaus and 140,000 members that comprise the Florida Farm Bureau. Any three or more persons engaged in agricultural pursuits may form an LAA and exercise all the powers granted by the laws of this state to LAAs. Under current law, no member of an LAA can be held personally responsible for any of the claims against or the indebtedness and obligations of the association. Many LAAs in other states are converting to not for profit corporations, but there is no efficient way to seamlessly convert an LAA into a not for profit corporation under Florida law.

CS/HB 827 provides a process that allows LAAs to convert to a domestic corporation not for profit. The bill also requires a \$35 filing fee for a certificate of conversion of a LAA to a domestic corporation to be collected by the Department of State (department).

The bill authorizes an LAA to convert to a domestic corporation not for profit by filing the following documents to the department:

- A certificate of conversion, which must be executed by an authorized person and such other persons that may be required in the association's articles of association or bylaws; and
- Articles of incorporation.

The certificate of conversion must include:

- The date upon which the association was initially formed;
- The name of the association immediately before filing the certificate of conversion;
- The name of the domestic corporation as set forth in its articles of incorporation; and
- The effective date of the conversion.

When the certificate of conversion and articles of incorporation are filed with the department, or upon the delayed effective date, the LAA is converted to a domestic corporation. However, the existence of the corporation is deemed to have commenced when the LAA was initially formed. The conversion of an LAA to a domestic corporation does not affect any obligation or liability of the LAA that was incurred before the conversion. When the conversion takes effect, all rights, privileges, and powers of the converting LAA, all property, real, personal and mixed, and all debts due to the LAA, as well as all other assets and causes of action belonging to the LAA, are vested in the domestic corporation to which the LAA is converted and are the property of the corporation as they were of the LAA. The title to any real property that is vested by deed or otherwise in the converting LAA does not revert and is not impaired by the operation of law pertaining to not for profit corporations, but all rights of creditors and all liens upon any property of the LAA are preserved unimpaired, and all debts, liabilities, and duties of the association attach to the domestic corporation and are enforceable against it to the same extent as if the debts, liabilities, and duties had been incurred or contracted by the corporation.

The bill appears to have a positive but insignificant fiscal impact on state government revenues by requiring LAAs that choose to convert to a domestic corporation not for profit to pay a \$35 filing fee to the Department of State for a certificate of conversion. Currently no LAAs are paying fees to the Department of State. The bill does not appear to have a fiscal impact on local governments.

The effective date of this bill is upon becoming law.

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

STORAGE NAME: h0827b.TEDAS.DOCX

DATE: 1/27/2012

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

Limited agricultural associations (LAAs) have existed in Florida since the 1940's and mostly consist of the 60 county farm bureaus and 140,000 members that comprise the Florida Farm Bureau. Under current law, any three or more persons engaged in agricultural pursuits may form an LAA and exercise all the powers granted by the laws of this state to LAAs. No member of an LAA can be held personally responsible for any of the claims against or the indebtedness and obligations of the association.<sup>1</sup>

The articles of association must be subscribed by the original members and acknowledged by one of the original members before an officer of the state authorized to take acknowledgements and administer oaths. Two copies of the articles of association, together with a certificate of the Department of State stating that there is no other LAA within the state having the same name, is required to be filed with the clerk of the circuit court in the county where the principal place of business of the association is to be located. The proposed articles of association must be endorsed and approved by the circuit judge. Upon endorsement by the circuit judge, the articles of association must be recorded by the clerk of the circuit court. The clerk of the circuit court must then transmit a copy of the articles of association to the Department of State for filing. The Department of State and the clerk of the court are entitled to a fee of \$5.25 for services rendered in connection with the formation of the LAA.<sup>2</sup>

The articles of association must set forth:

- The name of the LAA and the location of the principal place of business.
- The purpose for which the LAA is formed.
- The term of existence for the LAA.
- Which officers will conduct the business of the LAA, as well as the names of the officers who will conduct the business until their successors are eligible to serve.<sup>3</sup>
- The number, to be not less than three, of the LAA's managing committee members.<sup>4</sup>
- The fact that the members may not be held personally liable for any claims against or indebtedness and obligations of the LAA.

The name of the proposed LAA must be different from that of any other LAA in the state and must include the words "Limited Agricultural Association" or the letters "LAA" to distinguish it from a natural person, firm, co-partnership, or corporation.

Each LAA must adopt bylaws within 30 days after organization. The bylaws must provide for such matters as the acceptance of memberships, the issuance of certificates of membership, the fixing of the voting and participation rights of the owners of such certificates, the assign ability of such certificates, the election of a managing committee and the determination of its powers, the time and place of meetings of the LAA and the election, powers, and duties of its officers.

LAAs can be dissolved if the members present a petition of dissolution to the circuit judge of the circuit wherein its principal place of business is located. Such judge may make all orders necessary to the preservation of the rights of the members and creditors and the winding up of the affairs of the

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<sup>1</sup> Section 604.10, F.S.

<sup>2</sup> Section 604.11, F.S.

<sup>3</sup> Officers must be members of the LAA.

<sup>4</sup> Managing committee members must be members of the LAA.

association. Such notice of hearing on the petition for dissolution shall be given as may by the judge be deemed proper.<sup>5</sup>

According to the Florida Farm Bureau, many Farm Bureaus in other states have converted LAAs to not for profit corporations, but there is no efficient way to seamlessly convert an LAA into a not for profit corporation under Florida law.

Any business corporation incorporated under the laws of Florida, which is engaged solely in carrying out the purposes and objects for which nonprofit corporations are authorized under Florida law to carry out, may change its corporate nature from a business corporation to that of a nonprofit corporation. Upon approval of the conversion, the resulting nonprofit corporation will succeed to the rights, liabilities, and assets of its corporate predecessor,<sup>6</sup> in turn, its rights, powers, immunities, duties, and liabilities as a business corporation will cease and determine, and it will instead become subject to all the rights, powers, immunities, duties, and liabilities of nonprofit corporations under Florida law.<sup>7</sup>

The conversion from business to nonprofit status is accomplished by the filing of a petition for conversion in the circuit court of the county wherein the corporation seeking to convert has its principal place of business, in the name of the corporation, signed by an officer of the corporation and under its corporate seal, setting forth the purposes and objects in which it is solely engaged, and requesting that the nature of the corporation be changed.<sup>8</sup> It must be accompanied by the written consent of all the shareholders authorizing the change in the corporate nature and directing an authorized officer to file the petition before the court, together with a statement agreeing to accept all the property of the petitioning corporation and agreeing to assume and pay all its indebtedness and liabilities, and the proposed articles of incorporation, signed by the president and secretary of the petitioning corporation.<sup>9</sup>

If the circuit judge to whom the petition and proposed articles of incorporation are presented finds that the petition and proposed articles are in proper form, the judge will approve the articles of incorporation by endorsing his or her approval on such. Thereafter the articles, endorsed with the judge's approval, are sent to the Florida Department of State (department).<sup>10</sup>

Upon receipt of the articles, and upon the payment of all taxes due the state by the petitioning corporation, if any, the department will issue a certificate showing the receipt of the articles of incorporation with the endorsement of approval thereon and of the payment of all taxes to the state. Upon payment of specified filing fees, the department will file the articles of incorporation. Thenceforth, the petitioning corporation will be a nonprofit corporation under the name adopted in the articles of incorporation.<sup>11</sup>

### **Effect of Proposed Changes**

The bill amends s. 604.14, F.S., to provide that LAAs may convert to a corporation not for profit in accordance with s. 617.1809, F.S. The bill also amends s. 617.0122, F.S. to include a \$35 fee for a certificate of conversion of a limited agricultural association to a domestic corporation.

Section 617.1809, F.S., is created to provide a method for conversion of an LAA to a domestic corporation not for profit. An LAA may convert to a domestic corporation not for profit by filing the following documents to the department:

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<sup>5</sup> Section 604.14, F.S.

<sup>6</sup> Section 617.1805, F.S.

<sup>7</sup> Section 617.1807, F.S.

<sup>8</sup> Section 617.1805, F.S.

<sup>9</sup> Section 617.1806, F.S.

<sup>10</sup> Section 617.1807, F.S.

<sup>11</sup> Section 617.1807, F.S.

- A certificate of conversion, which must be executed by a person authorized in S. 617.01201(6), F.S.,<sup>12</sup> and such other persons that may be required in the association's articles of association or bylaws; and
- Articles of incorporation;<sup>13</sup>

The certificate of conversion must include:

- The date upon which the association was initially formed;
- The name of the association immediately before filing the certificate of conversion;
- The name of the domestic corporation as set forth in its articles of incorporation; and
- The effective date of the conversion. If the conversion does not take effect upon filing the certificate of conversion and articles of incorporation, the delayed effective date for the conversion must be a date certain and the same as the effective date of the articles of incorporation.

When the certificate of conversion and articles of incorporation are filed with the department, or upon the delayed effective date, the LAA is converted to a domestic corporation, and the corporation becomes subject to the provisions in chapter 617, F.S.<sup>14</sup> However, the existence of the corporation is deemed to have commenced when the LAA was initially formed. The conversion of an LAA to a domestic corporation does not affect any obligation or liability of the LAA that was incurred before the conversion. When the conversion takes effect, all rights, privileges, and powers of the converting LAA, all property, real, personal and mixed, and all debts due to the LAA, as well as all other assets and causes of action belonging to the LAA, are vested in the domestic corporation to which the LAA is converted and are the property of the corporation as they were of the LAA. The title to any real property that is vested by deed or otherwise in the converting LAA does not revert and is not impaired by the operation of chapter 617, F.S., but all rights of creditors and all liens upon any property of the LAA are preserved unimpaired, and all debts, liabilities, and duties of the association attach to the domestic corporation and are enforceable against it to the same extent as if the debts, liabilities, and duties had been incurred or contracted by the corporation.

The LAA is not required to wind up its affairs or pay its liabilities and distribute its assets. Conversion does not constitute dissolution of the LAA, but is a continuation of the LAA's existence in the form of a domestic corporation. Before the LAA can file a certificate of conversion with the department, unless the LAA's bylaws or articles of conversion specify otherwise, the conversion must be approved by a majority vote of the association's members, and the articles of incorporation must be approved in the same manner as the approval for conversion. The converting LAA may provide a plan or other record of conversion which describes the manner and basis of converting the membership interests in the association into membership interests in the domestic corporation. The plan or other record can also contain other provisions relating to conversion, including, but not limited to the right of the converting LAA to abandon the proposed conversion or an effective date for the conversion.

## B. SECTION DIRECTORY:

**Section 1:** Amends s. 604.14, F.S., providing that a limited agricultural association may convert to a corporation not for profit.

**Section 2:** Amends s. 617.0122, F.S., providing a \$35 fee to file a certificate of conversion of a limited agricultural association to a domestic corporation.

<sup>12</sup> Section 617.01201(6), F.S. The document must be executed: by a director of a domestic or foreign corporation, or by its president or by another of its officers; if directors or officers have not been selected or the corporation has not been formed, by an incorporator; or if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by the fiduciary.

<sup>13</sup> Must be in compliance with s. 617.0202, F.S., and be executed by a person authorized in s. 617.01201(6), F.S.; a fee of \$35 shall be collected by the department documents delivered for filing, s. 617.0122(1), F.S.

<sup>14</sup> Chapter 617, F.S., is the "Florida Not For Profit Corporation Act."



**Section 3:** Creates 617.1809, F.S., providing a process for LAAs to convert to a domestic corporation not for profit.

**Section 4:** Provides that this act shall take effect upon becoming law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The Department of State indicates the impact is insignificant. The bill requires LAAs that seek to convert to a domestic corporation not for profit shall pay a filing fee of \$35 to the Department of State for a certificate of conversion from the limited agricultural association to a domestic corporation not for profit. Currently no LAAs are paying fees to the Department of State. If the estimated 60 LAAs were to opt to become a domestic corporation not for profit, the additional revenue from the conversion would be \$4,200. Furthermore, each year domestic corporations not for profit are required to submit an annual report to the Department of State, along with a filing fee of \$61.25. If all the estimated 60 LAAs were to convert to a domestic corporation not for profit, the Department of State would receive \$3,675 in filing fees from the annual reports.

#### **2. Expenditures:**

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

LAAs that wish to take advantage of the provisions in the bill and convert to a domestic corporation not for profit will pay the \$35 filing fee required in the bill. Currently no LAAs are paying fees to the Department of State.

### **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/ COMMITTEE SUBSTITUTE CHANGES**

On January 11, 2012, the Agriculture & Natural Resources Subcommittee amended and passed HB 827 as a committee substitute (CS). The amendment corrected a typographical error in the bill.

The bill was reported favorably as a committee substitute. The analysis reflects the committee substitute.



29 Section 1. Section 604.14, Florida Statutes, is amended to  
 30 read:

31 604.14 Limited agricultural association; dissolution;  
 32 conversion to a corporation not for profit.-

33 (1) A ~~Any~~ limited agricultural association may be  
 34 dissolved upon the presentation by its members of a petition for  
 35 dissolution to a ~~the~~ circuit judge of the circuit in which the  
 36 association's ~~wherein its~~ principal place of business is  
 37 located. The ~~Such~~ judge may issue any ~~make all~~ orders necessary  
 38 for ~~to the~~ preservation of the rights of the members and  
 39 creditors and the winding up of the affairs of the association.  
 40 ~~Such~~ Notice of hearing on the petition for dissolution must  
 41 ~~shall~~ be given as ~~may by~~ the judge deems ~~be deemed~~ proper.

42 (2) A limited agricultural association may convert to a  
 43 corporation not for profit in accordance with s. 617.1809.

44 Section 2. Subsection (22) of section 617.0122, Florida  
 45 Statutes, is renumbered as subsection (23), and a new subsection  
 46 (22) is added to that section to read:

47 617.0122 Fees for filing documents and issuing  
 48 certificates.-The Department of State shall collect the  
 49 following fees on documents delivered to the department for  
 50 filing:

51 (22) Certificate of conversion of a limited agricultural  
 52 association to a domestic corporation: \$35.

53  
 54 Any citizen support organization that is required by rule of the  
 55 Department of Environmental Protection to be formed as a  
 56 nonprofit organization and is under contract with the department

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57 | is exempt from any fees required for incorporation as a  
 58 | nonprofit organization, and the Secretary of State may not  
 59 | assess any such fees if the citizen support organization is  
 60 | certified by the Department of Environmental Protection to the  
 61 | Secretary of State as being under contract with the Department  
 62 | of Environmental Protection.

63 | Section 3. Section 617.1809, Florida Statutes, is created  
 64 | to read:

65 | 617.1809 Limited agricultural association; conversion to a  
 66 | domestic corporation not for profit.-

67 | (1) As used in this section, the term "limited  
 68 | agricultural association" or "association" means a limited  
 69 | agricultural association formed under ss. 604.09-604.14.

70 | (2) A limited agricultural association may convert to a  
 71 | domestic corporation not for profit by filing the following  
 72 | documents with the department in accordance with s. 617.01201:

73 | (a) A certificate of conversion, which must be executed by  
 74 | a person authorized in s. 617.01201(6) and such other persons  
 75 | that may be required in the association's articles of  
 76 | association or bylaws.

77 | (b) Articles of incorporation, which must comply with s.  
 78 | 617.0202 and be executed by a person authorized in s.  
 79 | 617.01201(6).

80 | (3) The certificate of conversion must include:

81 | (a) The date upon which the association was initially  
 82 | formed under ss. 604.09-604.14.

83 | (b) The name of the association immediately before filing  
 84 | the certificate of conversion.

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85 | (c) The name of the domestic corporation as set forth in  
86 | its articles of incorporation.

87 | (d) The effective date of the conversion. If the  
88 | conversion does not take effect upon filing the certificate of  
89 | conversion and articles of incorporation, the delayed effective  
90 | date for the conversion, subject to the limitation in s.  
91 | 617.0123(2), must be a date certain and the same as the  
92 | effective date of the articles of incorporation.

93 | (4) When the certificate of conversion and articles of  
94 | incorporation are filed with the department, or upon the delayed  
95 | effective date, the association is converted to the domestic  
96 | corporation, and the corporation becomes subject to this  
97 | chapter. However, notwithstanding s. 617.0123, the existence of  
98 | the corporation is deemed to have commenced when the association  
99 | was initially formed under ss. 604.09-604.14.

100 | (5) Conversion of a limited agricultural association to a  
101 | domestic corporation does not affect any obligation or liability  
102 | of the association that was incurred before the conversion.

103 | (6) When a conversion takes effect under this section, all  
104 | rights, privileges, and powers of the converting association,  
105 | all property, real, personal, and mixed, and all debts due to  
106 | the association, as well as all other assets and causes of  
107 | action belonging to the association, are vested in the domestic  
108 | corporation to which the association is converted and are the  
109 | property of the corporation as they were of the association. The  
110 | title to any real property that is vested by deed or otherwise  
111 | in the converting association does not revert and is not  
112 | impaired by the operation of this chapter, but all rights of

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113 creditors and all liens upon any property of the association are  
 114 preserved unimpaired, and all debts, liabilities, and duties of  
 115 the association attach to the domestic corporation and are  
 116 enforceable against it to the same extent as if the debts,  
 117 liabilities, and duties had been incurred or contracted by the  
 118 corporation.

119 (7) The limited agricultural association is not required  
 120 to wind up its affairs or pay its liabilities and distribute its  
 121 assets. Conversion does not constitute a dissolution of the  
 122 association but is a continuation of the association's existence  
 123 in the form of the domestic corporation.

124 (8) Before a limited agricultural association may file a  
 125 certificate of conversion with the department, unless otherwise  
 126 specified in the association's articles of association or  
 127 bylaws, the conversion must be approved by a majority vote of  
 128 the association's members, and the articles of incorporation  
 129 must be approved by the same authorization required for approval  
 130 of the conversion. As part of the approval, the converting  
 131 association may provide a plan or other record of conversion  
 132 which describes the manner and basis of converting the  
 133 membership interests in the association into membership  
 134 interests in the domestic corporation. The plan or other record  
 135 may also contain other provisions relating to the conversion,  
 136 including, but not limited to, the right of the converting  
 137 association to abandon the proposed conversion or an effective  
 138 date for the conversion that is consistent with paragraph

139 (3) (d).

140 Section 4. This act shall take effect upon becoming a law.







HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1207 Autonomous Vehicle Technology

SPONSOR(S): Brandes

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	15 Y, 0 N	Johnson	Kruse
2) Transportation & Economic Development Appropriations Subcommittee		Rayman 	Davis 
3) Economic Affairs Committee			

SUMMARY ANALYSIS

Florida law does not address the use of autonomous vehicles. Autonomous vehicles are driverless cars that can, in some ways, fulfill human transportation needs.

HB 1207 defines autonomous technology and provides that vehicles equipped with autonomous technology may be operated on roads by employees or contractors of manufacturers for the purpose of testing the technology. The bill requires the Department of Highway Safety and Motor Vehicles (DHSMV) to prepare a report relating to the safe operation of vehicles equipped with autonomous technology on public roads, which is required to contain recommended legislative action and proposed DHSMV rules.

The bill has an insignificant fiscal impact on the state.

The bill has an effective date of July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

Autonomous vehicles are driverless cars that are able to fulfill human transportation needs.<sup>1</sup> While they are not in widespread use, they can provide several distinct advantages including reduced fuel consumption, not requiring anyone behind the wheel so cars could be shared, and the need for fewer parking spaces.<sup>2</sup>

The only jurisdiction in the world where it is legal to operate autonomous vehicles on public roads is in the state of Nevada, where a law authorizing them passed in June 2011.<sup>3</sup>

##### Proposed Changes

The bill defines "autonomous technology" as "technology installed on a vehicle enabling it to operate without the active control and continuous monitoring of a human operator. The term does not include individual safety systems or driver assistance systems such as electronic blind spot assistance, crash avoidance and emergency braking systems, park assist, adaptive cruise control, lane keep assist, lane departure warning, or traffic jam and queuing assistant, unless any such system alone or in combination with other systems enables the vehicle to drive itself without the active control or continuous monitoring of a human operator."

The bill provides that vehicles equipped with autonomous technology may be operated on roads in this state by employees or contractors of manufacturers for the purpose of testing the technology. For testing purposes, the vehicle may operate without the active control of a human operator, but the operation of the test vehicle must be continuously monitored in a manner that allows active control over the vehicle to be immediately assumed by a human operator.

The bill requires the Department of Highway Safety and Motor Vehicles (DHSMV) to prepare a report relating to the safe operation of vehicles equipped with autonomous technology on public roads. The report is required to contain recommended legislative action and proposed DHSMV rules to:

- Establish a driver license endorsement to be required for a resident to operate a vehicle with autonomous technology.
- Establish rules of the road and other safety requirements for a vehicle with autonomous technology operating with or without the physical presence of a driver.
- Require each manufacturer of autonomous technology or any vehicle with autonomous technology to certify that such technology conforms to all safety standards established by DHSMV.
- Permit the safe testing of autonomous technology on public roads prior to the manufacturer's certification that such technology conforms to all safety requirements established by DHSMV.

The report must be submitted to the President of the Senate and the Speaker of the House of Representatives by February 1, 2014.

#### B. SECTION DIRECTORY:

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<sup>1</sup> A video of an autonomous vehicle is available at [http://www.ted.com/talks/sebastian\\_thrun\\_google\\_s\\_driverless\\_car.html](http://www.ted.com/talks/sebastian_thrun_google_s_driverless_car.html) (Last visited January 17, 2011).

<sup>2</sup> *Google Cars Drive Themselves, in Traffic*, New York Times, October 9, 2010. <http://www.nytimes.com/2010/10/10/science/10google.html> (Last visited January 18, 2010).

<sup>3</sup> Nevada Assembly Bill 511.

Section 1. Defines "autonomous technology", authorizes testing of autonomous vehicles, and requires the DHSMV to issue a report on vehicles equipped with autonomous technology.

Section 2 Provides an effective date of July 1, 2012.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Insignificant impact. There are costs associated with provisions in the bill for DHSMV to prepare a report that will be covered within existing resources.

### 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 affect county or municipal governments.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The bill requires DHSMV to submit proposed rules relating to vehicles with autonomous technology with its report.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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A bill to be entitled  
 An act relating to autonomous vehicle technology;  
 defining the term "autonomous technology"; authorizing  
 operation of vehicles equipped with autonomous  
 technology by certain persons for testing purposes  
 under certain conditions; directing the Department of  
 Highway Safety and Motor Vehicles to prepare a report  
 on the safe operation of vehicles equipped with  
 autonomous technology on public roads; providing for  
 content of the report; requiring submission of the  
 report to the Legislature; providing an effective  
 date.

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

Section 1. Department of Highway Safety and Motor Vehicles  
 report on vehicles equipped with autonomous technology.-

(1) As used in this section, the term "autonomous  
 technology" means technology installed on a vehicle enabling it  
 to operate without the active control and continuous monitoring  
 of a human operator. The term does not include individual safety  
 systems or driver assistance systems such as electronic blind  
 spot assistance, crash avoidance and emergency breaking systems,  
 park assist, adaptive cruise control, lane keep assist, lane  
 departure warning, or traffic jam and queuing assistant, unless  
 any such system alone or in combination with other systems  
 enables the vehicle to drive itself without the active control  
 or continuous monitoring of a human operator.

29        (2) Vehicles equipped with autonomous technology may be  
 30 operated on roads in this state by employees or contractors of  
 31 manufacturers of autonomous technology for the purpose of  
 32 testing the technology. For testing purposes, the vehicle may  
 33 operate without the active control of a human operator, but the  
 34 operation of the test vehicle must be continuously monitored in  
 35 a manner that allows active control over the vehicle to be  
 36 immediately assumed by a human operator.

37        (3)(a) The Department of Highway Safety and Motor Vehicles  
 38 shall prepare a report relating to the safe operation of  
 39 vehicles equipped with autonomous technology on public roads.  
 40 The report shall contain recommended legislative action and  
 41 proposed department rules to:

42            1. Establish a driver license endorsement to be required  
 43 for a resident to operate a vehicle with autonomous technology.

44            2. Establish rules of the road and other safety  
 45 requirements for vehicles with autonomous technology operating  
 46 with or without the physical presence of a driver.

47            3. Require each manufacturer of autonomous technology or  
 48 any vehicle equipped with autonomous technology to certify that  
 49 such technology conforms with all safety requirements  
 50 established by the department.

51            4. Permit the safe testing of autonomous technology on  
 52 public roads prior to the manufacturer's certification that such  
 53 technology conforms with all safety requirements established by  
 54 the department.

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55            (b) No later than February 1, 2014, the department shall  
56 submit the report to President of the Senate and the Speaker of  
57 the House of Representatives.

58            Section 2. This act shall take effect July 1, 2012.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1287 Motor Vehicle Registration Forms

SPONSOR(S): Abruzzo

TIED BILLS: IDEN./SIM. BILLS: SB 1388

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	15 Y, 0 N	Kiner	Kruse
2) Transportation & Economic Development Appropriations Subcommittee		Rayman <i>SR</i>	Davis <i>GD</i>
3) Economic Affairs Committee			

SUMMARY ANALYSIS

HB 1287 amends s. 320.02, F.S., and s. 322.08, F.S., to create a \$1 voluntary contribution check-off on a motor vehicle registration application (initial registration or renewal) and a driver's license or identification card application (initial, renewal, or replacement). The check-offs are created for the following entities and causes:

- Autism Services and Supports – contributions shall be distributed to Achievement and Rehabilitation Centers, Inc., Autism Services Fund.
- Support Our Troops – contributions shall be distributed to Support Our Troops, Inc., a Florida not-for-profit organization.

The bill has an insignificant fiscal impact.

The bill has an effective date of July 1, 2012.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### ***Requests to Establish Voluntary Check-off on Motor Vehicle Registration Application***

Section 320.023, F.S., outlines the procedure an organization must follow prior to seeking legislative authorization to request the creation of a new voluntary contribution fee and establish a corresponding voluntary contribution on a motor vehicle registration application (initial registration or renewal). The contribution allows a registered owner of a motor vehicle to voluntarily contribute to one or more of the authorized organizations. To become eligible, the organization must submit the following to the Florida Department of Highway Safety and Motor Vehicles ("DHSMV") at least 90 days before the convening of the next regular session of the Legislature:

- a request for the particular voluntary contribution being sought, describing it in general terms;
- an application fee of up to \$10,000 (state funds may not be used) to defray DHSMV's costs for reviewing the application and developing the check-off, if authorized; and
- a short and long-term marketing strategy and a financial analysis outlining the anticipated revenues and the planned expenditures of the revenues to be derived from the voluntary contributions.

DHSMV must discontinue the check-off if less than \$25,000 has been contributed by the end of the fifth year, or if less than \$25,000 is contributed during any subsequent five-year period.<sup>1</sup>

The authorized voluntary check-offs on a motor vehicle registration application are listed in s. 320.02, F.S.

##### ***Requests to Establish Voluntary Check-off on Driver's License Application***

Section 322.081, F.S., outlines the procedure an organization must follow prior to seeking legislative authorization to request the creation of a new voluntary contribution fee and establish a corresponding voluntary contribution on a driver's license or identification card application (initial, renewal, or replacement). The contribution allows a person applying for, renewing, or replacing a Florida driver's license or identification card to voluntarily contribute to one or more of the authorized organizations during the transaction. To become eligible, the organization must submit the following to DHSMV at least 90 days before the convening of the next regular session of the Legislature:

- a request for the particular voluntary contribution being sought, describing it in general terms;
- an application fee of up to \$10,000 (state funds may not be used) to defray the DHSMV's costs for reviewing the application and developing the check-off, if authorized; and
- a short and long-term marketing strategy and a financial analysis outlining the anticipated revenues and the planned expenditures of the revenues to be derived from the voluntary contributions.

DHSMV must discontinue the contribution if less than \$25,000 has been contributed by the end of the fifth year, or if less than \$25,000 is contributed during any subsequent five-year period.<sup>2</sup>

The authorized voluntary check-offs on a driver's license or identification card applications are listed in s. 322.08, F.S.

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<sup>1</sup> Section 320.023(4)(a), F.S.

<sup>2</sup> Section 322.081(4)(a), F.S.

## ***Moratorium on New Voluntary Check-offs***

Chapter 2010-223, Laws of Florida,<sup>3</sup> established a moratorium on new voluntary check-offs for both registration transactions (initial registration or renewal) and driver's license or identification card transactions (initial, renewal, or replacement). The moratorium ends on July 1, 2013. An organization is exempt from the moratorium if that organization has done the following:

- submitted a request to establish a voluntary contribution on a motor vehicle application or a driver's license or identification card application to DHSMV before May 1, 2010; and
- submitted a valid financial analysis, marketing strategy, and application fee before September 1, 2010; or
- filed a bill during the 2010 Legislative Session to establish a voluntary contribution and has met the requirements of s. 320.023, F.S., or s. 322.081, F.S.

According to DHSMV, Autism Services and Supports and Support Our Troops are exempt from the moratorium.<sup>4</sup>

### **Proposed Changes**

#### ***New Voluntary Check-offs on Motor Vehicle Registration Application***

The bill amends s. 320.02, F.S., to create a \$1 voluntary contribution check-off on an application and renewal form for a motor vehicle registration for the following entities and causes:

- Autism Services and Supports – contributions are distributed monthly to the Achievement and Rehabilitation Centers, Inc., Autism Services Fund.
- Support Our Troops – contributions shall be distributed monthly to Support Our Troops, Inc., a Florida not-for-profit organization.

#### ***New Voluntary Check-offs on Driver's License Application***

The bill amends s. 322.08, F.S., to create a \$1 voluntary contribution check-off on an original, renewal, or replacement driver's license or identification card application. The check-offs are created for the following entities and causes:

- Autism Services and Supports – contributions shall be distributed to Achievement and Rehabilitation Centers, Inc., Autism Services Fund.
- Support Our Troops – contributions shall be distributed to Support Our Troops, Inc., a Florida not-for-profit organization.

The bill does not set a schedule for the distribution of contributions to the recipient organizations.

### ***Effective Date***

The bill has an effective date of July 1, 2012.

## **B. SECTION DIRECTORY:**

- Section 1. Amends s. 320.02, F.S., creating a \$1 voluntary contribution check-off on an application and renewal form for a motor vehicle registration for specified entities and causes.
- Section 2. Amends s. 320.08, F.S., creating a \$1 voluntary contribution check-off on an application for an original, renewal, or replacement driver's license or identification card for specified entities and causes.

<sup>3</sup> Ch. 2010-223, Laws of Florida, s. 26.

<sup>4</sup> Letter from DHSMV Executive Director Julie L. Jones to the Florida House of Representatives, Transportation and Highway Safety Subcommittee, January 19, 2011. This letter is on file with the subcommittee.

Section 3. Provides an effective date of July 1, 2012.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

Non-Recurring or First Year

Start Up Effects:

Amount  
Year 1  
FY 2012-2013

1. Revenues:

Highway Safety Operating Trust Fund:  
Application Fee \$ 40,000

The above amount reflects the \$10,000 application fee paid by the Achievement and Rehabilitation Centers, Inc., Autism Services Fund and Support Our Troops, Inc., a Florida not-for-profit organization, for the motor vehicle application and for driver's license application.

2. Expenditures:

Highway Safety Operating Trust Fund:  
Programming Costs \$ 40,000

The amount above reflects the programming cost to develop the new application form.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Tax Collector Offices will be minimally impacted by collecting additional funds when an individual elects to make one or both of the voluntary contributions.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals who elect to donate to a charitable cause on a motor vehicle registration application or renewal, or on a driver's license or identification card application, renewal, or replacement, will be required to pay an additional \$1 for each check-off they elect. It is impossible to determine how many people will elect to donate. Therefore, the aggregate impact to the private sector cannot be determined.

### D. FISCAL COMMENTS:

The bill provides the application form for motor vehicle registration (initial or renewal) shall include language permitting the voluntary contribution of \$1 per applicant for two additional charitable organizations that have met the filing requirements set forth in s. 320.023, F.S. The application fee for the organizations is already on deposit with DHSMV to cover the costs for reviewing the application and developing the contribution. The bill provides this same authorization regarding driver's license applications (initial, renewal, or replacement).

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

None.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

DHSMV requests the effective date be changed to October 1, 2012, to allow sufficient time for programming modifications. .

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

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A bill to be entitled  
An act relating to motor vehicle registration forms;  
amending s. 320.02, F.S.; requiring the application  
forms for motor vehicle registration and renewal of  
registration to include language permitting the  
applicant to make a voluntary contribution to Autism  
Services and Supports and to Support Our Troops;  
providing that such contributions are not income for  
specified purposes; amending s. 322.08, F.S.;  
requiring the application forms for an original,  
renewal, or replacement driver license or  
identification card to include language permitting the  
applicant to make a voluntary contribution to Autism  
Services and Supports and to Support Our Troops;  
providing that such contributions are not income for  
specified purposes; providing an effective date.

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

Section 1. Paragraphs (o) and (p) are added to subsection  
(15) of section 320.02, Florida Statutes, to read:

320.02 Registration required; application for  
registration; forms.—

(15)

(o) The application form for motor vehicle registration  
and renewal of registration must include language permitting a  
voluntary contribution of \$1 per applicant for Autism Services  
and Supports. Such contributions must be transferred by the

29 department each month to the Achievement and Rehabilitation  
 30 Centers, Inc., Autism Services Fund.

31 (p) The application form for motor vehicle registration  
 32 and renewal of registration must include language permitting a  
 33 voluntary contribution of \$1 per applicant to Support Our  
 34 Troops, which shall be distributed monthly to Support Our  
 35 Troops, Inc., a Florida not-for-profit organization.

36  
 37 For the purpose of applying the service charge provided in s.  
 38 215.20, contributions received under this subsection are not  
 39 income of a revenue nature.

40 Section 2. Subsection (7) of section 322.08, Florida  
 41 Statutes, is amended to read:

42 322.08 Application for license; requirements for license  
 43 and identification card forms.-

44 (7) The application form for an original, renewal, or  
 45 replacement driver ~~driver's~~ license or identification card shall  
 46 include language permitting the following:

47 (a) A voluntary contribution of \$1 per applicant, which  
 48 contribution shall be deposited into the Health Care Trust Fund  
 49 for organ and tissue donor education and for maintaining the  
 50 organ and tissue donor registry.

51 (b) A voluntary contribution of \$1 per applicant, which  
 52 contribution shall be distributed to the Florida Council of the  
 53 Blind.

54 (c) A voluntary contribution of \$2 per applicant, which  
 55 shall be distributed to the Hearing Research Institute,  
 56 Incorporated.

57 (d) A voluntary contribution of \$1 per applicant, which  
 58 shall be distributed to the Juvenile Diabetes Foundation  
 59 International.

60 (e) A voluntary contribution of \$1 per applicant, which  
 61 shall be distributed to the Children's Hearing Help Fund.

62 (f) A voluntary contribution of \$1 per applicant, which  
 63 shall be distributed to Family First, a nonprofit organization.

64 (g) A voluntary contribution of \$1 per applicant to Stop  
 65 Heart Disease, which shall be distributed to the Florida Heart  
 66 Research Institute, a nonprofit organization.

67 (h) A voluntary contribution of \$1 per applicant to Senior  
 68 Vision Services, which shall be distributed to the Florida  
 69 Association of Agencies Serving the Blind, Inc., a not-for-  
 70 profit organization.

71 (i) A voluntary contribution of \$1 per applicant for  
 72 services for persons with developmental disabilities, which  
 73 shall be distributed to The Arc of Florida.

74 (j) A voluntary contribution of \$1 to the Ronald McDonald  
 75 House, which shall be distributed each month to Ronald McDonald  
 76 House Charities of Tampa Bay, Inc.

77 (k) Notwithstanding s. 322.081, a voluntary contribution  
 78 of \$1 per applicant, which shall be distributed to the League  
 79 Against Cancer/La Liga Contra el Cancer, a not-for-profit  
 80 organization.

81 (l) A voluntary contribution of \$1 per applicant to  
 82 Prevent Child Sexual Abuse, which shall be distributed to  
 83 Lauren's Kids, Inc., a nonprofit organization.

84 (m) A voluntary contribution of \$1 per applicant, which

85 shall be distributed to Prevent Blindness Florida, a not-for-  
 86 profit organization, to prevent blindness and preserve the sight  
 87 of the residents of this state.

88 (n) Notwithstanding s. 322.081, a voluntary contribution  
 89 of \$1 per applicant to the state homes for veterans, to be  
 90 distributed on a quarterly basis by the department to the State  
 91 Homes for Veterans Trust Fund, which is administered by the  
 92 Department of Veterans' Affairs.

93 (o) A voluntary contribution of \$1 per applicant to the  
 94 Disabled American Veterans, Department of Florida, which shall  
 95 be distributed quarterly to Disabled American Veterans,  
 96 Department of Florida, a nonprofit organization.

97 (p) A voluntary contribution of \$1 per applicant for  
 98 Autism Services and Supports, which shall be distributed to  
 99 Achievement and Rehabilitation Centers, Inc., Autism Services  
 100 Fund.

101 (q) A voluntary contribution of \$1 per applicant to  
 102 Support Our Troops, which shall be distributed to Support Our  
 103 Troops, Inc., a Florida not-for-profit organization.

104  
 105 A statement providing an explanation of the purpose of the trust  
 106 funds shall also be included. For the purpose of applying the  
 107 service charge provided in s. 215.20, contributions received  
 108 under paragraphs (b)-(q) ~~(b)-(e)~~ are not income of a revenue  
 109 nature.

110 Section 3. This act shall take effect July 1, 2012.





Presentation  
on  
Economic Gardening / GrowFL

January 31, 2012



EDUCATE. ADVOCATE. CONNECT.

# GrowFL Program Overview

- Economic Development initiative that provide assistance to 2nd stage businesses
- Florida Economic Gardening Institute administers the program
- State Funded from November '09 through October '10
- Services
  - Technical Assistance Focused
  - CEO Roundtable Groups
  - CEO Forums
  - Webinars & workshops
  - “Florida Companies to Watch” recognition event



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# GrowFL Program Performance

- 312 Technical Assistance Engagements for 250 Companies
- 17 CEO Roundtable Groups established throughout Florida
- Dozens of Special Events Including CEO Forums, Webinars, and Kauffman Workshops



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# GrowFL Program Outcomes

- GrowFL helped create 3,285 Jobs
  - (1,419 direct / 823 indirect / 1,043 induced)
- \$510.4M Annual Economic Impact (Sales/Output)
- \$267.4M Increase in Florida's GDP
- \$18.7M Increase in State/ Local Net Tax Revenue

Source – Economic Impact of GrowFL (2009-2011) – Tucker Hall



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# GrowFL Current Status

- Performing Technical Assistance within the 23-County Florida High Tech Corridor
- 100+ companies have received Technical Assistance since 9/1/11
- Funding sources include UCF, Florida High Tech Corridor Council, and Orange / Seminole Counties
- Pending agreements include Brevard, Marion, Volusia, and Leon Counties, as well as Tampa Bay Partnership, and Miami-Dade College



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