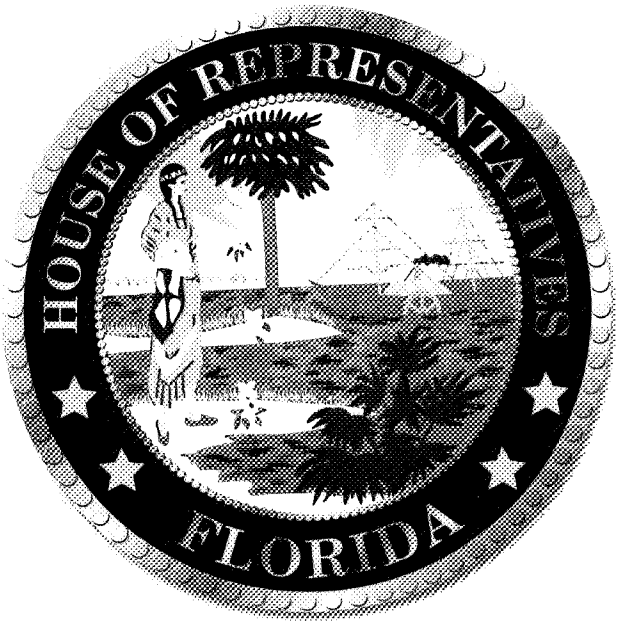

RULEMAKING & REGULATION SUBCOMMITTEE COMMITTEE MEETING

Tuesday, April 5, 2011

3:00 P.M. – 6:00 P.M.

306 House Office Building

MEETING PACKET

Dean Cannon
Speaker

Chris Dorworth
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Rulemaking & Regulation Subcommittee

Start Date and Time: Tuesday, April 05, 2011 03:00 pm

End Date and Time: Tuesday, April 05, 2011 06:00 pm

Location: 306 HOB
Duration: 3.00 hrs

Consideration of the following bill(s):

HB 331 Firesafety by Weinstein
HB 553 Violations of the Florida Election Code by Eisnaugle
CS/HB 707 Agriculture by Community & Military Affairs Subcommittee, Crisafulli
CS/HB 823 Loan Processing by Insurance & Banking Subcommittee, Workman
CS/HB 849 Building Construction and Inspection by Business & Consumer Affairs Subcommittee, Davis
CS/HB 917 Sentencing of Inmates by Criminal Justice Subcommittee, Porth

Consideration of the following proposed committee bill(s):

PCB RRS 11-02a -- Administrative Procedure

Workshop on the following:

Rules of Concern:
The following rules in Chapter 64E-9 Public Swimming Pools and Bathing Places:
F.A.C. Rule 64E-9.005 Construction Plan or Modification Plan Approval
F.A.C. Rule 64E-9.007 Recirculation and Treatment System Requirement

NOTICE FINALIZED on 04/01/2011 16:03 by Thompson.Sonja

FLORIDA HOUSE OF REPRESENTATIVES

Dean Cannon, Speaker

Rules & Calendar Committee
Rulemaking & Regulation Subcommittee

Chris Dorworth
Chair

317 The Capitol
(850) 488-0608

AGENDA
Tuesday, April 5, 2010
3:00 P.M.– 6:00 P.M.
Room 306 House Office Building

Opening Remarks by Chair Dorworth

Roll Call by Sonja Thompson, CAA

Consideration of the following bill(s):

- CS/HB 707 Agriculture by Community & Military Affairs Subcommittee, Crisafulli
- HB 553 Violations of the Florida Election Code by Eisnaugle
- CS/HB 823 Loan Processing by Insurance & Banking Subcommittee, Workman
- CS/HB 849 Building Construction and Inspection by Business & Consumer Affairs Subcommittee, Davis
- CS/HB 917 Sentencing of Inmates by Criminal Justice Subcommittee, Porth
- HB 331 Firesafety by Weinstein

Workshop on the following: (3:45p.m. or earlier)

Rules of Concerns
The following rules in Chapter 64E-9 Public Swimming Pools and Bathing Places:

- F.A.C. Rule 64E-9.005 Construction Plan or Modification Plan Approval
- F.A.C. Rule 64E-9.007 Recirculation and Treatment System Require

Consideration of the following proposed committee bill(s):

- PCB RRS 11-02a -- Administrative Procedure

Closing Remarks

Meeting Adjourned

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 331 Firesafety
SPONSOR(S): Weinstein
TIED BILLS: **IDEN./SIM. BILLS:** SB 534

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	11 Y, 0 N	Thompson	Williamson
2) K-20 Competitiveness Subcommittee	11 Y, 0 N	Graf	Ahearn
3) Rulemaking & Regulation Subcommittee		Rubottom	Rubottom
4) Government Operations Appropriations Subcommittee			
5) State Affairs Committee			

SUMMARY ANALYSIS

The bill clarifies the role of the State Fire Marshal in firesafety inspections of Florida's educational facilities and streamlines the inspection and enforcement practices at the state and local levels. Specifically, the bill:

- Aligns laws governing the State Fire Marshal with educational laws governing firesafety inspections on educational property;
- Abolishes the classification of the special state firesafety inspector, leaves intact the classification of firesafety inspector, and provides for a contingent grandfathering of existing special state firesafety inspectors;
- Requires uniform firesafety standards and an alternate system to be governed by firesafety inspectors certified by the State Fire Marshal;
- Reduces the number of mandatory annual inspections at educational facilities from two to one, and provides for the inspection report to be distributed at the local level only;
- Clarifies the firesafety inspection process for charter schools and for public colleges;
- Requires all public education boards to use only certified firesafety inspectors and other inspectors who have been certified by the State Fire Marshal in monitoring compliance with the Florida Building Code, the Florida Fire Prevention Code, and the State Requirements for Educational Facilities; and
- Requires a public education board to submit for approval the site plan for new construction to the local entity providing fire-protection services to the facility, and outlines the compliance process.

Reducing redundant firesafety inspections of Florida's education facilities may reduce related expenditures for state and local governments. See "Fiscal Analysis" for details.

The bill provides an effective date of July 1, 2011.

See DRAFTING ISSUES.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Division of State Fire Marshal

The law designates the Chief Financial Officer as the State Fire Marshal.[1] The State Fire Marshal operates through the Division of State Fire Marshal within the Florida Department of Financial Services (DFS) to implement and enforce state law on fire prevention and control. Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; develops firesafety standards; provides facilities for the analysis of fire debris; and operates the Florida State Fire College.[2] Current law authorizes the State Fire Marshal to adopt by rule the Fire Prevention Code, which contains or references all firesafety laws and rules regarding public and private buildings.[3]

The Division of State Fire Marshal consists of four bureaus: Fire and Arson Investigations, Forensic Fire and Explosives Analysis, Fire Prevention, and Fire Standards and Training.[4] The Florida State Fire College, part of the Bureau of Fire Standards and Training, trains over 6,000 students per year in a wide variety of certification and training programs.[5] The Inspections Section within the Bureau of Fire Prevention conducts inspections of more than 14,000 state-owned buildings and facilities.[6] The Florida Fire Incident Reporting Section collects over 1,800,000 fire and emergency reports each year. These reports are combined with the reports from other states in the National Fire Incident Reporting System for use by the fire services in analysis and trends. The Florida reports are also used to form the basis for the State Fire Marshal's Annual Report.[7]

Firesafety Inspections of Florida's Educational and Ancillary Facilities

The State Fire Marshal must develop firesafety criteria for educational facilities in cooperation with the Florida Building Commission and the Department of Education.[8] All public schools, colleges, and universities are required to be inspected once every year by both the fire inspector for each school board and the local fire official.[9] Unless otherwise specified, under current law, a "board" is defined as:

> [A] district school board, a community college board of trustees, a university board of trustees, and the Board of Trustees for the Florida School for the Deaf and the Blind. The term "board" does not include the State Board of Education or the Board of Governors.[10]

Annual Report on Firesafety

The State Fire Marshal must produce a statewide annual report documenting the status of each board's firesafety program, including the improvement or lack thereof. This involves an annual compilation of district inspection reports of educational and ancillary facilities into one format for distribution to the

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[1] Section 633.01(1), F.S.
[2] Section 633.01, F.S.
[3] Sections 633.0215(1), F.S.
[4] Florida Department of Financial Services, *State Fire Marshal, available at,* http://www.myfloridacfo.com/sitePages/agency/sections/FireMarshal.aspx (last visited March 24, 2011).
[5] Florida Department of Financial Services, *Welcome to the Florida Division of State Fire Marshal, available at,* http://www.myfloridacfo.com/sfm/index.htm (last visited March 24, 2011).
[6] Florida Department of Financial Services, *Bureau of Fire Prevention-Inspections Section, available at,* http://www.myfloridacfo.com/sfm/bfpr/bfpr-insp_index.htm (last visited March 24, 2011).
[7] Florida Department of Financial Services, *Welcome to the Florida Division of State Fire Marshal, available at,* http://www.myfloridacfo.com/sfm/index.htm (last visited March 24, 2011).
[8] Section 1013.37(1)(c), F.S.
[9] Section 1013.12(2)(a), (3)(b), and (5); *see also* rule 69A-58.004(1), F.A.C.
[10] Section 1013.01(3), F.S.

substantive committees of the state House of Representatives and Senate having jurisdiction over education, the Commissioner of Education or his or her successor, the State Board of Education, the Board of Governors, and the Governor.[11]

The State Fire Marshal must adopt and administer rules regarding health and safety standards for educational and ancillary properties. If a county does not employ or appoint a fire official for firesafety inspections of educational properties, the State Fire Marshal assumes the duties of the local fire official.[12]

Firesafety Inspectors
Current law allows two different types of firesafety inspectors to conduct firesafety inspections: firesafety inspectors and special state firesafety iinspectors. A "firesafety inspector" is defined as:

> [A]n individual officially assigned the duties of conducting firesafety inspections of buildings and facilities on a recurring or regular basis on behalf of the state or any county, municipality, or special district with firesafety responsibilities.[13]

A "special state firesafety inspector" is defined as:

> [A]n individual officially assigned to the duties of conducting firesafety inspections required by law on behalf of or by an agency of the state having authority for inspections other than the Division of State Fire Marshal.[14]

A 2010 survey by the Florida State College at Jacksonville found a total of 44 special state firesafety inspectors employed in the 67 school districts and 26 institutions within the Florida College System.[15] The special state firesafety inspectors are required to complete 120 hours of specific training, 80 hours less than the training required for firesafety inspectors.[16] Every firesafety inspector or special state firesafety inspector certificate is valid for a period of 3 years from the date of issuance.[17]

Charter Schools
Charter schools are public schools that operate under a performance contract or charter with a sponsor. A charter school may be formed by creating a new school or converting an existing public school to charter status.[18] The charter delineates unique requirements that the school must comply with in order to maintain charter status.[19] A charter school must be inspected annually and meet the requirements of the Florida Fire Prevention Code. In addition, charter schools, with the exception of conversion charter schools, are not required to comply, but may choose to comply, with the State Requirements for Educational Facilities of the Florida Building Code.[20]

Effect of Proposed Changes

State Fire Marshal
The bill revises the powers and duties of the State Fire Marshal by requiring the State Fire Marshal to consult with the Department of Education regarding the adoption of rules on safety and health standards at educational and ancillary facilities. If a county does not employ or appoint a firesafety inspector certified by the State Fire Marshal, the bill provides that the State Fire Marshal will assume the duties of the local county, municipality, or independent special fire control district to conduct firesafety inspections of educational and ancillary facilities.

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[11] Section 1013.12(8), F.S.
[12] Section 633.01(7), F.S.
[13] Section 633.021(24), F.S.
[14] Section 633.021(24), F.S.
[15] E-mail, Florida State College at Jacksonville (Feb. 9, 2011).
[16] Section 633.081(2)(g) and (3), F.S.
[17] Section 633.081(5), F.S.
[18] Section 1002.33(1), F.S.
[19] Section 1002.33(9), F.S.
[20] Section 1002.33(18) (a) and (b), F.S.

Firesafety Inspectors
The bill abolishes the classification of "special state firesafety inspector" as of July 1, 2013. All special state firesafety inspector certifications will expire by midnight, June 30, 2013. However, current special state firesafety inspectors may be certified as firesafety inspectors if the following conditions are met:

- The inspector has at least five years of experience as a special state firesafety inspector as of July 1, 2011, and passes the firesafety inspection examination prior to July 1, 2013;
- The inspector does not have five years of experience as a special state firesafety inspector as of July 1, 2011, but takes an additional 80 hours of courses and passes the firesafety inspection examination; or
- The inspector has at least five years of experience as a special state firesafety inspector, fails the firesafety inspection examination, but takes 80 additional hours of courses, and then retakes and passes the firesafety inspection examination.

The bill prohibits a special state firesafety inspector who does not pass the firesafety inspection examination by July 1, 2013, from conducting firesafety inspections of educational and ancillary facilities.

The bill defines "firesafety inspector" as a person certified by the State Fire Marshal to conduct firesafety inspections of buildings and facilities on a recurring or regular basis.

Firesafety Inspections by District School Boards
The bill requires a district school board to appoint certified firesafety inspectors to conduct annual inspections of educational and ancillary facilities. Inspections must begin no sooner than one year after a certificate of occupancy is issued. The district school board must submit a copy of the report to the county, municipality, or independent special fire control district providing fire protection services within ten business days after the inspection, unless immediate corrective action is required owing to life-threatening deficiencies identified during a firesafety inspection. The district school board, or any other entity authorized to conduct the firesafety inspection, must certify to the State Fire Marshal that the annual inspection has been completed. The bill requires the district school board to take immediate action to correct the deficiencies identified in the firesafety inspection report, or suspend use of the educational or ancillary facility until the deficiencies are corrected.

Inspections of Educational Property by Other Public Agencies
An annual firesafety inspection must be conducted on educational and ancillary facilities operated by a school board or public college. Such inspections may begin no sooner than one year after a building certificate of occupancy is issued, and annually thereafter. If the firesafety inspection identifies any life-threatening deficiencies, the county, municipality, or independent special fire control district, in conjunction with the board-appointed fire official must require the board to take immediate to correct the deficiencies, or suspend use of the educational or ancillary facility until the deficiencies are corrected.

Inspection of Charter Schools Not Located on Board Owned or Leased Property
The bill authorizes a safety or sanitation inspection of educational and ancillary facilities at any time by an authorized state or local agency. The agency that is authorized by law to conduct such inspections must submit a copy of the inspection report to the charter school sponsor.

A firesafety inspection must be conducted on educational facilities that are not owned or leased by the district school board or a public college in accordance with the standards adopted by the State Fire Marshal.

The inspecting authority is required, upon request, to provide a copy of the firesafety report to the board in the district in which the charter school facility is located. The inspecting authority must include a plan of action to correct each deficiency that is identified in the firesafety inspection. If any life-threatening deficiencies are identified, the inspecting authority must require the charter school to take immediate action to correct the deficiencies, or suspend use of the educational or ancillary facility until the deficiencies are corrected. If the charter school fails to take corrective action within the period

designated in the corrective action plan, the county, municipality, or independent special fire control district must immediately report the deficiency to the State Fire Marshal and the charter school sponsor.

The bill provides the State Fire Marshal enforcement authority over charter school educational and ancillary facilities.

Inspections of Public Postsecondary Education Facilities

The bill requires firesafety inspections of public college facilities, including charter schools located on board-owned or board-leased facilities or otherwise operated by public college boards to comply with the Florida Fire Prevention Code, as adopted by the State Fire Marshal. Local amendments to the provisions of the code relating to inspection of such facilities are prohibited. Each public college facility must be inspected annually by a firesafety inspector certified by the State Fire Marshal.[21] The certified firesafety inspector must provide a plan of action to the college to correct each deficiency identified during the firesafety inspection. The bill requires the college to provide a copy of the firesafety inspection report to the county, municipality, or independent special fire control district in which the facility is located.

Firesafety inspections of state universities must comply with the Florida Fire Prevention Code. If a school board,[22] public college board or charter school fails to correct deficiencies identified by the certified firesafety inspector, the inspecting authority must immediately report the deficiency to the State Fire Marshal.

The bill deletes the requirement for the State Fire Marshal to publish an annual report on firesafety. This report is based on a compilation of firesafety inspection reports received from local entities for each educational and ancillary facility and submitted to the Florida Legislature, Governor, Commissioner of Education, State Board of Education, and the Board of Governors.

Approval of New Construction and Site Plans

The bill requires each board, as defined under current law,[23] to provide for a periodic inspection of proposed educational and ancillary facilities to ensure that the construction complies with the Florida Building Code and the Florida Fire Prevention Code, in addition to the State Requirements for Educational Facilities. Firesafety inspectors certified by the State Fire Marshal must enforce the Florida Fire Prevention Code.

The bill requires local boards to submit for approval to local county, municipality, or independent special fire control district providing fire-protection services to a facility, site plans for new facilities, and describes the process for compliance and informal appeal. The boards must also submit to the local entity, the site plan for each new addition that exceeds 2,500 square feet.

The reviews of site plans and inspections must be conducted by certified building code inspectors,[24] fire officials, or firesafety inspectors.

The bill makes clear that such site plans are not subject to local amendments. The site plans will be deemed approved unless the local county, municipality, or independent special fire control district submits to the board-appointed fire official, deficiencies citing the Florida Fire Prevention Code within fifteen days after receipt of the site plan. The fire official must incorporate the identified deficiencies in his or her review and subsequent inspections.

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[21] Section 633.081, F.S., provides training and certification requirements for State Fire Marshal-certified firesafety inspector.

[22] The provisions for school board have been included under the section on Inspections of Public Postsecondary Education Facilities in the bill.

[23] Section 1013.01(3), F.S., defines the term "board" as a district school board, a community college board of trustees, a university board of trustees, and the Board of Trustees for the Florida School for the Deaf and the Blind. The term "board" does not include the State Board of Education or the Board of Governors.

[24] Section 468.603(2), F.S., defines building code inspector.

The State Fire Marshal reserves the final administrative authority to resolve disputes between the local county, municipality, or independent special fire control district, and the fire official pertaining to the requirements or application of the Florida Fire Prevention Code.

Before the commencement of any new construction, renovation, or remodeling, the bill requires that the board must approve the construction documents for compliance with the Florida Building Code and the Florida Fire Prevention Code. The board is required to contract with a State Fire Marshal-certified firesafety inspector to ensure compliance with all firesafety codes. The bill prohibits issuing the certificate of occupancy until the board certifies that the building or structure complies with all applicable statutes and rules. The board must document and maintain as part of the construction record file, the method of compliance that it chooses. Finally, the bill requires that the board must, upon request, provide to the local county, municipality, or independent special fire control district, reasonable access to all construction documents.

B. SECTION DIRECTORY:

Section 1. Amends s. 633.01, F.S., to revise the rulemaking authority and responsibilities of the State Fire Marshal; to provide that if a county does not employ or appoint a certified firesafety inspector, the State Fire Marshal is to perform firesafety inspections of educational property.

Section 2. Amends s. 633.021, F.S., to clarify the definition of "firesafety inspector" to include certification under s. 633.081, F.S.

Section 3. Amends s. 633.081, F.S., to revise requirements and procedures for inspections of buildings and equipment; to abolish special state firesafety inspector classifications and certifications; and to provide criteria, procedures, and requirements for special state firesafety inspectors to be certified as firesafety inspectors.

Section 4. Amends s. 1013.12, F.S., to revise procedures and requirements for certain standards and inspection of educational property; to provide procedures, criteria, and requirements for inspections of charter schools; to provide reporting requirements; to revise requirements for inspections of public postsecondary education facilities; and to delete a provision requiring that the State Fire Marshal publish an annual report.

Section 5. Amends s. 1013.371, F.S., to revise firesafety inspection requirements for educational institution boards to conform to the Florida Building Code and the Florida Fire Prevention Code; and to revise certain code enforcement authority of such boards certified pursuant to chapter 633, F.S.

Section 6. Amends s. 1013.38, F.S., to require educational institution boards to submit certain facility site plans to a local county, municipality, or independent special fire control district for review; to authorize such entities to review site plans for compliance with certain provisions of the Florida Fire Prevention Code; to specify that site plans are not subject to local ordinances or local amendments to the Florida Fire Prevention Code; to provide criteria for approving site plans and correcting firesafety compliance deficiencies; to provide for referral of disputes to the State Fire Marshal; to authorize public education boards to use firesafety inspectors for compliance with the Florida Building Code and the Florida Fire Prevention Code; and to impose additional requirements for such boards relating to construction, renovation, or remodeling of educational facilities.

Section 7. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill will likely create an insignificant reduction in expenditures. The bill deletes the Florida Division of State Fire Marshal's annual state-level report requirement. The Florida Department of Financial Services (DFS) estimates that the Florida Division of State Fire Marshal will save office funds and resources that are used to generate the report. The savings will be in the $5,000 range unless the contract with the University of Florida to operate the database is cancelled. If the contract is cancelled, savings will be closer to $9,000.[25]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Currently, the State Requirements for Educational Facilities and the State Fire Marshal rules require two separate or one joint annual fire inspections to be performed by both a local authorized agency as well as the board for each board-owned or leased building. The bill authorizes an annual inspection of educational and ancillary facilities by county, municipal, or special fire control districts, thereby reducing the number of mandatory annual inspections to one every year.[26]

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Special state firesafety inspectors who fail the firesafety inspection examination, must meet the training and certification requirements provided in the bill. The bill prohibits special state firesafety inspectors who do not have at least five years of experience by July 1, 2011, and who do not pass the firesafety inspection examination by July 1, 2013, from conducting firesafety inspections.

D. FISCAL COMMENTS:

Reducing duplicative inspections will likely result in cost savings for the local government entities. The DFS estimates cost savings will be small, approximately, $5000 resulting from the modifications in the contract with the University of Florida relating to the database used for the compilation of firesafety inspection reports, and the cost associated with printing the annual report. Any staff time saved by implementing the bill will be redirected to other critical areas, and will likely not result in real savings to DFS.[27]

Additionally, deleting the existing requirement for the Florida Division of State Fire Marshal to prepare an annual report based on the compilation of inspection reports received from each board for all educational and ancillary facilities will likely result in cost savings for the State. Florida Department of Education estimates approximately $515,210 in cost savings to the school districts and colleges based on an unofficial survey of the 67 school districts and 28 colleges within the Florida College System conducted by the department.[28]

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[25] Florida Department of Financial Services, Revised Analysis of HB 331 (March 7, 2011).
[26] Florida Department of Education, Analysis of HB 331 (Feb. 17, 2011); *see also* rule 69A-58.004(1), F.A.C.; Chapter 5, State Requirements for Educational Facilities, incorporated by reference in rule 6A-2.0010, F.A.C., State Requirements for Educational Facilities (SREF).
[27] Florida Department of Financial Services, Revised Analysis of HB 331 (March 7, 2011).
[28] Florida Department of Education, Analysis of HB 331 (Feb. 17, 2011).

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:

The bill requires the State Fire Marshal to consult with the Florida Department of Education (DOE) regarding the adoption of rules pertaining to safety and health standards at educational facilities. Consequently, the DOE rules related to education facilities[29] and the State Fire Marshal rules for education facilities[30] adopted pursuant to Chapter 120, F.S., may need amending.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill makes references to "public college". As directed by s. 21 of ch. 2010-70, Laws of Florida, a reviser's bill (HB 7111) was prepared to substitute the term "Florida College System Institution" for the terms "Florida college," "community college," and "junior college" where those terms appear in Florida K-20 Education Code. The term "public college" was also included in the reviser's bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[29] Rule 6A-2.0010, F.A.C., State Requirements for Educational Facilities (SREF).
[30] Rule Chapter 69A-58, F.A.C., Firesafety in Education Facilities.

A bill to be entitled

An act relating to firesafety; amending s. 633.01, F.S.; revising the rulemaking authority and responsibilities of the State Fire Marshal relating to educational and ancillary plants; amending s. 633.021, F.S.; revising the definition of the term "firesafety inspector"; amending s. 633.081, F.S.; revising requirements and procedures for inspections of buildings and equipment; abolishing special state firesafety inspector classifications and certifications; providing criteria, procedures, and requirements for special state firesafety inspectors to be certified as firesafety inspectors; amending s. 1013.12, F.S.; revising procedures and requirements for certain standards and inspection of educational property; providing procedures, criteria, and requirements for inspections of charter schools; providing reporting requirements; revising requirements for inspections of public postsecondary education facilities; deleting a provision requiring that the State Fire Marshal publish an annual report; amending s. 1013.371, F.S.; revising firesafety inspection requirements for educational institution boards to conform to certain codes; revising certain code enforcement authority of such boards; amending s. 1013.38, F.S.; requiring educational institution boards to submit certain facility site plans to certain local governmental entities for review; authorizing such entities to review site plans for compliance with certain provisions of the Florida Fire

Prevention Code; specifying that site plans are not subject to local ordinances or local amendments to the Florida Fire Prevention Code; providing criteria for approving site plans and correcting firesafety compliance deficiencies; providing for referral of disputes to the State Fire Marshal; authorizing such boards to use certain firesafety inspectors for certain compliance reviews; imposing additional requirements for such boards relating to construction, renovation, or remodeling of educational facilities; providing an effective date.

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

Section 1. Subsection (7) of section 633.01, Florida Statutes, is amended to read:

633.01 State Fire Marshal; powers and duties; rules.—

(7) The State Fire Marshal, in consultation with the Department of Education, shall adopt and administer rules prescribing standards for the safety and health of occupants of educational and ancillary facilities pursuant to ss. 633.022, 1013.12, 1013.37, and 1013.371. In addition, in any county that does not employ or appoint a firesafety inspector certified under s. 633.081 ~~local fire official~~, the State Fire Marshal shall assume the duties of the local county, municipality, or independent special fire control district as defined in s. 191.003 ~~fire official~~ with respect to firesafety inspections of educational property required under s. 1013.12(3)(b), and the State Fire Marshal may take necessary corrective action as

authorized under s. 1013.12(7) ~~(6)~~.

Section 2. Subsection (11) of section 633.021, Florida Statutes, is amended to read:

633.021 Definitions.—As used in this chapter:

(11) A "firesafety inspector" is an individual certified by the State Fire Marshal under s. 633.081 who is officially assigned the duties of conducting firesafety inspections of buildings and facilities on a recurring or regular basis ~~on behalf of the state or any county, municipality, or special district with firesafety responsibilities~~.

Section 3. Section 633.081, Florida Statutes, is amended to read:

633.081 Inspection of buildings and equipment; orders; firesafety inspection training requirements; certification; disciplinary action.—The State Fire Marshal and her or his agents shall, at any reasonable hour, when the State Fire Marshal has reasonable cause to believe that a violation of this chapter or s. 509.215, or a rule promulgated thereunder, or a minimum firesafety code adopted by the State Fire Marshal or a local authority, may exist, inspect any and all buildings and structures which are subject to the requirements of this chapter or s. 509.215 and rules promulgated thereunder. The authority to inspect shall extend to all equipment, vehicles, and chemicals which are located on or within the premises of any such building or structure.

(1) Each county, municipality, and special district that has firesafety enforcement responsibilities shall employ or contract with a firesafety inspector. Except as provided in s.

633.082(2), the firesafety inspector must conduct all firesafety inspections that are required by law. The governing body of a county, municipality, or special district that has firesafety enforcement responsibilities may provide a schedule of fees to pay only the costs of inspections conducted pursuant to this subsection and related administrative expenses. Two or more counties, municipalities, or special districts that have firesafety enforcement responsibilities may jointly employ or contract with a firesafety inspector.

(2) Except as provided in s. 633.082(2), every firesafety inspection conducted pursuant to state or local firesafety requirements shall be by a person certified as having met the inspection training requirements set by the State Fire Marshal. Such person shall:

(a) Be a high school graduate or the equivalent as determined by the department;

(b) Not have been found guilty of, or having pleaded guilty or nolo contendere to, a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States, or of any state thereof, which involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases;

(c) Have her or his fingerprints on file with the department or with an agency designated by the department;

(d) Have good moral character as determined by the department;

(e) Be at least 18 years of age;

(f) Have satisfactorily completed the firesafety inspector

certification examination as prescribed by the department; and

(g)1. Have satisfactorily completed, as determined by the department, a firesafety inspector training program of not less than 200 hours established by the department and administered by agencies and institutions approved by the department for the purpose of providing basic certification training for firesafety inspectors; or

2. Have received in another state training which is determined by the department to be at least equivalent to that required by the department for approved firesafety inspector education and training programs in this state.

(3)(a)1. Effective July 1, 2013, the classification of special state firesafety inspector is abolished and all special state firesafety inspector certifications shall expire at midnight June 30, 2013.

2. Any person who is a special state firesafety inspector on June 30, 2013, and who has failed to comply with paragraph (b) or paragraph (c) may not perform any firesafety inspection required by law.

3. A special state firesafety inspector certificate may not be issued after June 30, 2011.

(b)1. Any person who is a special state firesafety inspector on July 1, 2011, and who has at least 5 years of experience as a special state firesafety inspector as of July 1, 2011, may take the firesafety inspection examination as provided in paragraph (2)(f) for firesafety inspectors before July 1, 2013, to be certified as a firesafety inspector under this section.

2. Upon passing the examination, the person shall be certified as a firesafety inspector as provided in this section.

3. A person who fails to become certified must comply with paragraph (c) to be certified as a firesafety inspector under this section.

(c)1. To be certified as a firesafety inspector under this section, any person who:

a. Is a special state firesafety inspector on July 1, 2011, and who does not have 5 years of experience as a special state firesafety inspector as of July 1, 2011; or

b. Has 5 years of experience as a special state firesafety inspector but has failed the examination taken as provided in paragraph (2)(f),

must take an additional 80 hours of the courses described in paragraph (2)(g).

2. After successfully completing the courses described in this paragraph, such person may take the firesafety inspection examination as provided in paragraph (2)(f), if such examination is taken before July 1, 2013.

3. Upon passing the examination, the person shall be certified as a firesafety inspector as provided in this section.

4. A person who fails the course of study or the examination described in this paragraph may not perform any firesafety inspection required by law on or after July 1, 2013.

~~Each special state firesafety inspection which is required by law and is conducted by or on behalf of an agency of the state must be performed by an individual who has met the provision of~~

~~subsection (2), except that the duration of the training program shall not exceed 120 hours of specific training for the type of property that such special state firesafety inspectors are assigned to inspect.~~

(4) A firefighter certified pursuant to s. 633.35 may conduct firesafety inspections, under the supervision of a certified firesafety inspector, while on duty as a member of a fire department company conducting inservice firesafety inspections without being certified as a firesafety inspector, if such firefighter has satisfactorily completed an inservice fire department company inspector training program of at least 24 hours' duration as provided by rule of the department.

(5) Every firesafety inspector ~~or special state firesafety inspector~~ certificate is valid for a period of 3 years from the date of issuance. Renewal of certification is ~~shall be~~ subject to the affected person's completing proper application for renewal and meeting all of the requirements for renewal as established under this chapter or by rule adopted under this chapter ~~promulgated thereunder~~, which shall include completion of at least 40 hours during the preceding 3-year period of continuing education as required by the rule of the department or, in lieu thereof, successful passage of an examination as established by the department.

(6) The State Fire Marshal may deny, refuse to renew, suspend, or revoke the certificate of a firesafety inspector ~~or special state firesafety inspector~~ if the State Fire Marshal ~~it~~ finds that any of the following grounds exist:

(a) Any cause for which issuance of a certificate could

have been refused had it then existed and been known to the State Fire Marshal.

(b) Violation of this chapter or any rule or order of the State Fire Marshal.

(c) Falsification of records relating to the certificate.

(d) Having been found guilty of or having pleaded guilty or nolo contendere to a felony, whether or not a judgment of conviction has been entered.

(e) Failure to meet any of the renewal requirements.

(f) Having been convicted of a crime in any jurisdiction which directly relates to the practice of fire code inspection, plan review, or administration.

(g) Making or filing a report or record that the certificateholder knows to be false, or knowingly inducing another to file a false report or record, or knowingly failing to file a report or record required by state or local law, or knowingly impeding or obstructing such filing, or knowingly inducing another person to impede or obstruct such filing.

(h) Failing to properly enforce applicable fire codes or permit requirements within this state which the certificateholder knows are applicable by committing willful misconduct, gross negligence, gross misconduct, repeated negligence, or negligence resulting in a significant danger to life or property.

(i) Accepting labor, services, or materials at no charge or at a noncompetitive rate from any person who performs work that is under the enforcement authority of the certificateholder and who is not an immediate family member of the

certificateholder. For the purpose of this paragraph, the term "immediate family member" means a spouse, child, parent, sibling, grandparent, aunt, uncle, or first cousin of the person or the person's spouse or any person who resides in the primary residence of the certificateholder.

(7) The Division of State Fire Marshal and the Florida Building Code Administrators and Inspectors Board, established pursuant to s. 468.605, shall enter into a reciprocity agreement to facilitate joint recognition of continuing education recertification hours for certificateholders licensed under s. 468.609 and firesafety inspectors certified under subsection (2).

(8) The State Fire Marshal shall develop by rule an advanced training and certification program for firesafety inspectors having fire code management responsibilities. The program must be consistent with the appropriate provisions of NFPA 1037, or similar standards adopted by the division, and establish minimum training, education, and experience levels for firesafety inspectors having fire code management responsibilities.

(9) The department shall provide by rule for the certification of firesafety inspectors.

Section 4. Section 1013.12, Florida Statutes, is amended to read:

1013.12 Casualty, safety, sanitation, and firesafety standards and inspection of property.—

(1) FIRESAFETY.—The State Board of Education shall adopt and administer rules prescribing standards for the safety and

health of occupants of educational and ancillary plants as a part of State Requirements for Educational Facilities or the Florida Building Code for educational facilities construction as provided in s. 1013.37, except that the State Fire Marshal in consultation with the Department of Education shall adopt uniform firesafety standards for educational and ancillary plants and educational facilities, as provided in s. 633.022(1)(b), and a firesafety evaluation system to be used as an alternate firesafety inspection standard for existing educational and ancillary plants and educational facilities. The uniform firesafety standards and the alternate firesafety evaluation system shall be administered and enforced by ~~local~~ fire officials certified by the State Fire Marshal under s. 633.081. These standards must be used by all public agencies when inspecting public educational and ancillary plants, and the firesafety standards must be used by county, municipal, or independent special ~~local~~ fire control district inspectors ~~officials~~ when performing firesafety inspections of public educational and ancillary plants and educational facilities. In accordance with such standards, each board shall prescribe policies and procedures establishing a comprehensive program of safety and sanitation for the protection of occupants of public educational and ancillary plants. Such policies must contain procedures for periodic inspections as prescribed in this section or chapter 633 and for withdrawal of any educational and ancillary plant, or portion thereof, from use until unsafe or unsanitary conditions are corrected or removed.

(2) PERIODIC INSPECTION OF PROPERTY BY DISTRICT SCHOOL

BOARDS.—

(a) Each board shall provide for periodic inspection, other than firesafety inspection, of each educational and ancillary plant at least once during each fiscal year to determine compliance with standards of sanitation and casualty safety prescribed in the rules of the State Board of Education.

(b) Each school cafeteria must post in a visible location and on the school website the school's semiannual sanitation certificate and a copy of its most recent sanitation inspection report.

(c) Under the direction of the fire official appointed by the board under s. 1013.371(2), firesafety inspections of each educational and ancillary plant located on property owned or leased by the board, or other educational facilities operated by the board, must be made no sooner than 1 year after issuance of a certificate of occupancy and annually thereafter. Such inspections shall be made by persons certified by the Division of State Fire Marshal under s. 633.081 to ~~be eligible to~~ conduct firesafety inspections in public educational and ancillary plants. The board shall submit a copy of the firesafety inspection report to the county, municipality, or independent special fire control district providing fire protection services to the school facility within 10 business days after the date of the inspection. Alternate schedules for delivery of reports may be agreed upon between the school district and the county, municipality, or independent special fire control district providing fire protection services to the site in cases in which delivery is impossible due to hurricanes or other natural

disasters. Regardless, if immediate life-threatening deficiencies are noted in the report, the report shall be delivered immediately ~~State Fire Marshal and, if there is a local fire official who conducts firesafety inspections, to the local fire official~~. In addition, the board and any other authority conducting the fire safety inspection shall certify to the State Fire Marshal that the annual inspection has been completed. The certification shall be made electronically or by such other means as directed by the State Fire Marshal.

(d) In each firesafety inspection report, the board shall include a plan of action and a schedule for the correction of each deficiency ~~which have been formulated in consultation with the local fire control authority~~. If immediate life-threatening deficiencies are noted in any inspection, the board shall ~~either~~ take action to promptly correct the deficiencies or withdraw the educational or ancillary plant from use until such time as the deficiencies are corrected.

(3) INSPECTION OF EDUCATIONAL PROPERTY BY OTHER PUBLIC AGENCIES.—

(a) A safety or sanitation inspection of any educational or ancillary plant may be made at any time by the Department of Education or any other state or local agency authorized or required to conduct such inspections by either general or special law. Each agency conducting inspections shall use the standards adopted by the Commissioner of Education in lieu of, and to the exclusion of, any other inspection standards prescribed either by statute or administrative rule. The agency shall submit a copy of the inspection report to the board.

(b) One firesafety inspection of each educational or ancillary plant located on the property owned or leased by the board, or other educational or ancillary plants operated by the school board, and each public college may ~~must~~ be conducted no sooner than 1 year after the issuance of the certificate of occupancy and annually thereafter ~~each fiscal year~~ by the county, municipality, or independent special fire control district in which the plant is located using the standards adopted by the State Fire Marshal. The board or public college shall cooperate with the inspecting authority when a firesafety inspection is made by a governmental authority under this paragraph.

(c) In each firesafety inspection report prepared pursuant to this subsection, the county, municipality, or independent special ~~local~~ fire control district, ~~official~~ in conjunction with the board, shall include a plan of action and a schedule for the correction of each deficiency. If immediate life-threatening deficiencies are noted in any inspection, the local county, municipality, or independent special fire control district, in conjunction with the fire official appointed by the board, shall ~~either~~ take action to require the board to promptly correct the deficiencies or withdraw the educational or ancillary plant ~~facility~~ from use until the deficiencies are corrected, subject to review by the State Fire Marshal who shall act within 10 days to ensure that the deficiencies are corrected or withdraw the plant ~~facility~~ from use.

(4) CORRECTIVE ACTION; DEFICIENCIES OTHER THAN FIRESAFETY DEFICIENCIES.—Upon failure of the board to take corrective

action within a reasonable time, the agency making the inspection, other than a local fire official, may request the commissioner to:

(a) Order that appropriate action be taken to correct all deficiencies in accordance with a schedule determined jointly by the inspecting authority and the board; in developing the schedule, consideration must be given to the seriousness of the deficiencies and the ability of the board to obtain the necessary funds; or

(b) After 30 calendar days' notice to the board, order all or a portion of the educational or ancillary plant withdrawn from use until the deficiencies are corrected.

(5) INSPECTIONS OF CHARTER SCHOOLS NOT LOCATED ON BOARD-OWNED OR LEASED PROPERTY OR OTHERWISE OPERATED BY A SCHOOL BOARD.—

(a) A safety or sanitation inspection of any educational or ancillary plant may be made at any time by a state or local agency authorized or required to conduct such inspections by general or special law. The agency shall submit a copy of the inspection report to the charter school sponsor.

(b) One firesafety inspection of each charter school that is not located in facilities owned or leased by the board or a public college must be conducted each fiscal year by the county, municipality, or independent special fire control district in which the charter school is located using the standards adopted by the State Fire Marshal. Upon request, the inspecting authority shall provide a copy of each firesafety report to the board in the district in which the facility is located.

(c) In each firesafety inspection report and formulated in consultation with the charter school, the inspecting authority shall include a plan of action and a schedule for the correction of each deficiency. If any immediate life-threatening deficiency is noted in any inspection, the inspecting authority shall take action to require the charter school to promptly correct each deficiency or withdraw the educational or ancillary plant from use until such time as all deficiencies are corrected.

(d) If the charter school fails to take corrective action within the period designated in the plan of action to correct any firesafety deficiency noted under paragraph (c), the county, municipality, or independent special fire control district shall immediately report the deficiency to the State Fire Marshal and the charter school sponsor. The State Fire Marshal has enforcement authority with respect to charter school educational and ancillary plants and educational facilities as provided in chapter 633 for any building or structure.

(6) ~~(5)~~ INSPECTIONS OF PUBLIC POSTSECONDARY EDUCATION FACILITIES.—

(a) Firesafety inspections of public ~~community~~ college facilities, including charter schools located on board-owned or board-leased facilities or otherwise operated by public college boards, shall be made in accordance ~~comply~~ with the Florida Fire Prevention Code, as adopted by the State Fire Marshal. Notwithstanding s. 633.0215, provisions of the code relating to inspections of such facilities are not subject to any local amendments as provided by s. 1013.371. Each public college facility shall be inspected annually by persons certified under

s. 633.081 ~~Board of Education rules~~.

(b) After each required firesafety inspection, the inspecting authority shall develop a plan of action to correct each deficiency identified. The public college shall provide a copy of each firesafety inspection report to the county, municipality, or independent special fire control district in which the facility is located.

(c) ~~(b)~~ Firesafety inspections of state universities shall comply with the Florida Fire Prevention Code, as adopted by the State Fire Marshal under s. 633.0215 ~~regulations of the Board of Governors~~.

(7) ~~(6)~~ CORRECTIVE ACTION; FIRESAFETY DEFICIENCIES.—If a school ~~Upon failure of the~~ board, public college board, or charter school fails to correct any firesafety deficiency noted under this section ~~take corrective action~~ within the time designated in the plan of action ~~to correct any firesafety deficiency noted under paragraph (2)(d) or paragraph (3)(c)~~, the inspecting authority ~~local fire official~~ shall immediately report the deficiency to the State Fire Marshal, who has ~~shall have~~ enforcement authority with respect to educational and ancillary plants and educational facilities as provided in chapter 633 for any other building or structure.

(8) ~~(7)~~ ADDITIONAL STANDARDS.—In addition to any other rules adopted under this section or s. 633.022, the State Fire Marshal in consultation with the Department of Education shall adopt and administer rules prescribing the following standards for the safety and health of occupants of educational and ancillary plants:

(a) The designation of serious life-safety hazards, including, but not limited to, nonfunctional fire alarm systems, nonfunctional fire sprinkler systems, doors with padlocks or other locks or devices that preclude egress at any time, inadequate exits, hazardous electrical system conditions, potential structural failure, and storage conditions that create a fire hazard.

(b) The proper placement of functional smoke and heat detectors and accessible, unexpired fire extinguishers.

(c) The maintenance of fire doors without doorstops or wedges improperly holding them open.

~~(8) ANNUAL REPORT.—The State Fire Marshal shall publish an annual report to be filed with the substantive committees of the state House of Representatives and Senate having jurisdiction over education, the Commissioner of Education or his or her successor, the State Board of Education, the Board of Governors, and the Governor documenting the status of each board's firesafety program, including the improvement or lack thereof.~~

Section 5. Paragraph (a) of subsection (1) and subsection (2) of section 1013.371, Florida Statutes, are amended to read:

1013.371 Conformity to codes.—

(1) CONFORMITY TO FLORIDA BUILDING CODE AND FLORIDA FIRE PREVENTION CODE REQUIRED FOR APPROVAL.—

(a) Except as otherwise provided in paragraph (b), all public educational and ancillary plants constructed by a board must conform to the Florida Building Code and the Florida Fire Prevention Code, and the plants are exempt from all other state building codes; county, municipal, or other local amendments to

the Florida Building Code and local amendments to the Florida Fire Prevention Code; building permits, and assessments of fees for building permits, except as provided in s. 553.80; ordinances; road closures; and impact fees or service availability fees. Any inspection by local or state government must be based on the Florida Building Code and the Florida Fire Prevention Code. Each board shall provide for periodic inspection of the proposed educational plant during each phase of construction to determine compliance with the Florida Building Code, the Florida Fire Prevention Code, and the State Requirements for Educational Facilities.

(2) ENFORCEMENT BY BOARD.—It is the responsibility of each board to ensure that all plans and educational and ancillary plants meet the standards of the Florida Building Code and the Florida Fire Prevention Code and to provide for the enforcement of these codes in the areas of its jurisdiction. Each board shall provide for the proper supervision and inspection of the work. Each board may employ a chief building official ~~or inspector~~ and such other inspectors, who have been certified pursuant to chapter 468, and a fire official and such other inspectors, who have been certified pursuant to chapter 633, and such personnel as ~~are~~ necessary to administer and enforce the provisions of such codes ~~this code~~. Boards may also use local building department inspectors who are certified by the department to enforce the Florida Building Code and the State Requirements for Educational Facilities ~~this code~~. Boards may also use local county, municipal, or independent special fire control district firesafety inspectors who are certified by the

State Fire Marshal to conduct reviews of site plans and inspections and to enforce the Florida Fire Prevention Code. Plans or facilities that fail to meet the standards of the Florida Building Code or the Florida Fire Prevention Code may not be approved. When planning for and constructing an educational, auxiliary, or ancillary facility, a board must use construction materials and systems that meet standards adopted pursuant to s. 1013.37(1)(e)3. and 4. If the planned or actual construction of a facility deviates from the adopted standards, the board must, at a public hearing, quantify and compare the costs of constructing the facility with the proposed deviations and in compliance with the adopted standards and the Florida Building Code. The board must explain the reason for the proposed deviations and compare how the total construction costs and projected life-cycle costs of the facility or component system of the facility would be affected by implementing the proposed deviations rather than using materials and systems that meet the adopted standards.

Section 6. Section 1013.38, Florida Statutes, is amended to read:

1013.38 Boards to ensure that facilities comply with building codes and life safety codes.—

(1) Boards shall ensure that all new construction, renovation, remodeling, day labor, and maintenance projects conform to the appropriate sections of the Florida Building Code, Florida Fire Prevention Code, or, where applicable as authorized in other sections of law, other building codes, and life safety codes.

(a) For each proposed new facility and each proposed new facility addition exceeding 2,500 square feet, the board shall submit for review a minimum of one copy of the site plan to the local county, municipality, or independent special fire control district providing fire-protection services to the facility.

(b) The local county, municipality, or independent special fire control district may review each site plan for compliance with the applicable provisions of the Florida Fire Prevention Code relating to fire department access roads, fire-protection system connection locations, and fire hydrant spacing. Such site plans are not subject to local amendments to the Florida Fire Prevention Code or local ordinances as provided in s. 1013.371. Site plan reviews conducted pursuant to this section shall be performed at no charge to the school board or public college board.

(c) The site plan shall be deemed approved unless the local county, municipality, or independent special fire control district submits to the fire official appointed by the board, in writing, any deficiencies identified with reference to specific provisions of the Florida Fire Prevention Code within 15 days after receipt of the site plan. The fire official shall incorporate such comments into his or her review and subsequent inspections.

(d) If the local county, municipality, or independent special fire control district and the fire official appointed by the board do not agree on the requirements or application of the Florida Fire Prevention Code, either party may refer the matter to the State Fire Marshal, who shall have final administrative

authority in resolving the matter.

(2) In addition to the submission of site plans, boards may provide compliance as follows:

(a) Boards or consortia may individually or cooperatively provide review services under the insurance risk management oversight through the use of board employees or consortia employees~~,~~ registered pursuant to chapter 471, chapter 481, or part XII of chapter 468 and firesafety inspectors certified under s. 633.081.

(b) Boards may elect to review construction documents using their own employees registered pursuant to chapter 471, chapter 481, or part XII of chapter 468 and firesafety inspectors certified under s. 633.081.

(c) Boards may submit phase III construction documents for review to the department.

(d) Boards or consortia may contract for plan review services directly with engineers and architects registered pursuant to chapter 471 or chapter 481 and firesafety inspectors certified under s. 633.081.

(3) The Department of Management Services may, upon request, provide facilities services for the Florida School for the Deaf and the Blind, the Division of Blind Services, and public broadcasting. As used in this section, the term "facilities services" means project management, code and design plan review, and code compliance inspection for projects as defined in s. 287.017(5).

(4)(a) Before the commencement of any new construction, renovation, or remodeling, the board shall:

1. Approve or cause to be approved the construction documents and evaluate such documents for compliance with the Florida Building Code and the Florida Fire Prevention Code.

2. Ensure compliance with all applicable firesafety codes and standards by contracting with a firesafety inspector certified by the State Fire Marshal under s. 633.081.

(b) A certificate of occupancy may not be issued until the board, through its designated certified building official, has determined that the building or structure and its site conditions comply with all applicable statutes and rules.

(c) The method of compliance as chosen by the board pursuant to subsection (2) shall be documented and maintained as part of the construction record file.

(d) Upon request by the local county, municipality, or independent special fire control district, the board shall provide reasonable access to all construction documents.

Section 7. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 553 Violations of the Florida Election Code
SPONSOR(S): Eisnaugle
TIED BILLS: **IDEN./SIM. BILLS:** SB 330

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	12 Y, 0 N	McDonald	Williamson
2) Rulemaking & Regulation Subcommittee		Miller	Rubottom
3) State Affairs Committee			

SUMMARY ANALYSIS

The bill provides that it is a violation of the Florida Election Code for a candidate, in any election, to directly or indirectly falsely represent past or current service in the military. A civil penalty of up to $5,000 may be assessed for each violation by the Florida Elections Commission or an administrative law judge for the Division of Administrative Hearings, as appropriate. Assessed civil penalties are deposited in the General Revenue Fund.

The bill also provides that anyone may file a complaint with the Florida Elections Commission alleging such violation.

The Florida Elections Commission and the Division of Administrative Hearings are required to provide expedited hearings in such cases coming before them.

The fiscal impact on state government is minimal.

The bill takes effect July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Law

Currently, the Florida Election Code does not govern false representations made by a candidate concerning the candidate's own background. It does, however, prohibit a candidate from knowingly making false or malicious statements or causing such statements to be made about an opposing candidate in an election.

An aggrieved candidate may file a complaint with the Florida Elections Commission (Commission) pursuant to s. 106.25, F.S. The offense is punishable by an administrative fine of up to $5,000 to be deposited in the General Revenue Fund.[1] The respondent has 30 days after the filing of formal allegations to choose a hearing before the Commission, otherwise a hearing is conducted by an administrative law judge appointed by the Division of Administrative Hearings (DOAH).[2] The statute provides final order authority to both the Commission and the administrative law judge in their respective proceedings but DOAH presently lacks any authority to impose a fine or other sanctions in proceedings under this section.[3] The present rules of the Commission do not expressly provide for an expedited hearing.[4] Currently, s. 120.574, F.S., provides procedures for a summary hearing before DOAH but only by the voluntary agreement of the parties.[5]

Federal Law

The "Stolen Valor Act of 2005,"[6] signed into law on December 20, 2006, makes it a crime to falsely represent having been awarded a military honor, declaration, or medal, with penalties including fines, imprisonment, or both. The length of imprisonment ranges from 6 months up to 1 year depending upon the type of medal.[7] There is currently disagreement among courts in different federal judicial circuits with regard to the constitutionality of the federal law.[8]

Effect of Proposed Changes[9]

The bill provides that it is a violation of the Florida Election Code for a candidate, in any election, to directly or indirectly falsely represent past or current service in the military.[10] A civil penalty of up to $5,000 may be assessed for each violation by the Commission or an administrative law judge for the

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[1] Section 104.271(2), F.S. This appears to be the only provision in the Florida Election Code that addresses false political speech.
[2] s. 106.25(5), F.S.
[3] *Florida Elections Commission v. Davis*, 44 So. 3d 1211 (Fla. 1st DCA 2010).
[4] Fla. Admin. Code R. 2B-1.004.
[5] s. 120.574(1)(b), F.S.
[6] Public Law 109-437.
[7] The longer imprisonment of up to 1 year is provided for false claims involving a Distinguished Service Cross, Navy Cross, Air Force Cross, Silver Star, Purple Heart, and Congressional Medal of Honor.
[8] *See U.S. v. Alvarez*, 617 F.3d 1198 (9th Cir. 2010) (holding that the Stolen Valor Act violates First Amendment free speech rights); *but see, U.S. v. Robbins*, 2011 WL 7384 (W.D. Va. 2011) (false statements of fact implicated by the federal statute are not protected by the First Amendment). *U.S. v. Alvarez* is the only appellate decision interpreting the Stolen Valor Act. While the U.S. Circuit Court of Appeals for the Ninth Circuit has a reputation in the legal community for adopting outlier positions rejected by other circuits, in *Alvarez* the Court relied upon the reasoning in *U.S. v. Stevens*, ---U.S.---, 130 S. Ct. 1577, 176 L.Ed.2d 435 (2010), to find the First Amendment to the U.S. Constitution did not permit sanctioning speech content because of its relative lack of social worth. *Alvarez* at 1206. In *Robbins*, the federal district judge expressly refused to follow the 2-1 majority decision in *Alvarez* by adopting the dissent's position that *false speech* is not entitled to First Amendment protection. This conclusion conflicts with the decision in *U.S. v. Stevens*.
[9] The changes proposed to the Florida Election Code are similar to the federal Stolen Valor Act in that they refer to false statements of fact involving military service. The federal law, however, does not relate to having served or serving in the military but to honors, declarations, or medals received related to such service.
[10] Military service in the bill refers to prior service, active duty, or reserve.

(DOAH), depending upon which authority renders the final order. Assessed civil penalties are deposited in the General Revenue Fund.

The bill provides that any person may file a complaint with the Florida Elections Commission alleging that a candidate has falsely represented his or her military service. The Commission is required to adopt rules to provide for the expedited hearing of complaints before the Commission and requires the director of DOAH to assign an administrative law judge to provide an expedited hearing on cases before DOAH.

B. SECTION DIRECTORY:

Section 1. Creates s. 104.2715, F.S., providing that it is a violation of the Florida Election Code for a candidate to directly or indirectly falsely represent his or her military service; permitting anyone to file a complaint with the Florida Elections Commission alleging a violation; requiring the adoption of rules to provide for an expedited hearing for complaints filed with the Commission; requiring the director of DOAH to assign an administrative law judge to provide an expedited hearing in certain cases; and requiring the assessment of a civil penalty.

Section 2. Provides a July 1, 2011, effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Violation penalties may provide additional, but minimal, revenues that will be deposited into the General Revenue Fund.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the

aggregate, nor reduce the percentage of state tax shared with counties or municipalities. The bill is exempt from the mandate requirements because it is amending the elections laws.

2. Other:

As found by the Florida Supreme Court in *Sult v. State,* Florida is bound by the interpretations of the United States Supreme Court concerning the extent of protection afforded to speech content by the First Amendment to the United States Constitution:

> The First Amendment to the United States Constitution and article I, section 4 of the Florida Constitution protect the rights of individuals to express themselves in a variety of ways. The constitutions protect not only speech and the written word, but also conduct intended to communicate. ... When lawmakers attempt to restrict or burden fundamental and basic rights such as these, the laws must not only be directed toward a legitimate public purpose, but they must be drawn as narrowly as possible. ... As the United States Supreme Court has noted, "[b]ecause First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity."[11]

Regulation of speech during political campaigns is viewed particularly closely under the strict scrutiny standard of constitutional review:

> The First Amendment " 'has its fullest and most urgent application' to speech uttered during a campaign for political office." ... For these reasons, political speech must prevail against laws that would suppress it, whether by design or inadvertence. Laws that burden political speech are "subject to strict scrutiny," which requires the Government to prove that the restriction "furthers a compelling interest and is narrowly tailored to achieve that interest."[12]

In *Weaver v. Bonner,*[13] the Eleventh Circuit Court of Appeals applied a consistent constitutional standard even as to prohibitions against false factual statements by a political candidate:

> A candidate's speech during an election campaign "occupies the core of the protection afforded by the First Amendment." *McIntyre v. Ohio Elections Comm'n,* 514 U.S. 334, 346, 115 S.Ct. 1511, 1518, 131 L.Ed.2d 426 (1995). The proper test to be applied to determine the constitutionality of restrictions on "core political speech" is strict scrutiny. *Id.* Under strict scrutiny analysis, the government has the burden of proving that the restriction is "(1) narrowly tailored, to serve (2) a compelling state interest." *Republican Party of Minnesota v. White,* 536 U.S. 765, 122 S.Ct. 2528, 2534, 153 L.Ed.2d 694 (2002); *see also Brown v. Hartlage,* 456 U.S. 45, 53-54, 102 S.Ct. 1523, 1529, 71 L.Ed.2d 732 (1982) ("When a State seeks to restrict directly the offer of ideas by a candidate to the voters, the First Amendment surely requires that the restriction be demonstrably supported by not only a legitimate state interest, but a compelling one, and that the restriction operate without unnecessarily circumscribing protected expression.").

B. RULE-MAKING AUTHORITY:

The bill requires the Florida Elections Commission to adopt rules to provide an expedited hearing of complaints filed with the Commission that relate to false misrepresentation of military service.

A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.[14] Rulemaking authority is delegated by the Legislature[15] through statute and authorizes an agency to "adopt, develop, establish, or otherwise create"[16] a rule. Agencies do not have discretion

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[11] 906 So. 2d 1013, 1018 (Fla. 2005) (citations omitted).
[12] *Citizens United v. Federal Elections Commission,* ---U.S.---, 130 S.Ct. 876, 175 L.Ed.2d 753 (2010) (citations omitted).
[13] 309 F. 3d 1312 (11th Cir. 2002). Applying the standard of strict scrutiny, the Circuit Court found unconstitutional a prohibition in the Georgia Code of Judicial Conduct against false statements made in a judicial election.
[14] s. 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region,* 969 So. 2d 527, 530 (Fla. 1st DCA 2007).
[15] *Southwest Florida Water Management District v. Save the Manatee Club, Inc.,* 773 So. 2d 594 (Fla. 1st DCA 2000).
[16] s. 120.52(17), F.S.

whether to engage in rulemaking.[17] To adopt a rule an agency must have a general grant of authority to implement a specific law by rulemaking.[18] The grant of rulemaking authority itself need not be detailed.[19] The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.[20]

Proceedings before DOAH are conducted pursuant to the Uniform Rules[21] adopted by the Administration Commission.[22] The bill does not provide authority for either the Commission or DOAH to make rules compelling the parties to participate in an expedited or summary hearing before DOAH.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not specify whether "military" is limited to the armed forces of the United States. The bill does not provide a definition for "expedited proceeding" and does not provide rulemaking authority for DOAH or the Administration Commission to adopt rules for expedited proceedings. The bill grants specific penalty power to the administrative law judge.[23]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[17] s. 120.54(1)(a), F.S.
[18] s. 120.52(8) & s. 120.536(1), F.S.
[19] *Save the Manatee Club, Inc.*, supra at 599.
[20] *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).
[21] Fla. Admin. Code Chapter 28-106.
[22] Composed of the Governor and Cabinet under s. 14.202, F.S., the Administration Commission is authorized to adopt uniform rules to be applied by all agencies, including rules governing agency enforcement and discipline proceedings. s. 120.54(5)(b)5, F.S.
[23] *Davis v. Florida Elections Commission*, 44 So.3d 1211 (Fla. 1st DCA 2010) (The court found that an ALJ needs express statutory authority to institute penalties for election violations originating with the Florida Elections Commission).

A bill to be entitled

An act relating to violations of the Florida Election Code; creating s. 104.2715, F.S.; providing that a candidate who, in a primary or other election, falsely represents that he or she served or is currently serving in the military, commits a violation of the Florida Election Code; permitting any person to file a complaint with the Florida Elections Commission alleging that a candidate has falsely represented his or her military service; requiring that the commission adopt rules to provide for an expedited hearing for complaints filed with the commission; requiring that the Director of the Division of Administrative Hearings assign an administrative law judge to provide an expedited hearing in certain cases; requiring the commission or administrative law judge to assess a civil penalty of up to a specified amount against a candidate who is found to have falsely misrepresented his or her military service; providing an effective date.

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

Section 1. Section 104.2715, Florida Statutes, is created to read:

104.2715 False representations of military service; penalty.—

(1) A candidate who, in a primary or other election, falsely represents, directly or indirectly, that he or she

CODING: Words stricken are deletions; words underlined are additions.

served or is currently serving in the military, whether active duty, reserve, or National Guard, commits a violation of the Florida Election Code.

(2) Any person may file a complaint with the Florida Elections Commission pursuant to s. 106.25 alleging a violation of subsection (1).

(3) The commission shall adopt rules to provide an expedited hearing of complaints filed under subsection (2), or, in cases referred to the Division of Administrative Hearings pursuant to s. 106.25(5), the director shall assign an administrative law judge to provide an expedited hearing.

(4) Notwithstanding any other law, the commission or administrative law judge shall assess a civil penalty of up to $5,000 against any candidate who is found to have violated subsection (1), which shall be deposited into the General Revenue Fund.

Section 2. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 707 Agriculture
SPONSOR(S): Community & Military Affairs Subcommittee, Crisafulli and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 858

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	14 Y, 0 N, As CS	Gibson	Hoagland
2) Rulemaking & Regulation Subcommittee		Jensen	Rubottom
3) Agriculture & Natural Resources Appropriations Subcommittee			
4) State Affairs Committee			

SUMMARY ANALYSIS

HB 707 addresses various issues relating to agriculture. The bill prohibits, with some limited exceptions, counties from imposing an assessment or fee for stormwater management on land classified as agricultural if the agricultural operation has a National Pollutant Discharge Elimination System (NPDES) permit, an environmental resource permit (ERP), a works-of-the-district permit, or implements best management practices (BMPs). The bill also prohibits counties from enforcing any regulations on land classified as agricultural if the activity is regulated by BMPs, interim measures or regulations. The bill does not limit the powers of a county to enforce applicable wetland protection ordinances, regulations or rules adopted prior to July 1, 2003. Additional exceptions are provided for areas located in the Wekiva River Protection Area and when a program is operated under a delegation agreement from a state agency or a water management district.

The bill creates the "Agricultural Land Acknowledgement Act" (act), which requires a political subdivision, prior to issuing a local land use permit, building permit, or certificate of occupancy for nonagricultural land located contiguous to sustainable agricultural land, to have the applicant sign and submit to the political subdivision a written acknowledgement of neighboring sustainable agricultural land. Additionally, a copy of the Acknowledgement of Agricultural Land must be presented to prospective buyers at or before the execution of a contract for sale. The Department of Agriculture and Consumer Services is granted rulemaking authority to implement the provisions of the act.

The bill exempts any person, rather than any "natural person" as in current law, involved in the sale of agricultural products that were grown by the person in the state, from obtaining a local business tax receipt. The bill amends the definition of "farm tractor" to clarify that a farm tractor may be operated incidentally on the roads of the state as transportation between the owner's or operator's headquarters and the farm, grove, or orchard or between one farm, grove, or orchard and another.

The bill reverses current law enacted in 2005 and returns tropical foliage to exempt status from the provisions of the License and Bond law[1]. The bill exempts farm fences from the Florida Building Code, and exempts farm fences and nonresidential farm buildings from county or municipal codes and fees, except for code provisions implementing local, state, or federal floodplain management regulations. The definition of "nonresidential farm building" is clarified to more accurately define what types of buildings are exempt from county or municipal codes and fees.

The bill allows multi-peril crop insurers to meet the statutorily required capital and surplus to do business in the state, providing agricultural producers with increased insurance options. The bill amends chapter 823, F.S., to mirror the language in chapter 403, F.S., regarding the materials used in agricultural production that may be burned in the open.

The Revenue Estimating Conference on February 24, 2011, estimated that limiting the ability of counties to charge stormwater management assessments or fees on certain agricultural properties would have a total negative fiscal impact on the five counties currently charging fees ranging from $500,000 in FY 2011-12, to $700,000 in FY 2014-15. The remainder of the bill was estimated to have an insignificant fiscal impact on state and local revenues.

The effective date of the bill is July 1, 2011.

[1] Ss. 604.15-604.34, F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background Information

Gubernatorial Veto

HB 707 contains identical language, with the exception of technical drafting changes, to House Bill 7103, which was passed unanimously by both houses of the Legislature during the 2010 Legislative Session.[2] On May 15, 2010, Governor Charlie Crist vetoed HB 7103. The Governor's veto letter expressed "concerns about the restrictions placed on local governments that are contained in this bill."[3]

ON MARCH 24, 2011, HB 7103 (2010), WAS ENACTED NOTWITHSTANDING THE VETO AND BECAME EFFECTIVE IMMEDIATELY.

Issues Addressed

County Regulations

Current Situation

In 2003, the Legislature passed CS/CS/SB 1660, which prohibited counties from adopting any ordinance, resolution, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm or farm operation on land that is classified as agricultural[4], if such activity is regulated through best management practices (BMPs) or by an existing state, regional, or federal regulatory program. Prior to the enactment of this legislation, several counties had proposed regulations on various agricultural operations in the state that were duplicative and more restrictive than those already dictated through BMPs or an existing governmental regulatory program. The bill did not explicitly prohibit the enforcement of existing measures. Some counties are imposing stormwater utility fees on agricultural lands where the farm operation has an agricultural discharge permit or implements BMPs.

Effect of the Bill

The bill prohibits counties from enforcing regulations on activities currently meeting state, regional or federal regulations on a bona fide farm operation on land classified as agricultural. The powers of a county to enforce applicable wetland protection ordinances, regulations or rules adopted prior to July 1, 2003, are not limited by the provisions of the bill. Additional exceptions are provided for areas located in the Wekiva River Protection Area and when a program is operated under a delegation agreement from a state agency and a water management district. The bill provides that a local government may not impose an assessment or fee for stormwater management on land classified as agricultural if the farm operation has a National Pollutant Discharge Elimination System (NPDES) permit, an environmental resource permit (ERP), a works-of-the-district permit or implements BMPs[5].

The bill permits counties that adopted ordinances prior to March 1, 2009, to continue to charge an assessment or fee for stormwater management on agricultural land as long as the ordinance or resolution provides credits against the assessment or fee for the water quality or flood control benefit of implementation of BMPs[6]; stormwater quality and quantity measures required as part of the NPDES permit, ERP, or works-of-the-district permit; or implements BMPs, which are demonstrated to be of equivalent or greater stormwater benefit than the BMPs implemented pursuant to Chapter 120, F.S.

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[2] *See* http://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=44447&SessionId=64 (last visited: March 18, 2011).

[3] Veto of Fla. HB 7103 (2010) (letter from Gov. Crist to Interim Sec'y of State Dawn Roberts, May 15, 2010) (on file with Sec'y of State, R.A. Gray Building, Tallahassee, Fla.).

[4] S. 193.461, F.S.

[5] The BMPs interim measures or regulations must have been adopted as rules under chapter 120, F.S. by the Department of Environmental Protection, the Department of Agriculture and Consumer Services or a water management district as part of a statewide or regional program.

[6] *Id.*

Nuisance Protection

Current Situation

Current law[7] states that if a farm operation has been operating for one year or more and was not a nuisance at the time it was established, it cannot be considered a nuisance thereafter as long as it conforms to generally accepted agricultural and management practices. Florida law further states that the farm operation does not become a nuisance as a result of a change in ownership, a change in the type of farm product being produced, a change in conditions in or around the locality of the farm, or a change brought about to comply with BMPs adopted by local, state or federal agencies.

Conditions that invalidate the nuisance protection include:

- The presence of untreated or improperly treated human waste, garbage, offal, dead animals, dangerous waste materials, or gases that are harmful to human or animal life.
- The presence of improperly built or improperly maintained septic tanks, water closets or privies.
- The keeping of diseased animals that is dangerous to human health, unless such animals are kept in accordance with current state or federal disease control programs.
- The presence of unsanitary places where animals are slaughtered, which may give rise to diseases harmful to human or animal life.

In 2007, a developer in Polk County built a housing development next to an established blueberry grower. The entrances to the development and the grower's operation were adjacent. The grower posted a "buyers beware" sign at the entrance to his farm stating that he used propane cannons to scare birds from his blueberry bushes. The developer sued the blueberry farmer stating that the sign was hindering the sales of homes in the development. The case was eventually dropped.

The Department of Agriculture & Consumer Services (department) states that it receives 8-12 complaints per year regarding the "nuisance" law and speculates there are at least 10 times as many that are never brought to the attention of the department.

Effect of the Bill

The bill creates the "Agricultural Land Acknowledgement Act", which requires a political subdivision, prior to issuing a local land use permit, building permit, or certificate of occupancy for nonagricultural land located contiguous to sustainable agricultural land, to have the applicant for the permit or certificate sign and submit to the political subdivision a written acknowledgement of neighboring sustainable agricultural land.

The bill provides specific information to be included in the acknowledgement and provides that such acknowledgement is a public record and must be maintained by the political subdivision as a permanent record. The bill also requires that a copy of the Acknowledgement of Neighboring Agricultural Land be presented to prospective purchasers of residential property contiguous to sustainable agricultural land prior to or at the time the contract for sale is signed.

The department, in cooperation with the Department of Revenue, is granted rulemaking authority to administer the provisions of this section of law.

Georgia has similar language in the Georgia Department of Community Affairs' "Model Land Use Management Code."

Occupational License Exemption

Current Situation

Florida law[8] exempts any natural person from obtaining an occupational license to sell agricultural products[9] that were grown in the state by said natural person. While the statutes provide a definition

[7] S. 823.14(4), F.S.

[8] S. 205.064, F.S.

for "person," no definition is provided for "natural person." Hence, the statute is interpreted differently in different counties in regards to the exemption.

Effect of the Bill
The bill strikes the word "natural" to exempt any "person" from obtaining an occupational license.

Farm Equipment
Current Situation
Florida law provides various exemptions from obtaining a driver's license, one of those being "...any person while driving or operating any road machine, farm tractor, or implement of husbandry temporarily operated or moved on a highway."[10] Currently, a farm tractor is defined in statute[11] as "a motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry."

When this term was codified in statute several years ago, there was no other motor vehicle able to pull wagons and other farm machinery, other than a truck. In the past several years, farmers have begun using utility-type vehicles, such as ATVs, John Deere Gators, golf carts and others, as well as tractors, in agricultural operations. While these utility vehicles are generally used in the fields and around the agricultural production areas, it is necessary at times to gain access to state roadways for a brief distance to get from one field to another or to the production area.

Effect of the Bill
The bill amends the definition to clarify that a farm tractor may be operated incidentally on the roads of the state as transportation between the owner's or operator's headquarters and the farm, grove, or orchard or between one farm, grove, or orchard and another.

Tropical Foliage
Current Situation
The Florida License and Bond Law (law) [12] was enacted in 1941 to give market protection to producers of perishable agricultural commodities. The law is intended to facilitate the marketing of Florida agricultural products by encouraging a better understanding between buyers and sellers and by providing a marketplace that is relatively free of unfair trading practices and defaults.

In 2004, the Committee on Agriculture in the Florida House of Representatives reviewed the law as part of an interim project and recommended changes to the then-current statutes. During the 2005 Legislative Session, HB 1231 implemented the recommendations suggested by the interim project. Based on one of the recommendations, the bill amended the definition of the term "agricultural products" to include tropical foliage as a non-exempt agricultural product produced in the state. Until that point, tropical foliage had been exempt from the provisions of the law. For the most part, agricultural products considered exempt from the law are generally those offered by growers or groups of growers selling their own product(s); all persons who buy for cash and pay at the time of purchase with U.S. currency; dealers operating as bonded licensees under the Federal Packers and Stockyards Act; or retail operations purchasing less than $1,000 in product per month from Florida producers.

Due to the manner by which the foliage business is conducted, the change implemented by HB 1231 has not proven beneficial to the foliage industry and the industry has requested a reenactment of the exemption.

Effect of the Bill
This bill reverses the legislation enacted in 2005 to return tropical foliage to exempted status from the provisions of the law.

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[9] Agricultural products include grove, horticultural, floricultural, tropical piscicultural, or tropical fish farm products, with the exception of intoxicating liquors, wine or beer.
[10] S. 322.04 (1)(b), F.S.
[11] S. 322.01(20), F.S.
[12] Ss. 604.15-604.34, F.S.

Nonresidential Farm Buildings

Current Situation

Nonresidential farm buildings have always maintained exempt status from building codes except for a brief period in 1998, when the statewide building code was amended and the exemption was inadvertently left out. In the recent past, some counties and municipalities have started assessing impact fees and/or requiring permits for nonresidential farm buildings, even though the buildings are never inspected and are exempt from building codes.

In October 2001, Attorney General Bob Butterworth wrote in an opinion to Nicolas Camuccio, Gilchrist Assistant County Attorney:

> ". . . [T]he plain language of sections 553.73(7)(c)[13] and 604.50, Florida Statutes, exempts all nonresidential buildings located on a farm from state and local building codes. Thus, to the extent that the State Minimum Building Codes require an individual to obtain a permit for the construction, alteration, repair, or demolition of a building or structure, no such permits are required for nonresidential buildings located on a farm. . . ."

Effect of the Bill

The bill exempts farm fences from the Florida Building Code, and exempts farm fences and nonresidential farm buildings from county or municipal codes and fees, except for code provisions implementing local, state, or federal floodplain management regulations.

The definition of "nonresidential farm building" is amended to clarify that it may be a temporary or permanent structure and is not intended to be used as a residential dwelling. The definition includes examples of types of buildings that are exempt from county or municipal codes and fees.

Crop Insurance

Current Situation

Crop insurance is purchased by agricultural producers for protection against either the loss of their crops due to natural disasters or the loss of revenue due to declines in the prices of agricultural commodities. In the United States, a subsidized multi-peril federal insurance program, administered by the Risk Management Agency, is available to most farmers. The program is authorized by the Federal Crop Insurance Act (title V of the Agricultural Adjustment Act of 1938, P.L. 75-430).

Multi-peril crop insurance covers the broad perils of drought, flood, insects, disease, etc., which may affect many insureds at the same time and present the insurer with excessive losses. To make this class of insurance, the perils are often bundled together in a single policy, called a multi-peril crop insurance (MPCI) policy. MPCI coverage is usually offered by a government insurer and premiums are usually partially subsidized by the government. The earliest MPCI program was first implemented in 1938 by the Federal Crop Insurance Corporation (FCIC), an agency of the U.S. Department of Agriculture. The FCIC authorizes reinsurers. Certain crop insurers are interested in doing business in Florida, but are currently unable to write insurance because of current statutory constructs regarding gross writing ratios.

Effect of the Bill

The bill allows insurance companies, when calculating their gross writing ratio, to not include gross written premiums for federal multi-peril crop insurance that is ceded to the Federal Crop Insurance Cooperation (FCIC) and authorized reinsurers. The bill requires liabilities for ceded reinsurance premiums payable to the FCIC and authorized reinsurers to be netted against the asset for amounts recoverable from reinsurers. Insurers who write other insurance products along with federal multi-peril crop insurance must disclose, either in the notes to the annual and quarterly financial statement or as a

[13] This cite has changed to s. 553.73(9)(c), F.S., since the opinion was written.

supplement to the financial statement, a breakout of the gross written premiums for federal multi-peril crop insurance.

Open Burning

Current Situation

There are currently two sections in statute[14] that address open burning of materials used in agricultural production. They differ only in the products listed as approved for open burning.

Effect of the Bill

The bill amends the language in chapter 823, F.S., to mirror the language in chapter 403, F.S., which is the most recent expression of the Legislature.

B. SECTION DIRECTORY:

Section 1: Amends s. 163.3162(4), F.S.; prohibits a county from enforcing certain ordinances and/or resolutions relating to land classified as agricultural under certain circumstances; and, prohibits the county from imposing a tax, assessment or fee for stormwater management in certain circumstances.

Section 2: Creates s. 163.3163, F.S.; creates the "Agricultural Land Acknowledgement Act"; provides legislative findings and intent; provides definitions; requires applicants for certain development permits to sign and submit an acknowledgement of neighboring sustainable agricultural land; provides for such acknowledgement to become a public record and permanently maintained by the political subdivision; and, allows the Department of Agriculture and Consumer Services to adopt rules to administer the provisions of this section.

Section 3: Amends s. 205.064(1), F.S.; revises exemption eligibility for a local business tax receipt.

Section 4: Amends s. 322.01(20), F.S.; revises the definition of "farm tractor."

Section 5: Amends s. 604.15(1), F.S.; revises the definition of "agricultural products."

Section 6: Amends s. 604.50, F.S.; provides an exemption for farm fences from the Florida Building Code; provides an exemption for nonresidential farm buildings and farm fences from any county or municipal code or fee; and, revises the definition of "nonresidential farm building."

Section 7: Adds subsection (7) to s. 624.4095, F.S.; requires that gross written premiums not be included when calculating the insurer's gross ratio; requires liabilities for ceded reinsurance premiums be netted against the asset for amounts recoverable from reinsurers; and, requires insurer writing other insurance products together with federal multi-peril crop insurance to disclose a breakout of the gross written premiums for multiple-peril crop insurance.

Section 8: Amends s. 823.145, F.S.; revises the agricultural materials that are allowed to be openly burned.

Section 9: Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill removes tropical foliage from the definition of agricultural products that are required to be licensed and bonded. The Revenue Estimating Conference on February 24, 2011, estimated that

[14] ss. 403.707(2)(e) and 823.145, F.S.

the removal will reduce revenue to the Department of Agriculture and Consumer Services by $18,900 annually. The fiscal impact is insignificant.

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference on February 24, 2011, reported that there are five counties that currently charge stormwater assessments or fees on agricultural properties. The conference estimated that eliminating the ability to charge stormwater assessments or fees for certain agricultural lands would have a total fiscal impact ranging from $500,000 in FY 2011-12 to $700,000 in FY 2014-15.

   The conference also estimated that exempting "persons" instead of "natural persons" from certain local business taxes would have an insignificant fiscal impact on local governments.

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides relief to agricultural producers who are being charged with assessments, fees and/or business tax receipts by counties or municipalities.

The bill also exempts dealers who sell tropical foliage from the requirement to be licensed and bonded. According to the Department of Agriculture and Consumer Affairs, this will decrease the protection provided by the agricultural bond and create a financial vulnerability for those growers who no longer have the protection of ensuring they are paid for their product.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Article VII, section 18(b) of the Florida Constitution, may apply because the bill reduces the authority that counties and municipalities have to raise revenues in the aggregate. The bill prohibits a county from imposing an assessment or fee for stormwater management on certain lands and exempts non-residential farm buildings and fences from fees. The bill also prohibits cities and counties from imposing a local business tax on persons engaged in the selling of farm, aquacultural, grove, horticultural, floricultural, tropical piscicultural, or tropical fish farm products, or products manufactured therefrom.

   Article VII, section 18(d) of the Florida Constitution, provides an exemption for laws that have an insignificant fiscal impact. The Legislature has interpreted "insignificant fiscal impact", in the context of Article VII, section 18(d), to mean an amount not greater than the average statewide population for the applicable fiscal year times ten cents, or $1.9 million. The average fiscal impact, including any

offsetting effects over the long term, is also considered.[15] The Revenue Estimating Conference estimated that this bill would have total impacts ranging from $500,000 in FY 2011-12 to $700,000 in FY 2014-2015, so it appears that the bill would fall under the insignificant fiscal impact exemption in Article VII, section 18(d).

If it is later determined that the bill has more than an insignificant fiscal impact, a two-thirds vote of the membership of each house would be necessary to have the legislation binding on counties and municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The Department of Agriculture and Consumer Services, in cooperation with the Department of Revenue, is granted rulemaking authority to implement the provisions of the "Agricultural Land Acknowledgement Act."

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 21, 2011, the Community & Military Affairs Subcommittee adopted one technical amendment to HB 707 and reported the bill favorably as a committee substitute. The amendment removed a cross reference added by bill drafting and inserted language in order to make the bill identical to that of CS/HB 7103 passed by the Legislature in 2010 and vetoed by Governor Crist.

[15] *See* Legislative Leadership Memorandum Addressing the Implementation of Constitutional Language Referring to Mandates (issued by Senate President Margolis and House Speaker Wetherell, March 1991); House Memorandum Addressing the Implementation of Constitutional Language Referring to Mandates (issued by House Speaker Webster, March 1997); 2009 Intergovernmental Impact Report, pp. 58-77 (March 2010), *available at* http://www.floridalcir.gov/UserContent/docs/File/reports/impact09.pdf (last visited March 18, 2011).

A bill to be entitled

An act relating to agriculture; amending s. 163.3162, F.S.; prohibiting a county from enforcing certain limits on the activity of a bona fide farm operation on agricultural land under certain circumstances; prohibiting a county from charging agricultural lands for stormwater management assessments and fees under certain circumstances; allowing an assessment to be collected if credits against the assessment are provided for implementation of best management practices; providing exemptions from certain restrictions on a county's powers over the activity on agricultural land; providing a definition; providing for application; creating s. 163.3163, F.S.; creating the "Agricultural Land Acknowledgement Act"; providing legislative findings and intent; providing definitions; requiring an applicant for certain development permits to sign and submit an acknowledgement of certain contiguous agricultural lands as a condition of the political subdivision issuing the permits; specifying information to be included in the acknowledgement; requiring that the acknowledgement be recorded in the official county records; authorizing the Department of Agriculture and Consumer Services to adopt rules; amending s. 205.064, F.S.; authorizing a person selling certain agricultural products who is not a natural person to qualify for an exemption from obtaining a local business tax receipt; amending s. 322.01, F.S.; revising the term "farm tractor" for purposes of driver's licenses;

amending s. 604.15, F.S.; revising the term "agricultural products" to make tropical foliage exempt from regulation under provisions relating to dealers in agricultural products; amending s. 604.50, F.S.; exempting farm fences from the Florida Building Code; revising the term "nonresidential farm building"; exempting nonresidential farm buildings and farm fences from county and municipal codes and fees; specifying that the exemptions do not apply to code provisions implementing certain floodplain regulations; amending s. 624.4095, F.S.; requiring that gross written premiums for certain crop insurance not be included when calculating the insurer's gross writing ratio; requiring that liabilities for ceded reinsurance premiums be netted against the asset for amounts recoverable from reinsurers; requiring that insurers who write other insurance products disclose a breakout of the gross written premiums for crop insurance; amending s. 823.145, F.S.; expanding the materials used in agricultural operations that may be disposed of by open burning; providing certain limitations on open burning; providing an effective date.

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

Section 1. Subsection (4) of section 163.3162, Florida Statutes, is amended to read:

163.3162 Agricultural Lands and Practices Act.—

(4) DUPLICATION OF REGULATION.—Except as otherwise

provided in this section and s. 487.051(2), and notwithstanding any other law, including any provision of chapter 125 or this chapter:~~,~~

(a) A county may not exercise any of its powers to adopt or enforce any ordinance, resolution, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm operation on land classified as agricultural land pursuant to s. 193.461, if such activity is regulated through implemented best management practices, interim measures, or regulations adopted as rules under chapter 120 ~~developed~~ by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or a water management district ~~and adopted under chapter 120~~ as part of a statewide or regional program; or if such activity is expressly regulated by the United States Department of Agriculture, the United States Army Corps of Engineers, or the United States Environmental Protection Agency.

(b) A county may not charge an assessment or fee for stormwater management on a bona fide farm operation on land classified as agricultural land pursuant to s. 193.461, if the farm operation has a National Pollutant Discharge Elimination System permit, environmental resource permit, or works-of-the-district permit or implements best management practices adopted as rules under chapter 120 by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or a water management district as part of a statewide or regional program.

(c) For each county that, before March 1, 2009, adopted a

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

stormwater utility ordinance or resolution, adopted an ordinance or resolution establishing a municipal services benefit unit, or adopted a resolution stating the county's intent to use the uniform method of collection pursuant to s. 197.3632 for such stormwater ordinances, the county may continue to charge an assessment or fee for stormwater management on a bona fide farm operation on land classified as agricultural pursuant to s. 193.461 if the ordinance or resolution provides credits against the assessment or fee on a bona fide farm operation for the water quality or flood control benefit of:

1. The implementation of best management practices adopted as rules under chapter 120 by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or a water management district as part of a statewide or regional program;

2. The stormwater quality and quantity measures required as part of a National Pollutant Discharge Elimination System permit, environmental resource permit, or works-of-the-district permit; or

3. The implementation of best management practices or alternative measures that the landowner demonstrates to the county to be of equivalent or greater stormwater benefit than those provided by implementation of best management practices adopted as rules under chapter 120 by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or a water management district as part of a statewide or regional program, or stormwater quality and quantity measures required as part of a National Pollutant

Discharge Elimination System permit, environmental resource permit, or works-of-the-district permit.

(d) ~~(a)~~ When an activity of a farm operation takes place within a wellfield protection area as defined in any wellfield protection ordinance adopted by a county, and the implemented best management practice, regulation, or interim measure does not specifically address wellfield protection, a county may regulate that activity pursuant to such ordinance. This subsection does not limit the powers and duties provided for in s. 373.4592 or limit the powers and duties of any county to address an emergency as provided for in chapter 252.

(e) ~~(b)~~ This subsection may not be construed to permit an existing farm operation to change to a more excessive farm operation with regard to traffic, noise, odor, dust, or fumes where the existing farm operation is adjacent to an established homestead or business on March 15, 1982.

(f) ~~(c)~~ This subsection does not limit the powers of a predominantly urbanized county with a population greater than 1,500,000 and more than 25 municipalities, not operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by s. 6(e), Art. VIII of the Constitution of 1968, which has a delegated pollution control program under s. 403.182 and includes drainage basins that are part of the Everglades Stormwater Program, to enact ordinances, regulations, or other measures to comply with the provisions of s. 373.4592, or which are necessary to carrying out a county's duties pursuant to the terms and conditions of any environmental program delegated to the county

by agreement with a state agency.

(g) ~~(d)~~ For purposes of this subsection, a county ordinance that regulates the transportation or land application of domestic wastewater residuals or other forms of sewage sludge shall not be deemed to be duplication of regulation.

(h) This subsection does not limit a county's powers to:

1. Enforce wetlands, springs protection, or stormwater ordinances, regulations, or rules adopted before July 1, 2003.

2. Enforce wetlands, springs protection, or stormwater ordinances, regulations, or rules pertaining to the Wekiva River Protection Area.

3. Enforce ordinances, regulations, or rules as directed by law or implemented consistent with the requirements of a program operated under a delegation agreement from a state agency or water management district.

As used in this paragraph, the term "wetlands" has the same meaning as provided in s. 373.019.

(i) The provisions of this subsection which limit a county's authority to adopt or enforce any ordinance, regulation, rule, or policy, or to charge any assessment or fee for stormwater management, apply only to a bona fide farm operation as described in this subsection.

(j) This subsection does not apply to a municipal services benefit unit established before March 1, 2009, pursuant to s. 125.01(1)(q), predominately for flood control or water supply benefits.

Section 2. Section 163.3163, Florida Statutes, is created

to read:

163.3163 Applications for development permits; disclosure and acknowledgement of contiguous sustainable agricultural land.—

(1) This section may be cited as the "Agricultural Land Acknowledgement Act."

(2) The Legislature finds that nonagricultural land that neighbors agricultural land may adversely affect agricultural production and farm operations on the agricultural land and may lead to the agricultural land's conversion to urban, suburban, or other nonagricultural uses. The Legislature intends to reduce the occurrence of conflicts between agricultural and nonagricultural land uses and encourage sustainable agricultural land use. The purpose of this section is to ensure that generally accepted agricultural practices will not be subject to interference by residential use of land contiguous to sustainable agricultural land.

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

(a) "Contiguous" means touching, bordering, or adjoining along a boundary. For purposes of this section, properties that would be contiguous if not separated by a roadway, railroad, or other public easement are considered contiguous.

(b) "Farm operation" has the same meaning as defined in s. 823.14.

(c) "Sustainable agricultural land" means land classified as agricultural land pursuant to s. 193.461 which is used for a farm operation that uses current technology, based on science or research and demonstrated measurable increases in productivity,

to meet future food, feed, fiber, and energy needs, while considering the environmental impacts and the social and economic benefits to the rural communities.

(4)(a) Before a political subdivision issues a local land use permit, building permit, or certificate of occupancy for nonagricultural land contiguous to sustainable agricultural land, the political subdivision shall require that, as a condition of issuing the permit or certificate, the applicant for the permit or certificate sign and submit to the political subdivision, in a format that is recordable in the official records of the county in which the political subdivision is located, a written acknowledgement of contiguous sustainable agricultural land in the following form:

ACKNOWLEDGEMENT OF CONTIGUOUS SUSTAINABLE AGRICULTURAL LAND

I, ...(name of applicant)..., understand that my property located at ...(address of nonagricultural land)..., as further described in the attached legal description, is contiguous to sustainable agricultural land located at ...(address of agricultural land)..., as further described in the attached legal description.

I acknowledge and understand that the farm operation on the contiguous sustainable agricultural land identified herein will be conducted according to generally accepted agricultural practices as provided in the Florida Right to Farm Act, s. 823.14, Florida Statutes.

Signature: ...(signature of applicant)....

Date: ...(date)....

(b) An acknowledgement submitted to a political subdivision under paragraph (a) shall be recorded in the official records of the county in which the political subdivision is located.

(c) The Department of Agriculture and Consumer Services, in cooperation with the Department of Revenue, may adopt rules to administer this section.

Section 3. Subsection (1) of section 205.064, Florida Statutes, is amended to read:

205.064 Farm, aquacultural, grove, horticultural, floricultural, tropical piscicultural, and tropical fish farm products; certain exemptions.—

(1) A local business tax receipt is not required of any ~~natural~~ person for the privilege of engaging in the selling of farm, aquacultural, grove, horticultural, floricultural, tropical piscicultural, or tropical fish farm products, or products manufactured therefrom, except intoxicating liquors, wine, or beer, when such products were grown or produced by such ~~natural~~ person in the state.

Section 4. Subsection (20) of section 322.01, Florida Statutes, is amended to read:

322.01 Definitions.—As used in this chapter:

(20) "Farm tractor" means a motor vehicle that is:

(a) Operated principally on a farm, grove, or orchard in agricultural or horticultural pursuits and that is operated on the roads of this state only incidentally for transportation

between the owner's or operator's headquarters and the farm, grove, or orchard or between one farm, grove, or orchard and another; or

(b) Designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

Section 5. Subsection (1) of section 604.15, Florida Statutes, is amended to read:

604.15 Dealers in agricultural products; definitions.—For the purpose of ss. 604.15-604.34, the following words and terms, when used, shall be construed to mean:

(1) "Agricultural products" means the natural products of the farm, nursery, grove, orchard, vineyard, garden, and apiary (raw or manufactured); sod; ~~tropical foliage;~~ horticulture; hay; livestock; milk and milk products; poultry and poultry products; the fruit of the saw palmetto (meaning the fruit of the *Serenoa repens*); limes (meaning the fruit *Citrus aurantifolia*, variety Persian, Tahiti, Bearss, or Florida Key limes); and any other nonexempt agricultural products produced in the state, except tobacco, sugarcane, tropical foliage, timber and timber byproducts, forest products as defined in s. 591.17, and citrus other than limes.

Section 6. Section 604.50, Florida Statutes, is amended to read:

604.50 Nonresidential farm buildings and farm fences.—

(1) Notwithstanding any other law to the contrary, any nonresidential farm building or farm fence is exempt from the Florida Building Code and any county or municipal ~~building~~ code

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

or fee, except for code provisions implementing local, state, or federal floodplain management regulations.

(2) As used in ~~For purposes of~~ this section, the term:

(a) "Nonresidential farm building" means any temporary or permanent building or support structure that is classified as a nonresidential farm building on a farm under s. 553.73(9)(c) or that is used primarily for agricultural purposes, ~~is located on a farm that is not used as a residential dwelling, and~~ is located on land that is an integral part of a farm operation or is classified as agricultural land under s. 193.461, and is not intended to be used as a residential dwelling. The term may include, but is not limited to, a barn, greenhouse, shade house, farm office, storage building, or poultry house.

(b) ~~The term~~ "Farm" has the same meaning ~~is~~ as provided ~~defined~~ in s. 823.14.

Section 7. Subsection (7) is added to section 624.4095, Florida Statutes, to read:

624.4095 Premiums written; restrictions.—

(7) For purposes of ss. 624.407 and 624.408 and this section, with regard to capital and surplus required, gross written premiums for federal multiple-peril crop insurance that is ceded to the Federal Crop Insurance Corporation and authorized reinsurers shall not be included when calculating the insurer's gross writing ratio. The liabilities for ceded reinsurance premiums payable for federal multiple-peril crop insurance ceded to the Federal Crop Insurance Corporation and authorized reinsurers shall be netted against the asset for amounts recoverable from reinsurers. Each insurer that writes

other insurance products together with federal multiple-peril crop insurance shall disclose in the notes to the annual and quarterly financial statement, or file a supplement to the financial statement that discloses, a breakout of the gross written premiums for federal multiple-peril crop insurance.

Section 8. Section 823.145, Florida Statutes, is amended to read:

823.145 Disposal by open burning of certain materials ~~mulch plastic~~ used in agricultural operations.—Polyethylene agricultural ~~mulch~~ plastic; damaged, nonsalvageable, untreated wood pallets; and packing material that cannot be feasibly recycled, which are used in connection with agricultural operations related to the growing, harvesting, or maintenance of crops, may be disposed of by open burning provided that no public nuisance or any condition adversely affecting the environment or the public health is created thereby and that state or federal national ambient air quality standards are not violated.

Section 9. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 823 Loan Processing
SPONSOR(S): Insurance & Banking Subcommittee, Workman
TIED BILLS: **IDEN./SIM. BILLS:** SB 1316

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Barnum	Cooper
2) Rulemaking & Regulation Subcommittee		Miller	Rubottom
3) Government Operations Appropriations Subcommittee			
4) Economic Affairs Committee			

SUMMARY ANALYSIS

The Housing and Economic Recovery Act of 2008 was enacted on July 30, 2008. Title V of this act is titled the "Secure and Fair Enforcement for Mortgage Licensing Act of 2008" or "S.A.F.E.". The intent is to provide greater accountability and regulation of loan originators. In 2009, the state became compliant with S.A.F.E.

The Office of Financial Regulation is responsible for loan originator licensure and annual renewal. The process includes confirming completion of educational requirements, conducting criminal history background checks, and reviewing credit histories.

Normally, loan originators are prohibited from working for more than one mortgage broker or mortgage lender, whether as an employee or as an independent contractor. Current law provides an exception for "loan processors," who are individuals licensed as loan originators but only performing clerical or support duties. In that role, they may contract with or be employed by multiple companies. S.A.F.E. requires licensure of contract loan processors as loan originators.

The bill distinguishes between in-house loan processors and contract loan processors, and creates a new type of license, unique to in-house loan processors.

The bill specifies that those applying for licensure as an in-house loan processor must comply with some, but not all, of the requirements which must be met for licensure as a loan originator. Applicants must submit fingerprints and undergo a state and federal criminal history background check. However, there is no pre-licensure education requirement or requirement for release of a credit report or a credit history.

The bill requires that applicants for initial licensure or renewal must submit a nonrefundable fee of $100 or $75 respectively, while similar fees for loan originators are $195 and $150. In-house loan processors are not subject to the $20 nonrefundable fee required of loan originators for deposit into the Mortgage Guaranty Trust Fund.

The bill requires direction and supervision of an in-house loan processor by a state-licensed loan originator.

Individuals currently licensed as loan originators who wish to be licensed as in-house loan processors, will be subject to fewer regulatory requirements and lower fees.

While retaining the requirement that a good faith estimate be provided to an individual applying for a mortgage loan, as required by S.A.F.E., the bill removes the requirement for the borrower to sign and date the good faith estimate.

The bill codifies a requirement of S.A.F.E. that a mortgage lender submit reports of mortgage activity and financial information to the Nationwide Mortgage Licensing System and Registry.

The bill should have a positive fiscal impact on the private sector. The fiscal impact on state government is indeterminate.

The bill provides for an effective date of January 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background:

The Housing and Economic Recovery Act of 2008[1] was enacted on July 30, 2008. Title V of this act is titled the "Secure and Fair Enforcement for Mortgage Licensing Act of 2008" or "S.A.F.E.". The intent of S.A.F.E. is to provide greater accountability and regulation of loan originators, defined to include mortgage brokers and lenders, and enhance consumer protections by:

- Providing uniform license applications and reporting requirements for state-licensed loan originators.
- Providing a comprehensive licensing and supervisory database.
- Aggregating and improving the flow of information to and between regulators.
- Providing increased accountability and tracking of loan originators.
- Streamlining the licensing process and reducing the regulatory burden.
- Enhancing consumer protections and supporting anti-fraud measures.
- Providing consumers with easily accessible information, offered at no charge, regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators.
- Establishing a means by which residential mortgage loan originators would, to the greatest extent possible, be required to act in the best interests of the consumer.
- Facilitating responsible behavior in the subprime mortgage market place and providing comprehensive training and examination requirements related to subprime mortgage lending.
- Facilitating the collection and disbursement of consumer complaints on behalf of state and federal mortgage regulators.[2]

S.A.F.E. establishes regulatory requirements for individuals, rather than businesses, licensed or registered as mortgage brokers and lenders, collectively known as loan originators. It defines the term, "loan originator," to mean an individual who takes loan applications and offers or negotiates terms of a loan for compensation.

S.A.F.E. requires that states participate in a national licensing registry, the Registry, which has been developed by the Conference of State Bank Supervisors and American Association of Residential Mortgage Regulators. It contains employment history, as well as disciplinary and enforcement actions against loan originators, and provides for free consumer access to this information.

S.A.F.E requires loan originators, which include mortgage brokers and lenders, to meet minimum net worth, surety bond, or applicable guaranty fund requirements to establish financial responsibility for licensees and provide some level of compensation for consumers defrauded by mortgage brokers and mortgage lenders.

In 2009, the Legislature enacted and the Governor approved legislation bringing the state into compliance with the S.A.F.E. Mortgage Licensing Act of 2008.[3] The law requires licensure of individual loan originators, plus mortgage broker businesses and mortgage lender businesses. Loan originators employed by or contracting with a mortgage lender are subject to licensure.

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[1] H.R. 3221, Public Law 110-289

[2] H.R. 3221, Public Law 110-289, Title V, sec. 1502

[3] Chapter 2009-241, Laws of Florida

Licensure as a loan originator[4] includes the following requirements:

- Twenty (20) hours of pre-licensure education through Registry authorized providers and satisfactory completion of a test authorized by the Registry. The course content is specified by the Registry.
- Eight (8) hours of prescribed Continuing Education Units every year through Registry authorized providers.
- Submission of fingerprints to the Office of Financial Regulation (OFR) and the Registry. The cost associated with fingerprinting is the responsibility of the individual.
- An independent credit report to be reviewed by the Registry and OFR. The cost associated with the credit report is the responsibility of the individual.
- A state and federal criminal history background check.
- A demonstration of character, general fitness, and financial responsibility such as to command the confidence of the community and to warrant a determination that the individual will operate honestly, fairly, and efficiently.

When applying for licensure as a loan originator, an individual must submit a nonrefundable application fee of $195. At the time of annual renewal, a nonrefundable fee of $150 must be submitted. There is an additional $30 fee for initial set-up in the Registry, plus a $30 annual processing fee at the time of renewal. In addition, at the time of initial application and renewal, the individual must submit a $20 nonrefundable fee to be deposited into the Mortgage Guaranty Trust Fund.[5] That fund was established to compensate persons, in specific circumstances, who have suffered monetary damages because of a violation of ch. 494, F.S., by a licensed individual or business.

Normally, loan originators are prohibited from working for more than one mortgage broker or mortgage lender, whether as an employee or as an independent contractor. Current law provides an exception for "loan processors," who are individuals licensed as loan originators but only performing clerical or support duties. In that role, they may contract with or be employed by multiple companies.

Current law does not differentiate between in-house loan processors and contract loan processors.[6] A loan processor needs to be licensed as a loan originator and, in addition, have a "declaration of intent" filed with the OFR, if (s)he wishes to engage solely in loan processing and work for multiple employers. If a loan processor wishes to return to standard loan origination activities, the individual can withdraw the declaration of intent.[7]

When executing a written mortgage broker agreement, current law requires that the mortgage broker disclose, in writing, to any applicant for a mortgage loan, a good faith estimate of the total amount of each of the fees the borrower may reasonably expect to pay if the loan is closed. These include fees earned by the mortgage broker, lender fees, third-party fees, and official fees, together with the terms and conditions for obtaining a refund of such fees, if any. Except for all fees to be received by the mortgage broker, they may be disclosed in generic terms. The good faith estimate must be signed and dated by the borrower.[8]

The Department of Housing and Urban Development requires that loan originators provide borrowers with a standardized good faith estimate using a prescribed form.[9] The form does not contain a signature block and cannot be altered or modified to accommodate a signature block with date.[10]

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[4] s. 494.00312, F.S.

[5] s. 494.00172, F.S.

[6] An in-house loan processor is an employee of a mortgage broker or mortgage lender, while a contract loan processor provides services as an independent contractor.

[7] s. 494.00331, F.S.

[8] s. 494.0038(3)(c), F.S.

[9] http://hud.gov/offices/hsg/ramh/res/respa_hm.cfm (Last visited on March 10, 2011)

[10] 24 CFR 3500 App C (Instructions for Completing Good Faith Estimate (GFE) Form

Effect of the bill:

The bill creates a new type of license, unique to in-house loan processors. In so doing, it clearly defines "loan processing" as:

- Receipt, collection, distribution, and analysis of information common for the processing of a mortgage loan.
- Communicating with a consumer to obtain the information necessary for the processing of a mortgage loan.

Equally important, the bill makes clear that loan processing does not include offering or negotiating rates or terms, or providing counseling to consumers regarding residential mortgage loan rates or terms.

The bill, through definitions, distinguishes between in-house loan processors and contract loan processors. Making this distinction is essential because S.A.F.E. requires licensing of contract loan processors as loan originators.[11]

The bill specifies that those applying for licensure as an in-house loan processor must comply with some, but not all, of the requirements which must be met for licensure as a loan originator. In addition to reduced requirements, the fees are also reduced. Like a loan originator applicant, an individual must submit fingerprints and undergo a state and federal criminal history background check. Costs associated with fingerprint processing and retention are borne by the applicant. Consistent with the loan originator requirements, in-house loan processor licensure or renewal may be denied if the person is the subject of a pending felony criminal prosecution or a prosecution or an administrative enforcement action, in any jurisdiction, which involves fraud, dishonesty, breach of trust, money laundering, or any other act of moral turpitude. An individual who has had a loan originator or in-house loan processor license, or its equivalent, revoked in any jurisdiction, cannot be licensed as an in-house loan processor.

Unlike the loan originator, the in-house loan processor applicant has no pre-licensure education requirement, nor must the individual undergo educational testing as part of the licensure process. In like manner, there is no requirement for release of a credit report or a credit history to be reviewed by the OFR, nor is continuing education required for the annual license renewal.

While applicants for initial licensure or renewal as an in-house loan processor must submit a nonrefundable application fee of $100 or $75 respectively, similar fees for loan originators are $195 and $150. In-house loan processors are not subject to the $20 nonrefundable fee required of loan originators for deposit into the Mortgage Guaranty Trust Fund.

While performing clerical or support duties as an employee of a mortgage broker or mortgage lender, the bill requires direction and supervision of an in-house loan processor by a state-licensed loan originator. That loan originator is subject to disciplinary actions for work-related activities of the in-house loan processor (s)he is supervising.

The bill amends s. 494.0011(2), F.S., to extend the rulemaking authority of the Financial Services Commission to the licensing and regulation of in-house loan processors. Revisions to s. 494.0018 and s. 494.0025, F.S., subject unlicensed in-house loan processors to administrative fines and penalties but not to criminal sanctions.

Under the provisions of the bill, individuals currently licensed as loan originators, but performing as in-house loan processors, will be subject to fewer requirements and lower fees should they desire to become licensed as in-house loan processors at their next annual license renewal. The bill provides for less regulation and lower costs for an individual seeking initial licensure in order to be qualified to perform loan processing as an employee of a mortgage broker or mortgage lender.

[11] H.R. 3221, Public Law 110-289, Title V, sec. 1504

While retaining the requirement that a good faith estimate be provided to an individual applying for a mortgage loan, as required by S.A.F.E., the bill removes the requirement for the borrower to sign and date the good faith estimate.

The bill codifies a requirement of S.A.F.E. that a mortgage lender submit "reports of condition"[12] to the Nationwide Mortgage Licensing System and Registry.[13]

The bill provides for an effective date of July 1, 2011.

B. SECTION DIRECTORY:

Section 1. Amends s. 494.001, F.S., by creating and revising definitions.

Section 2. Amends s. 494.0011, F.S., by specifying the rulemaking powers authorized to the Financial Services Commission extend to in-house loan processors.

Section 3. Amends s. 494.0018, F.S., by revising cross-references so that acting as an in-house loan processor without a current license is not punishable as a criminal offense.

Section 4. Amends s. 494.0025, F.S., by revising prohibited activities to include in-house loan processors.

Section 5. Amends s. 494.00255, F.S., by including in-house loan processors under those subject to administrative penalties and fines for license violations.

Section 6. Amends s. 494.00312, F.S., by revising the circumstances under which a loan originator license may not be issued.

Section 7. Creates s. 494.00314, F.S., providing application and processing requirements for an in-house loan processor license.

Section 8. Creates s. 494.00315, F.S., providing application and processing requirements for an in-house loan processor license renewal.

Section 9. Amends s. 494.00331, F.S., by revising provisions relating to employment as a loan processor to include distinctions between employment as a contract loan processor and as an in-house loan processor.

Section 10. Amends s. 494.0035, F.S., by clarifying language concerning the operation of a mortgage broker.

Section 11. Amends s. 494.0038, F.S., by revising provisions relating to a good faith estimate.

Section 12. Amends s. 494.00421, F.S., by revising an agency reference.

Section 13. Amends s. 494.00611, F.S., by revising the circumstances under which a mortgage lender license may not be issued.

Section 14. Amends s. 494.00612, F.S., by clarifying a mortgage lender license renewal requirement.

Section 15. Amends s. 494.0067, F.S., by requiring each mortgage lender to submit reports of condition.

Section 16. Provides an effective date of January 1, 2012.

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[12] Reports of condition contain mortgage activity and financial information.

[13] H.R. 3221, Public Law 110-289, Title V, sec. 1505

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Indeterminate. See FISCAL COMMENTS.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

An individual currently licensed as loan originator, but performing as an in-house loan processor, will pay $95 less in fees should (s)he desire to become licensed as an in-house loan processor at the time of license renewal. In addition, annual cost avoidance related to continuing education equates to approximately $100. For an individual joining the industry for the first time as an in-house loan processor, the cost would be approximately $540 less than under current law. For both individuals there would be a savings of approximately $195 at the time of annual license renewal.[14]

D. FISCAL COMMENTS:

The Office of Financial Regulation reports that between October 1, 2010 and March 2, 2011, it received 15,549 applications for licensure as a loan originator, including 275 who are known to be contract loan processors and therefore not affected by the bill.[15] Of the remaining 15,274 individuals, it cannot be determined how many are performing as in-house loan processors, nor how many would desire to change to the new category of licensee with lower fees. The number of new-to-the-industry applicants which could result from the lower costs and fewer licensure requirements, with associated application fees and processing workload, is unknown.

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.

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[14] Savings are a result of lower application fees, no education and/or testing requirements, and no annual requirement for the $20 payment into the Mortgage Guarantee Trust Fund. Pre-licensure courses plus testing average $460, and the cost for 8 hours of continuing education courses averages $102.

[15] OFR e-mail dated March 9, 2011 on file with the Insurance & Banking Subcommittee.

B. RULE-MAKING AUTHORITY:

A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.[16] Rulemaking authority is delegated by the Legislature[17] through statute and authorizes an agency to "adopt, develop, establish, or otherwise create"[18] a rule. Agencies do not have discretion whether to engage in rulemaking.[19] To adopt a rule an agency must have a general grant of authority to implement a specific law by rulemaking.[20] The grant of rulemaking authority itself need not be detailed.[21] The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.[22]

The bill incorporates in-house loan processor licensing and regulation into the general rulemaking authority of the Financial Services Commission under s. 494.0011(2), F.S. The present statute provides significant and specific guidance to the Commission for developing rules to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[16] s. 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region,* 969 So. 2d 527, 530 (Fla. 1st DCA 2007).
[17] *Southwest Florida Water Management District v. Save the Manatee Club, Inc.,* 773 So. 2d 594 (Fla. 1st DCA 2000).
[18] s. 120.52(17), F.S.
[19] s. 120.54(1)(a), F.S.
[20] s. 120.52(8) & s. 120.536(1), F.S.
[21] *Save the Manatee Club, Inc.,* supra at 599.
[22] *Sloban v. Florida Board of Pharmacy,*982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.,* 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

A bill to be entitled

An act relating to loan processing; amending s. 494.001, F.S.; creating and revising definitions; deleting a redundant definition; amending s. 494.0011, F.S.; specifying rulemaking powers of the Financial Services Commission; amending s. 494.0018, F.S.; revising cross-references; amending s. 494.0025, F.S.; prohibiting acting as an in-house loan processor without a specified license; amending s. 494.00255, F.S.; including licensed in-house loan processors in disciplinary provisions; amending s. 494.00312, F.S.; providing that a loan originator license may not be issued to a person who has had an in-house loan processor license or its equivalent revoked in any jurisdiction; creating s. 494.00314, F.S.; providing for licensing of in-house loan processors; providing application requirements; specifying when an application is considered received; providing grounds for denial of licensure; prohibiting issuance of licenses to applicants who have had certain licenses revoked in other jurisdictions; providing for annulment of licenses in certain circumstances; requiring annual renewal of licenses; prohibiting an in-house loan processor from acting as a loan originator without a loan originator license; authorizing a licensed loan originator to act as an in-house loan processor without an in-house loan processor license; creating s. 494.00315, F.S.; providing for license renewals; amending s. 494.00331, F.S.; providing that specified provisions do not apply to a

licensed contract loan processor who has on file with the office a declaration of intent to act solely as a contract loan processor; deleting a definition; providing restrictions on employment of persons licensed as in-house loan processors; amending s. 494.0035, F.S.; clarifying provisions concerning operation of mortgage brokers; amending s. 494.0038, F.S.; revising provisions relating to disclosure of settlement charges and loan terms; amending s. 494.00421, F.S.; revising an agency reference in the mortgage broker agreement; providing that a borrower may contact the Office of Financial Regulation rather than the Department of Financial Services regarding any complaints against a loan originator; amending s. 494.00611, F.S.; providing that a mortgage lender license may not be issued to an applicant if any of the applicant's control persons has ever had an in-house loan processor license or its equivalent revoked in any jurisdiction; amending s. 494.00612, F.S.; requiring that in order to renew a mortgage lender license a mortgage lender must authorize the Nationwide Mortgage Licensing System and Registry to obtain an independent credit report on each of the mortgage lender's control persons; amending s. 494.0067, F.S.; requiring each mortgage lender to submit certain reports to the registry as may be required; providing an effective date.

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

Section 1. Subsections (5) through (9), (10) through (14), (15) through (24), and (26) through (34) of section 494.001, Florida Statutes, are renumbered as subsections (6) through (10), (12) through (16), (18) through (27), and (28) through (36), respectively, new subsections (5), (11), and (17) are added to that section, and present subsections (14), (25), and (26) of that section are amended, to read:

494.001 Definitions.—As used in ss. 494.001-494.0077, the term:

(5) "Contract loan processor" means an individual who is licensed under part II of this chapter as a loan originator, who is an independent contractor for a mortgage broker or mortgage lender, and who engages only in loan processing.

(11) "In-house loan processor" means an individual who is an employee of a mortgage broker or a mortgage lender who engages only in loan processing.

(16) ~~(14)~~ "Loan originator" means an individual who, directly or indirectly, solicits or offers to solicit a mortgage loan, accepts or offers to accept an application for a mortgage loan, negotiates or offers to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender, ~~processes a mortgage loan application,~~ or negotiates or offers to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain. The term includes an individual who is required to be licensed as a loan originator under ~~the activities of a loan originator as that term is defined in~~ the S.A.F.E. Mortgage Licensing Act of 2008~~, and an individual acting as a loan originator pursuant to that~~

~~definition is acting as a loan originator for purposes of this definition~~. The term does not include an employee of a mortgage broker or mortgage lender whose duties are limited to ~~who performs only administrative or clerical tasks, including quoting available interest rates,~~ physically handling a completed application form~~,~~ or transmitting a completed application form to a lender on behalf of a prospective borrower.

(17) "Loan processing" means:

(a) Receiving, collecting, distributing, and analyzing information common for the processing of a mortgage loan; or

(b) Communicating with a consumer to obtain information necessary for the processing of a mortgage loan, if such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

~~(25) "Person" has the same meaning as in s. 1.01.~~

(28)~~(26)~~ "Principal loan originator" means the licensed loan originator in charge of, and responsible for, the operation of a mortgage lender or mortgage broker, including all of the activities of the mortgage lender's or mortgage broker's loan originators, in-house loan processors, and branch managers, whether employees or independent contractors.

Section 2. Subsection (2) of section 494.0011, Florida Statutes, is amended to read:

494.0011 Powers and duties of the commission and office.—

(2) ~~To administer ss. 494.001-494.0077,~~ The commission may adopt rules to administer parts I, II, and III of this chapter, including rules:

(a) Requiring electronic submission of any forms, documents, or fees required by this act.

(b) Relating to compliance with the S.A.F.E. Mortgage Licensing Act of 2008, including rules to:

1. Require in-house loan processors, loan originators, mortgage brokers, mortgage lenders, and branch offices to register through the registry.

2. Require the use of uniform forms that have been approved by the registry, and any subsequent amendments to such forms if the forms are substantially in compliance with the provisions of this chapter. Uniform forms that the commission may adopt include, but are not limited to:

a. Uniform Mortgage Lender/Mortgage Broker Form, MU1.

b. Uniform Mortgage Biographical Statement & Consent Form, MU2.

c. Uniform Mortgage Branch Office Form, MU3.

d. Uniform Individual Mortgage License/Registration & Consent Form, MU4.

3. Require the filing of forms, documents, and fees in accordance with the requirements of the registry.

4. Prescribe requirements for amending or surrendering a license or other activities as the commission deems necessary for the office's participation in the registry.

5. Prescribe procedures that allow a licensee to challenge information contained in the registry.

6. Prescribe procedures for reporting violations of this chapter and disciplinary actions on licensees to the registry.

(c) Establishing time periods during which an in-house loan processor, a loan originator, a mortgage broker, or a mortgage lender license applicant under part II or part III is barred from licensure due to prior criminal convictions of, or guilty or nolo contendere pleas by, any of the applicant's control persons, regardless of adjudication.

1. The rules must provide:

a. Permanent bars for felonies involving fraud, dishonesty, breach of trust, or money laundering;

b. A 15-year disqualifying period for felonies involving moral turpitude;

c. A 7-year disqualifying period for all other felonies; and

d. A 5-year disqualifying period for misdemeanors involving fraud, dishonesty, or any other act of moral turpitude.

2. The rules may provide for an additional waiting period due to dates of imprisonment or community supervision, the commitment of multiple crimes, and other factors reasonably related to the applicant's criminal history.

3. The rules may provide for mitigating factors for crimes identified in sub-subparagraph 1.b. However, the mitigation may not result in a period of disqualification less than 7 years. The rule may not mitigate the disqualifying periods in sub-subparagraphs 1.a., 1.c., and 1.d.

4. An applicant is not eligible for licensure until the expiration of the disqualifying period set by rule.

5. Section 112.011 is not applicable to eligibility for licensure under this part.

Section 3. Subsection (1) of section 494.0018, Florida Statutes, is amended to read:

494.0018 Penalties.—

(1) Whoever knowingly violates any provision of s. 494.00255(1)(a), (b), or (c) or s. 494.0025(1), (3)~~(2)~~, (4)~~(3)~~, (5)~~(4)~~, or (6)~~(5)~~, except as provided in subsection (2) of this section, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Each such violation constitutes a separate offense.

Section 4. Subsections (2) through (10) of section 494.0025, Florida Statutes, are renumbered as subsections (3) through (11), respectively, and a new subsection (2) is added to that section to read:

494.0025 Prohibited practices.—It is unlawful for any person:

(2) To act as an in-house loan processor in this state without a current, active in-house loan processor license issued by the office pursuant to part II of this chapter.

Section 5. Paragraphs (n) and (p) of subsection (1), paragraph (f) of subsection (2), and subsections (3), (4), (5), (6), and (8) of section 494.00255, Florida Statutes, are amended, and paragraph (m) of subsection (1) is reenacted, to read:

494.00255 Administrative penalties and fines; license violations.—

(1) Each of the following acts constitutes a ground for which the disciplinary actions specified in subsection (2) may be taken against a person licensed or required to be licensed under part II or part III of this chapter:

(m) In any mortgage transaction, violating any provision of the federal Real Estate Settlement Procedures Act, as amended, 12 U.S.C. ss. 2601 et seq.; the federal Truth in Lending Act, as amended, 15 U.S.C. ss. 1601 et seq.; or any regulations adopted under such acts.

(n) Having a loan originator, an in-house loan processor, a mortgage broker, or a mortgage lender license, or the equivalent of such license, revoked in any jurisdiction.

(p) Acting as a loan originator, an in-house loan processor, a mortgage broker, or a mortgage lender without a current license issued under part II or part III of this chapter.

(2) If the office finds a person in violation of any act specified in this section, it may enter an order imposing one or more of the following penalties:

(f) An administrative fine of up to $1,000 per day, but not to exceed $25,000 cumulatively, for each day that:

1. A mortgage broker or mortgage lender conducts business at an unlicensed branch office.

2. An unlicensed person acts as a loan originator, an in-house loan processor, a mortgage broker, or a mortgage lender.

(3) A mortgage broker or mortgage lender, as applicable, is subject to the disciplinary actions specified in subsection (2) for a violation of subsection (1) by:

(a) A control person of the mortgage broker or mortgage lender; ~~or~~

(b) A loan originator employed by or contracting with the mortgage broker or mortgage lender; or

(c) An in-house loan processor who is an employee of the mortgage broker or mortgage lender.

(4) A principal loan originator of a mortgage broker is subject to the disciplinary actions specified in subsection (2) for violations of subsection (1) by a loan originator or an in-house loan processor in the course of an association with the mortgage broker if there is a pattern of repeated violations by the loan originator or in-house loan processor or if the principal loan originator has knowledge of the violations.

(5) A principal loan originator of a mortgage lender is subject to the disciplinary actions specified in subsection (2) for violations of subsection (1) by a loan originator or an in-house loan processor in the course of an association with a mortgage lender if there is a pattern of repeated violations by the loan originator or in-house loan processor or if the principal loan originator has knowledge of the violations.

(6) A branch manager is subject to the disciplinary actions specified in subsection (2) for violations of subsection (1) by a loan originator or an in-house loan processor in the course of an association with the mortgage broker or mortgage lender if there is a pattern of repeated violations by the loan

originator or in-house loan processor or if the branch manager has knowledge of the violations.

(8) Pursuant to s. 120.60(6), the office may summarily suspend the license of a loan originator, an in-house loan processor, a mortgage broker, or a mortgage lender if the office has reason to believe that a licensee poses an immediate, serious danger to the public's health, safety, or welfare. The arrest of the licensee, or the mortgage broker or the mortgage lender's control person, for any felony or any crime involving fraud, dishonesty, breach of trust, money laundering, or any other act of moral turpitude is deemed sufficient to constitute an immediate danger to the public's health, safety, or welfare. Any proceeding for the summary suspension of a license must be conducted by the commissioner of the office, or designee, who shall issue the final summary order.

Section 6. Subsection (5) of section 494.00312, Florida Statutes, is amended to read:

494.00312 Loan originator license.—

(5) The office may not issue a license to an applicant who has had a loan originator or an in-house loan processor license or its equivalent revoked in any jurisdiction.

Section 7. Section 494.00314, Florida Statutes, is created to read:

494.00314 In-house loan processor license.—

(1) An individual acting as an in-house loan processor must be licensed under this section.

(2) In order to apply for an in-house loan processor license, an applicant must:

(a) Be at least 18 years of age and have a high school diploma or its equivalent.

(b) Submit a completed license application form as prescribed by commission rule.

(c) Submit a nonrefundable application fee of $100. Application fees may not be prorated for partial years of licensure.

(d) Submit fingerprints in accordance with rules adopted by the commission.

1. The fingerprints must be submitted to a live-scan vendor authorized by the Department of Law Enforcement.

2. A state criminal history background check must be conducted through the Department of Law Enforcement, and a federal criminal history check must be conducted through the Federal Bureau of Investigation.

3. All fingerprints submitted to the Department of Law Enforcement must be submitted electronically and entered into the statewide automated fingerprint identification system established in s. 943.05(2)(b) and available for use in accordance with s. 943.05(2)(g) and (h). The office shall pay an annual fee to the department to participate in the system and inform the department of any person whose fingerprints are no longer required to be retained.

4. The costs of fingerprint processing, including the cost of retaining fingerprints, shall be borne by the person subject to the background check.

5. The office is responsible for reviewing the results of the state and federal criminal history checks and determining whether the applicant meets licensure requirements.

(e) Submit additional information or documentation requested by the office and required by rule concerning the applicant. Additional information may include documentation of pending or prior disciplinary or criminal history events, including arrest reports and certified copies of charging documents, plea agreements, judgments and sentencing documents, documents relating to pretrial intervention, orders terminating probation or supervised release, final administrative agency orders, or other comparable documents that may provide the office with the appropriate information to determine eligibility for licensure.

(f) Submit any other information required by the registry for processing the application.

(3) An application is considered received for the purposes of s. 120.60 upon the office's receipt of all documentation from the registry, including the completed application form, criminal history information, and license application fee.

(4) The office shall issue an in-house loan processor license to each person who is not otherwise ineligible and who meets the requirements of this section. However, it is a ground for denial of licensure if the applicant:

(a) Has committed any violation specified in ss. 494.001-494.0077; or

(b) Is the subject of a pending felony criminal prosecution or a prosecution or an administrative enforcement

action in any jurisdiction which involves fraud, dishonesty, breach of trust, money laundering, or any other act of moral turpitude.

(5) The office may not issue a license to an applicant who has had an in-house loan processor or loan originator license or its equivalent revoked in any jurisdiction.

(6) An in-house loan processor license shall be annulled pursuant to s. 120.60 if it was issued by the office by mistake. A license must be reinstated if the applicant demonstrates that the requirements for obtaining the license have been satisfied.

(7) All in-house loan processor licenses must be renewed annually by December 31, pursuant to s. 494.00315. If a person holding an active license has not applied to renew the license on or before December 31, the license expires on December 31. If a person holding an active license has applied to renew on or before December 31, the license remains active until the renewal application is approved or denied. An in-house loan processor is not precluded from reapplying for licensure upon expiration of a previous license.

(8) An in-house loan processor licensed under this section may not act as a loan originator without a loan originator license issued under this part.

(9) A loan originator licensed under this part may also act as an in-house loan processor without an in-house loan processor license.

Section 8. Section 494.00315, Florida Statutes, is created to read:

494.00315 In-house loan processor license renewal.—In order to renew an in-house loan processor license, an in-house loan processor must:

(1) Submit a completed license renewal form as prescribed by commission rule.

(2) Submit a nonrefundable renewal fee of $75 and nonrefundable fees to cover the costs of further fingerprint processing and retention as set forth in commission rule.

(3) Submit any additional information or documentation requested by the office and required by rule concerning the licensee. Additional information may include documentation of pending and prior disciplinary and criminal history events, including arrest reports and certified copies of charging documents, plea agreements, judgments and sentencing documents, documents relating to pretrial intervention, orders terminating probation or supervised release, final administrative agency orders, or other comparable documents that may provide the office with the appropriate information to determine eligibility for renewal of licensure.

Section 9. Section 494.00331, Florida Statutes, is amended to read:

494.00331 Loan originator and loan processor employment.—

(1) LOAN ORIGINATORS.—An individual may not act as a loan originator unless he or she is an employee of, or an independent contractor for, a mortgage broker or a mortgage lender, and may not be employed by or contract with more than one mortgage broker or mortgage lender, or either simultaneously.

(2) CONTRACT LOAN PROCESSORS.—Subsection (1) ~~However, this provision~~ does not apply to a contract loan processor who has a declaration of intent to act solely as a contract loan processor on file with the office. The declaration of intent must be on a form as prescribed by commission rule ~~any licensed loan originator who acts solely as a loan processor and contracts with more than one mortgage broker or mortgage lender, or either simultaneously~~.

~~(2) For purposes of this section, the term "loan processor" means an individual who is licensed as a loan originator who engages only in:~~

~~(a) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; or~~

~~(b) Communication with consumers to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms or does not include counseling consumers about residential mortgage loan rates or terms.~~

~~(3) A person may not act as a loan processor unless the person is licensed as a loan originator under this chapter and has on file with the office a declaration of intent to engage solely in loan processing. The declaration of intent must be on such form as prescribed by the commission by rule.~~

(a) ~~(4)~~ A loan originator ~~that currently has a declaration of intent to engage solely in loan processing on file with the office~~ may withdraw his or her declaration of intent ~~to engage~~

~~solely in loan processing~~. The withdrawal of declaration of intent must be on such form as prescribed by commission rule.

(b) ~~(5)~~ A declaration of intent or a withdrawal of declaration of intent is effective upon receipt by the office.

(c) ~~(6)~~ The fee earned by a contract loan processor may be paid to the company that employs the loan processor without violating the restriction in s. 494.0025(8) ~~(7)~~ requiring fees or commissions to be paid to a licensed mortgage broker or mortgage lender or a person exempt from licensure under this chapter.

(3) IN-HOUSE LOAN PROCESSORS.—An individual may not act as an in-house loan processor unless he or she is an employee of a mortgage broker or a mortgage lender and may not be employed by more than one mortgage broker or mortgage lender, or either, simultaneously. An in-house loan processor must work at the direction of and be subject to the supervision and instruction of a loan originator licensed under this part.

Section 10. Subsection (1) of section 494.0035, Florida Statutes, is amended to read:

494.0035 Principal loan originator and branch manager for mortgage broker.—

(1) Each mortgage broker must be operated by a principal loan originator who shall have full charge, control, and supervision of the mortgage broker ~~business~~. The principal loan originator must have been licensed as a loan originator for at least 1 year before being designated as the principal loan originator, or must demonstrate to the satisfaction of the office that he or she has been actively engaged in a mortgage-related ~~mortgage broker-related~~ business for at least 1 year

before being designated as a principal loan originator. Each mortgage broker must keep the office informed of the person designated as the principal loan originator as prescribed by commission rule. If the designation is inaccurate, the mortgage broker ~~business~~ shall be deemed to be operated under the full charge, control, and supervision of each officer, director, or ultimate equitable owner of a 10-percent or greater interest in the mortgage broker, or any other person in a similar capacity. A loan originator may not be a principal loan originator for more than one mortgage broker at any given time.

Section 11. Paragraph (c) of subsection (3) of section 494.0038, Florida Statutes, is amended to read:

494.0038 Loan origination and mortgage broker fees and disclosures.—

(3) At the time a written mortgage broker agreement is signed by the borrower or forwarded to the borrower for signature, or at the time the mortgage broker business accepts an application fee, credit report fee, property appraisal fee, or any other third-party fee, but at least 3 business days before execution of the closing or settlement statement, the mortgage broker shall disclose in writing to any applicant for a mortgage loan the following information:

(c) A good faith estimate that discloses settlement charges and loan terms~~, signed and dated by the borrower, which discloses the total amount of each of the fees the borrower may reasonably expect to pay if the loan is closed, including, but not limited to, fees earned by the mortgage broker, lender fees,~~

~~third-party fees, and official fees, together with the terms and conditions for obtaining a refund of such fees, if any~~.

1. Any amount collected in excess of the actual cost shall be returned within 60 days after rejection, withdrawal, or closing.

2. At the time a good faith estimate is provided to the borrower, the loan originator must identify in writing an itemized list that provides the recipient of all payments charged the borrower, which, except for all fees to be received by the mortgage broker, may be disclosed in generic terms, such as, but not limited to, paid to lender, appraiser, officials, title company, or any other third-party service provider. This requirement does not supplant or is not a substitute for the written mortgage broker agreement described in subsection (1). The disclosure required under this subparagraph must be signed and dated by the borrower.

Section 12. Paragraph (a) of subsection (7) of section 494.00421, Florida Statutes, is amended to read:

494.00421 Fees earned upon obtaining a bona fide commitment.—Notwithstanding the provisions of ss. 494.001-494.0077, any mortgage broker which contracts to receive a loan origination fee from a borrower upon obtaining a bona fide commitment shall accurately disclose in the mortgage broker agreement:

(7)(a) The following statement, in at least 12-point boldface type immediately above the signature lines for the borrowers:

"You are entering into a contract with a mortgage broker to obtain a bona fide mortgage loan commitment under the same terms and conditions as stated hereinabove or in a separate executed good faith estimate form. If the mortgage broker obtains a bona fide commitment under the same terms and conditions, you will be obligated to pay the loan origination fees even if you choose not to complete the loan transaction. If the provisions of s. 494.00421, Florida Statutes, are not met, the loan origination fee can only be earned upon the funding of the mortgage loan. The borrower may contact the Office of Financial Regulation ~~Department of Financial Services~~, Tallahassee, Florida, regarding any complaints that the borrower may have against the loan originator. The telephone number of the office ~~department~~ is: ...(insert telephone number)...."

Section 13. Subsection (5) of section 494.00611, Florida Statutes, is amended to read:

494.00611 Mortgage lender license.—

(5) The office may not issue a license if the applicant has had a mortgage lender license or its equivalent revoked in any jurisdiction, or any of the applicant's control persons has ever had a loan originator or an in-house loan processor license or its equivalent revoked in any jurisdiction.

Section 14. Paragraph (e) of subsection (1) of section 494.00612, Florida Statutes, is amended to read:

494.00612 Mortgage lender license renewal.—

(1) In order to renew a mortgage lender license, a mortgage lender must:

(e) Authorize the registry to obtain an independent credit report on each of the mortgage lender's control persons ~~lender~~ from a consumer reporting agency, and transmit or provide access to the report to the office. The cost of the credit report shall be borne by the licensee.

Section 15. Subsection (13) is added to section 494.0067, Florida Statutes, to read:

494.0067 Requirements of mortgage lenders.—

(13) Each mortgage lender shall submit to the registry reports of condition which are in a form and which contain such information as the registry may require.

Section 16. This act shall take effect January 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 849 Building Construction and Inspection
SPONSOR(S): Business & Consumer Affairs Subcommittee, Davis and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/HB 396

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee	12 Y, 0 N, As CS	Creamer	Creamer
2) Rulemaking & Regulation Subcommittee		Miller	Rubottom
3) Government Operations Appropriations Subcommittee			
4) Economic Affairs Committee			

SUMMARY ANALYSIS

The bill deletes references to the specified energy efficiency and sustainable materials rating standards, and redefines the term "sustainable building rating" to include the International Green Construction Code (IGCC). Specifically, these sections substitute references to the individual green code ratings with the term "sustainable building rating."

The bill also revises the membership of the 25-member commission by expanding the qualifications for the participating member who is a representative of the green building industry, to include "a professional who is accredited under the International Green Construction Code (IGCC), or a professional who is accredited under Leadership in Energy and Environmental Design (LEED)."

The bill has no fiscal impact.

The bill has an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

International Green Construction Code (IGCC)

Current Situation

The International Green Construction Code (IGCC) establishes baseline green and sustainability "regulations for new and existing traditional and high-performance buildings related to energy conservation, water efficiency, building owner responsibilities, site impacts, building waste, and materials and other considerations." The IGCC is sponsored and endorsed by the International Code Council (ICC), the American Institute of Architects, ASTM International, the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), the U.S. Green Building Council (USGBC), and the Illuminating Engineering Society (IES).[1]

The ICC recently revealed the latest version of the IGCC, Public Version 2.0, in December of 2010.[2] The ICC provides that the new code complements existing rating systems and guidelines by providing minimum baseline requirements along with a "jurisdictional electives" section of the code that allows jurisdictions to customize the codes beyond its baseline provisions. The IGCC acts as a model code that becomes law after it is adopted by the state or local government entity that governs construction standards. Previously, Rhode Island adopted the IGCC, Public Version 1.0, as part of the Rhode Island Green Buildings Act in 2010. The new Act "applies to any public project that is owned, leased or controlled by the State of Rhode Island."[3] The City of Richland, WA, previously adopted the IGCC, Public Version 1.0, as a non-mandatory document for commercial buildings.[4]

Proposed Changes

The bill amends s. 255.253, F.S., to redefine the term "sustainable building rating" and include the International Green Construction Code (IGCC). The bill does not specify which version of the IGCC which version of the IGCC is incorporated into the statute.

Florida Building Commission

Current Situation

The Florida Building Commission (commission) is established in ch. 553, F.S., within the Department of Community Affairs (DCA) and consists of 25 members that are appointed by the Governor and confirmed by the Senate.[5] The Commission is responsible for adopting and enforcing the Florida Building Code as a single, unified state building code used to provide effective and reasonable protection for the public safety, health and welfare.[6] The commission is required to update the code triennially based upon the "code development cycle of the national model building codes."[7]

The commission is authorized to adopt general administrative rules,[8] issue binding code interpretations[9] and must use the rule adoption procedures of s. 120.536(1) and 120.54, F.S., to approve amendments to the building code.[10]

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[1] http://www.iccsafe.org/cs/IGCC/Pages/PublicVersionDevelopment.aspx. (Last visited on 3/31/2011).
[2] http://www.iccsafe.org/CS/IGCC/Pages/IGCCDownloadV2.aspx. (Last visited on 3/31/2011).
[3] http://bcap-ocean.org/code-information/rhode-island-green-buildings-act. (Last visited on 3/31/2011).
[4] August 11, 2010, ICC news release at http://www.iccsafe.org/newsroom/Pages/eNews.aspx. (Last visited 3/31/2011).
[5] s. 553.74, F.S.
[6] s. 553.72(1), F.S.
[7] s. 553.73(7)(a), F.S.
[8] s. 553.76(1), F.S.
[9] s. 553.775, F.S.

Proposed Changes

The bill amends s. 553.74(1)(v), F.S., revising the membership of the 25-member the Florida Building Commission. The language expands the qualifications for the participating member who is a representative of the green building industry, to include "a professional who is accredited under the International Green Construction Code (IGCC), or a professional who is accredited under Leadership in Energy and Environmental Design (LEED)".

B. SECTION DIRECTORY:

Section 1: Amends s. 255.252(3) & 255.252(4), F.S., to make technical changes in the present language and to substitute the defined phrase "sustainable building rating" for separate references to four different rating systems.

Section 2: Amends s. 255.253(7), F.S., to incorporate the IGCC as an additional green building rating system which may be approved by the Department of Management Services.

Section 3: Amends s. 255.257(4), F.S., to substitute the defined phrase "sustainable building rating" for separate references to four different rating systems.

Section 4: Amends s. 255.2575(2) to substitute the defined phrase "sustainable building rating" for separate references to four different rating systems.

Section 5: Amends s. 553.74(1)(v), F.S., to provide additional alternative accreditations for the one member of the Florida Building Commission who is a representative of the green building industry.

Section 6: Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

[10] The triennial update of the entire Building Code must be adopted through statutory rulemaking. s. 553.73(1)(a), 553.73(7)(a), F.S. Technical amendments are authorized under s. 553.73(3), F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No additional rulemaking authority is required to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides for inclusion of the International Green Construction Code (IGCC) as an alternative rating standard for public buildings. The bill does not specify which of the available versions of the IGCC is referenced in the amendments.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to building construction and inspection; amending s. 255.252, F.S.; conforming provisions to changes made by the act; amending s. 255.253, F.S.; redefining the term "sustainable building rating" to include the International Green Construction Code; amending ss. 255.257 and 255.2575, F.S.; conforming provisions to changes made by the act; amending s. 553.74, F.S.; revising requirements for selecting a member of the Florida Building Commission; providing an effective date.

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

Section 1. Subsections (3) and (4) of section 255.252, Florida Statutes, are amended to read:

255.252 Findings and intent.—

(3) In order for ~~that such~~ energy-efficiency and sustainable materials considerations to become a function of building design and a model for future application in the private sector, it is ~~shall be~~ the policy of the state that buildings constructed and financed by the state be designed and constructed to comply with a sustainable building rating ~~the United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system, the Green Building Initiative's Green Globes rating system, the Florida Green Building Coalition standards, or a nationally recognized, high-performance green building rating system as approved by the department~~. It is further the policy of the state, if ~~when~~

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

economically feasible, to retrofit existing state-owned buildings in a manner that minimizes ~~which will minimize~~ the consumption of energy used in the operation and maintenance of such buildings.

(4) In addition to designing and constructing new buildings to be energy-efficient, it is ~~shall be~~ the policy of the state to operate and maintain state facilities in a manner that minimizes ~~which will minimize~~ energy consumption and maximizes ~~maximize~~ building sustainability, and to operate ~~as well as ensure that~~ facilities leased by the state ~~are operated~~ so as to minimize energy use. It is further the policy of the state that the renovation of existing state facilities be in accordance with a sustainable building rating ~~the United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system, the Green Building Initiative's Green Globes rating system, the Florida Green Building Coalition standards, or a nationally recognized, high-performance green building rating system as approved by the department~~. State agencies are encouraged to consider shared savings financing of ~~such~~ energy-efficiency and conservation projects, using contracts that ~~which~~ split the resulting savings for a specified period of time between the state agency and the private firm or cogeneration contracts and that ~~which~~ otherwise permit the state to lower its net energy costs. Such energy contracts may be funded from the operating budget.

Section 2. Subsection (7) of section 255.253, Florida Statutes, is amended to read:

255.253 Definitions; ss. 255.251-255.258.—

(7) "Sustainable building rating" means a rating established by the United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system, the International Green Construction Code (IGCC), the Green Building Initiative's Green Globes rating system, the Florida Green Building Coalition standards, or a nationally recognized, high-performance green building rating system as approved by the department.

Section 3. Subsection (4) of section 255.257, Florida Statutes, is amended to read:

255.257 Energy management; buildings occupied by state agencies.—

(4) ADOPTION OF STANDARDS.—

(a) All state agencies shall adopt a sustainable building rating system ~~the United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system, the Green Building Initiative's Green Globes rating system, the Florida Green Building Coalition standards, or a nationally recognized, high-performance green building rating system as approved by the department~~ for all new buildings and renovations to existing buildings.

(b) No state agency shall enter into new leasing agreements for office space that does not meet Energy Star building standards, except when ~~determined by~~ the appropriate state agency head determines that no other viable or cost-effective alternative exists.

(c) All state agencies shall develop energy conservation measures and guidelines for new and existing office space where

state agencies occupy more than 5,000 square feet. These conservation measures shall focus on programs that may reduce energy consumption and, when established, provide a net reduction in occupancy costs.

Section 4. Subsection (2) of section 255.2575, Florida Statutes, is amended to read:

255.2575 Energy-efficient and sustainable buildings.—

(2) All county, municipal, school district, water management district, state university, community college, and ~~Florida~~ state court buildings shall be constructed to comply with a sustainable building rating system ~~meet the United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system, the Green Building Initiative's Green Globes rating system, the Florida Green Building Coalition standards, or a nationally recognized, high-performance green building rating system as approved by the Department of Management Services~~. This section applies ~~shall apply~~ to all county, municipal, school district, water management district, state university, community college, and ~~Florida~~ state court buildings the architectural plans of which are commenced after July 1, 2008.

Section 5. Paragraph (v) of subsection (1) of section 553.74, Florida Statutes, is amended to read:

553.74 Florida Building Commission.—

(1) The Florida Building Commission is created and shall be located within the Department of Community Affairs for administrative purposes. Members shall be appointed by the Governor subject to confirmation by the Senate. The commission

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shall be composed of 25 members, consisting of the following:

(v) One member who is a representative of the green building industry and who is a third-party commission agent, a Florida board member of the United States Green Building Council or Green Building Initiative, a professional who is accredited under the International Green Construction Code (IGCC), or a professional who is accredited under Leadership in Energy and Environmental Design (LEED) ~~LEED-accredited professional~~.

Any person serving on the commission under paragraph (c) or paragraph (h) on October 1, 2003, and who has served less than two full terms is eligible for reappointment to the commission regardless of whether he or she meets the new qualification.

Section 6. This act shall take effect July 1, 2011.

Amendment No. 01

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	_____

Committee/Subcommittee hearing bill: Rulemaking & Regulation Subcommittee

Representative(s) Davis offered the following:

Amendment (with title amendment)

Between lines 13 and 14, insert:

Section 1. Subsection (4) of section 120.541, Florida Statutes, as amended by chapter 2010-279, Laws of Florida, is amended to read:

120.541 Statement of estimated regulatory costs.—

(3) If the adverse impact or regulatory costs of the rule exceed any of the criteria established in paragraph (2)(a), the rule shall be submitted to the President of the Senate and Speaker of the House of Representatives no later than 30 days prior to the next regular legislative session, and the rule may not take effect until it is ratified by the Legislature.

(4) Subsection (3) ~~Paragraph (2)(a)~~ does not apply to the adoption of:

(a) ~~emergency rules pursuant to s. 120.54(4) or the adoption of~~ Federal standards pursuant to s. 120.54(6).

(b) Triennial updates to the Florida Building Code pursuant to s. 553.73(7)(a).

(c) Triennial updates to the Florida Fire Prevention Code pursuant to s. 633.0215(1).

Section 2. Subsection (3) of section 527.06, Florida Statutes, is amended to read:

527.06 Rules.—

(3)(a) Rules in substantial conformity with the published standards of the National Fire Protection Association (NFPA) are ~~shall be~~ deemed to be in substantial conformity with the generally accepted standards of safety concerning the same subject matter.

(b) Notwithstanding any other law, the department or other state agency may not require compliance with the minimum separation distances of NFPA 58 for separation between a liquefied petroleum gas tank and a building, adjoining property line, other liquefied petroleum gas tank, or any source of ignition, except in compliance with the minimum separation distances of the 2011 edition of NFPA 58. This subsection shall be deemed repealed upon the last effective date of rules adopted, directly or as incorporated by reference, by the department, the Florida Building Commission as part of the Florida Building Code, and the Office of State Fire Marshal as part of the Florida Fire Prevention Code of these minimum separation distances as contained in the 2011 edition of NFPA 58 promulgated by the National Fire Protection Association.

Amendment No. 01

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

Between lines 2 and 3, insert:

amending s. 120.541, F.S.; excluding rules adopting federal standards, triennial updates to the Florida Building Code, or triennial updates to the Florida Fire Prevention Code from required legislative ratification; excluding emergency rulemaking from certain provisions; amending s. 527.06, F.S.; prohibiting the Department of Agriculture and Consumer Services and other state agencies from requiring compliance with certain national standards for liquefied petroleum gas tanks unless the department or agencies require compliance with a specified edition of the national standards; providing for repeal under certain circumstances;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 917 Sentencing of Inmates
SPONSOR(S): Criminal Justice Subcommittee; Porth and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1334

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Krol	Cunningham
2) Rulemaking & Regulation Subcommittee		Miller	Rubottom
3) Justice Appropriations Subcommittee			
4) Judiciary Committee			

SUMMARY ANALYSIS

CS/HB 917 creates a new section of statute to authorize the Department of Corrections to develop and administer a nonviolent offender re-entry program. This program is intended to divert nonviolent offenders from long periods of incarceration when a reduced period of incarceration followed by intensive substance abuse treatment may have the same effect, rehabilitate the offender, and reduce recidivism.

The bill may have a positive fiscal impact on the Department of Corrections and provides an effective date of October 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Department of Corrections Re-entry Programming

Currently, the Department of Corrections (DOC) provides the following re-entry programming to inmates:

- Substance abuse treatment;
- Educational and academic programs;
- Career and technical education; and
- Faith and character-based programs.[1]

Also, DOC is statutorily mandated[2] to provide inmates who are within 12 months of their release with the 100-Hour Transition Training Program. This program offers inmates training in the following:

- Job readiness and life management skills, including goal setting;
- Problem solving and decision making;
- Communication;
- Values clarification;
- Living a healthy lifestyle;
- Family issues;
- Seeking and keeping a job;
- Continuing education;
- Community reentry; and
- Legal responsibilities.[3]

Drug Offender Probation

DOC is required to develop and administer a drug offender probation program which emphasizes a combination of treatment and intensive community supervision approaches and which provides for supervision of offenders in accordance with a specific treatment plan.[4] This program generally uses graduated sanctions when offenders violate program requirements by actions such as testing positive on drug tests, missing treatment sessions, or failing to report to court.[5] These sanctions can include mandatory community service, extended probation, or jail stays. Probationers in this program are subject to probation revocation if they violate any conditions of their probation. This can result in an imposition of any sentence that may have originally been imposed before the offender was placed on probation.[6] In FY 2009-10, 9,928 offenders were on drug offender probation.[7]

Effect of the Bill

CS/HB 917 authorizes the Department of Corrections to develop and administer a nonviolent offender re-entry program in a secure area within an institution or adjacent to an adult institution. This program is

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[1] "Recidivism Reduction Strategic Plan." Fiscal Year 2009-2014. Department of Corrections. http://www.dc.state.fl.us/orginfo/FinalRecidivismReductionPlan.pdf (Last accessed on March 18, 2011).
[2] Section 944.7065, F.S.
[3] *Supra* "Recidivism Reduction Strategic Plan."
[4] Section 948.20(2), F.S.
[5] Section 948.20(1), F.S.
[6] Section 948.06 (2)(e), F.S.
[7] Department of Corrections, Community Supervision Admissions, 2008-2009 Agency Statistics, http://www.dc.state.fl.us/pub/annual/0809/stats/csa_prior.html (Last accessed on March 18, 2011).

intended to divert nonviolent offenders[8] from long periods of incarceration when a reduced period of incarceration followed by intensive substance abuse treatment may have the same effect, rehabilitate the offender, and reduce recidivism. The program must include:

- Prison-based substance abuse treatment,
- General education development and adult basic education courses,
- Vocational training,
- Training in decisionmaking and personal development, and
- Other rehabilitation programs.

The bill requires that the nonviolent offender serve at least 120 days in the reentry program. Any portion of his or her sentence served before placement in the reentry program does not count as progress toward program completion.

The bill requires DOC to screen potential reentry program participants for eligibility criteria to participate in the program. In order to participate, a nonviolent offender must have:

- Served at least one-half of his or her original sentence, and
- Been identified as having a need for substance abuse treatment.

During the screening process, the bill requires DOC to consider the offender's criminal history and the possible rehabilitative benefits that substance abuse treatment, educational programming, vocational training, and other rehabilitative programming might have on the offender.

If a nonviolent offender is selected to participate in the program and if space is available in the reentry program, DOC must request the sentencing court to approve the offender's participation in the reentry program. The bill provides that no nonviolent offender has the right to placement in the re-entry program or placement or early release under supervision of any type. The bill denies a nonviolent offender a cause of action against the department, a court, or the state attorney related to the re-entry program

DOC must also notify the state attorney that the offender is being considered for placement in the reentry program. The notice must:

- Explain to the state attorney that a proposed reduced period of incarceration, followed by participation in substance abuse treatment and other rehabilitative programming, could produce the same deterrent effect otherwise expected from a lengthy incarceration.
- State that the state attorney may notify the sentencing court in writing of any objection he or she might have if the nonviolent offender is placed in the reentry program.[9]

The bill requires the sentencing court to notify DOC in writing of the court's decision to approve or disapprove the requested placement of the nonviolent offender into the re-entry program no later than 28 days after the court receives DOC's request to place the offender in the reentry program.[10]

The bill requires a nonviolent offender who has been admitted to the re-entry program to:

- Undergo a full substance abuse assessment to determine his or her substance abuse treatment needs.

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[8] The bill defines nonviolent offenders as an offender who has been convicted of a third-degree felony offense that is not a forcible felony as defined in s. 776.08, F.S., and has not been convicted of any offense that requires a person to register as a sexual offender pursuant to s. 943.0435, F.S.

[9] The bill requires that the state attorney must notify the sentencing court of his or her objections within 14 days after receiving the notice.

[10] The bill states that the court's failure to notify DOC of the decision within the 28-day period constitutes approval to place the offender into the reentry program.

- Have an educational assessment, using the Test of Adult Basic Education or any other testing instrument approved by the Department of Education.
- Obtain a high school diploma if one has not already been obtained.

The bill requires that assessments of the offender's vocational skills and future career education be provided to the offender as needed and that a periodic reevaluation be made in order to assess the progress of each offender.

If a nonviolent offender in the program becomes unmanageable, the bill authorizes DOC to revoke the offender's gain-time and place the offender in disciplinary confinement in accordance with DOC rule. The offender can be readmitted to the reentry program after completing the ordered discipline[11] unless:

- The offender commits or threatens to commit a violent act;
- DOC determines that the offender is unable to participate in the reentry program due to the offender's medical condition;
- The offender's sentence is modified or expires;
- DOC reassigns the offender's classification status; or
- DOC determines that removing the offender from the reentry program is in the best interest of the offender or the security of the institution.

The bill requires DOC to submit a report to the court at least 30 days before the nonviolent offender is scheduled to complete the reentry program. The report must describe the offender's performance in the reentry program. If the performance is satisfactory, the bill requires the court to issue an order modifying the sentence imposed and place the offender on drug offender probation[12] subject to the offender's successful completion of the remainder of the reentry program.[13] If the nonviolent offender violates the conditions of drug offender probation, the bill authorizes the court to revoke probation and impose any sentence that it might have originally imposed.

The bill also authorizes DOC to:

- Implement the reentry program to the fullest extent feasible within available resources.
- Submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives detailing the extent of implementation of the reentry program and outlining future goals and any recommendation the department has for future legislative action.
- Enter into performance-based contracts with qualified individuals, agencies, or corporations for the provision of any or all of the services for the reentry program.
- Establish a system of incentives within the reentry program which the department may use to promote participation in rehabilitative programs and the orderly operation of institutions and facilities.
- Develop a system for tracking recidivism, including, but not limited to, rearrests and recommitment of nonviolent offenders who successfully complete the reentry program, and shall report the recidivism rate in its annual report of the program.
- Adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to administer the reentry program.
- Authorizes DOC to establish rules of conduct to which nonviolent offenders in the reentry program would be subject, including sanctions which DOC may impose for noncompliance.

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[11] The bill specifies that any period of time during which the offender is unable to participate in the reentry program shall be excluded from the specified time requirements in the reentry program.

[12] The bill provides that if an offender being released intends to reside in a county that has established a postadjudicatory drug court program as described in s. 397.334, F.S., the sentencing court may require the offender to successfully complete the postadjudicatory drug court program as a condition of drug offender probation.

[13] The bill provides that the term of drug offender probation may include placement in a community residential or nonresidential substance abuse treatment facility under the jurisdiction of the department or the Department of Children and Family Services or any public or private entity providing such services.

B. SECTION DIRECTORY:

Section 1. Creates the nonviolent reentry program.

Section 2. Provides an effective date of October 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill creates a new section of statute to authorize the Department of Corrections to develop and administer a nonviolent offender re-entry program. This program is intended to divert nonviolent offenders from long periods of incarceration when a reduced period of incarceration followed by intensive substance abuse treatment may have the same effect, rehabilitate the offender, and reduce recidivism.

The bill provides that an inmate must serve at least half of his or her original sentence before being eligible for the re-entry program. An inmate who satisfactorily completes the reentry program will then be placed on drug offender probation. Because participation in the program hinges on an offender being eligible, DOC selection, and judicial approval, the precise impact of the bill is unknown. However, the bill will likely result in cost savings to the state.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes DOC to adopt rules pursuant to ch. 120, F.S., to govern operation of the nonviolent offender re-entry program. A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.[14] Rulemaking authority is delegated by the Legislature[15] through statute and authorizes an agency to "adopt, develop, establish, or otherwise create"[16] a rule. Agencies do not have discretion whether to engage in rulemaking.[17] To adopt a rule an agency must have a general grant of authority to implement a specific law by rulemaking.[18] The grant of rulemaking authority itself need not be detailed.[19] The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.[20]

The bill makes nonviolent offenders in the reentry program subject to rules of conduct established by DOC. Existing rules govern inmate conduct and sanctions for violations.[21] The bill does not state whether these existing rules are sufficient to govern the conduct of nonviolent inmates in the program or whether DOC is to create additional rules governing the conduct of this subset of inmates. If new rulemaking is contemplated, the current language in the bill could provide more specific guidance for DOC to define personal conduct which complies with the statute.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[14] s. 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region,* 969 So. 2d 527, 530 (Fla. 1st DCA 2007).
[15] *Southwest Florida Water Management District v. Save the Manatee Club, Inc.,* 773 So. 2d 594 (Fla. 1st DCA 2000).
[16] s. 120.52(17), F.S.
[17] s. 120.54(1)(a), F.S.
[18] s. 120.52(8) & s. 120.536(1), F.S.
[19] *Save the Manatee Club, Inc.,* supra at 599.
[20] *Sloban v. Florida Board of Pharmacy,*982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.,* 794 So. 2d 696, 704 (Fla. 1st DCA 2001).
[21] Fla. Admin, Code R. 33-601.314.

A bill to be entitled

An act relating to the sentencing of inmates; defining the terms "department" and "nonviolent offender"; directing the Department of Corrections to develop and administer a reentry program for nonviolent offenders which is intended to divert nonviolent offenders from long periods of incarceration; requiring that the program include intensive substance abuse treatment and rehabilitative programming; providing for the minimum length of service in the program; providing that any portion of a sentence before placement in the program does not count as progress toward program completion; specifying eligibility criteria for a nonviolent offender to be placed into the reentry program; directing the department to notify the nonviolent offender's sentencing court to obtain approval before the nonviolent offender is placed into the reentry program; requiring the department to notify the state attorney; authorizing the state attorney to file objections to placing the offender into the reentry program within a specified period; requiring the sentencing court to notify the department of the court's decision to approve or disapprove the requested placement within a specified period; providing that failure of the court to timely notify the department of the court's decision constitutes approval by the requested placement; requiring the nonviolent offender to undergo an education assessment and a full substance abuse assessment if admitted into the reentry program; requiring the offender to be enrolled in

an adult education program in specified circumstances; requiring that assessments of vocational skills and future career education be provided to the offender; requiring that certain reevaluation be made periodically; providing that the nonviolent offender is subject to the disciplinary rules of the department; specifying the reasons for which the offender may be terminated from the reentry program; requiring that the department submit a report to the sentencing court at least 30 days before the nonviolent offender is scheduled to complete the reentry program; setting forth the issues to be addressed in the report; requiring the sentencing court to issue an order modifying the sentence imposed and place the nonviolent offender on drug offender probation if the nonviolent offender's performance is satisfactory; authorizing the court to revoke probation and impose the original sentence in specified circumstances; authorizing the court to require the offender to complete a postadjudicatory drug court program in specified circumstances; directing the department to implement the reentry program using available resources; requiring the department to submit an annual report to the Governor and Legislature detailing the extent of implementation of the reentry program and outlining future goals and recommendations; authorizing the department to enter into contracts with qualified individuals, agencies, or corporations for services for the reentry program; authorizing the department to impose administrative or protective confinement as necessary;

authorizing the department to establish a system of incentives within the reentry program which the department may use to promote participation in rehabilitative programs and the orderly operation of institutions and facilities; directing the department to develop a system for tracking recidivism, including, but not limited to, rearrests and recommitment of nonviolent offenders who successfully complete the reentry program, and to report on recidivism in its annual report of the program; directing the department to adopt rules; providing an effective date.

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

Section 1. Nonviolent offender reentry program.—

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

(a) "Department" means the Department of Corrections.

(b) "Nonviolent offender" means an offender who has:

1. Been convicted of a third-degree felony offense that is not a forcible felony as defined in s. 776.08, Florida Statutes; and

2. Not been convicted of any offense that requires a person to register as a sexual offender pursuant to s. 943.0435, Florida Statutes.

(2)(a) The department shall develop and administer a reentry program for nonviolent offenders. The reentry program must include prison-based substance abuse treatment, general education development and adult basic education courses,

vocational training, training in decisionmaking and personal development, and other rehabilitation programs.

(b) The reentry program is intended to divert nonviolent offenders from long periods of incarceration when a reduced period of incarceration followed by participation in intensive substance abuse treatment and rehabilitative programming could produce the same deterrent effect, rehabilitate the offender, and reduce recidivism.

(c) The nonviolent offender shall serve at least 120 days in the reentry program. The offender may not count any portion of his or her sentence served before placement in the reentry program as progress toward program completion.

(d) A reentry program may be operated in a secure area in or adjacent to an adult institution.

(3)(a) Upon receiving a potential reentry program participant, the department shall screen the nonviolent offender for eligibility criteria to participate in the reentry program. In order to participate, a nonviolent offender must have served at least one-half of his or her original sentence and must have been identified as having a need for substance abuse treatment. When screening a nonviolent offender, the department shall consider the offender's criminal history and the possible rehabilitative benefits that substance abuse treatment, educational programming, vocational training, and other rehabilitative programming might have on the offender.

(b)1. If a nonviolent offender meets the eligibility criteria and space is available in the reentry program, the

department shall request the sentencing court to approve the offender's participation in the reentry program.

2. This section does not create or confer any right to any nonviolent offender to placement in the reentry program or any right to placement or early release under supervision of any type. A nonviolent offender has no cause of action against the department, a court, or the state attorney related to the reentry program.

(c)1. The department shall notify the state attorney that the offender is being considered for placement in the reentry program. The notice must explain to the state attorney that a proposed reduced period of incarceration, followed by participation in substance abuse treatment and other rehabilitative programming, could produce the same deterrent effect otherwise expected from a lengthy incarceration.

2. The notice must also state that the state attorney may notify the sentencing court in writing of any objection the state attorney might have if the nonviolent offender is placed in the reentry program. The state attorney must notify the sentencing court of his or her objections within 14 days after receiving the notice.

(d) The sentencing court shall notify the department in writing of the court's decision to approve or disapprove the requested placement of the nonviolent offender no later than 28 days after the court receives the department's request to place the offender in the reentry program. Failure to notify the department of the court's decision within the 28-day period

constitutes approval to place the offender into the reentry program.

(4) After the nonviolent offender is admitted into the reentry program, he or she shall undergo a full substance abuse assessment to determine his or her substance abuse treatment needs. The offender shall also have an educational assessment, which shall be accomplished using the Test of Adult Basic Education or any other testing instrument approved by the Department of Education. Each offender who has not obtained a high school diploma shall be enrolled in an adult education program designed to aid the offender in improving his or her academic skills and earn a high school diploma. Further assessments of the offender's vocational skills and future career education shall be provided to the offender as needed. A periodic reevaluation shall be made in order to assess the progress of each offender.

(5)(a) If a nonviolent offender in the reentry program becomes unmanageable, the department may revoke the offender's gain-time and place the offender in disciplinary confinement in accordance with department rule. Except as provided in paragraph (b), the offender shall be readmitted to the reentry program after completing the ordered discipline. Any period of time during which the offender is unable to participate in the reentry program shall be excluded from the specified time requirements in the reentry program.

(b) The department may terminate an offender from the reentry program if:

1. The offender commits or threatens to commit a violent act;

2. The department determines that the offender is unable to participate in the reentry program due to the offender's medical condition;

3. The offender's sentence is modified or expires;

4. The department reassigns the offender's classification status; or

5. The department determines that removing the offender from the reentry program is in the best interest of the offender or the security of the institution.

(6)(a) The department shall submit a report to the court at least 30 days before the nonviolent offender is scheduled to complete the reentry program. The report must describe the offender's performance in the reentry program. If the performance is satisfactory, the court shall issue an order modifying the sentence imposed and place the offender on drug offender probation subject to the offender's successful completion of the remainder of the reentry program. The term of drug offender probation may include placement in a community residential or nonresidential substance abuse treatment facility under the jurisdiction of the department or the Department of Children and Family Services or any public or private entity providing such services. If the nonviolent offender violates the conditions of drug offender probation, the court may revoke probation and impose any sentence that it might have originally imposed.

(b) If an offender being released pursuant to paragraph (a) intends to reside in a county that has established a postadjudicatory drug court program as described in s. 397.334, Florida Statutes, the sentencing court may require the offender to successfully complete the postadjudicatory drug court program as a condition of drug offender probation. The original sentencing court shall relinquish jurisdiction of the offender's case to the postadjudicatory drug court program until the offender is no longer active in the program, the case is returned to the sentencing court due to the offender's termination from the program for failure to comply with the terms thereof, or the offender's sentence is completed. If transferred to a postadjudicatory drug court program, the offender shall comply with all conditions and orders of the program.

(7) The department shall implement the reentry program to the fullest extent feasible within available resources.

(8) The department shall submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives detailing the extent of implementation of the reentry program and outlining future goals and any recommendation the department has for future legislative action.

(9) The department may enter into performance-based contracts with qualified individuals, agencies, or corporations for the provision of any or all of the services for the reentry program.

(10) A nonviolent offender in the reentry program is subject to rules of conduct established by the department and

may have sanctions imposed, including loss of privileges, restrictions, disciplinary confinement, alteration of release plans, or other program modifications in keeping with the nature and gravity of the program violation. Administrative or protective confinement, as necessary, may be imposed.

(11) The department may establish a system of incentives within the reentry program which the department may use to promote participation in rehabilitative programs and the orderly operation of institutions and facilities.

(12) The department shall develop a system for tracking recidivism, including, but not limited to, rearrests and recommitment of nonviolent offenders who successfully complete the reentry program, and shall report the recidivism rate in its annual report of the program.

(13) The department shall adopt rules pursuant to ss. 120.536(1) and 120.54, Florida Statutes, to administer the reentry program.

Section 2. This act shall take effect October 1, 2011.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 917 (2011)

Amendment No. 01

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	_____

Committee/Subcommittee hearing bill: Rulemaking & Regulation Subcommittee

Representative(s) Porth offered the following:

Amendment (with title amendment)

Between lines 237 and 238, insert:

Section 2. Subsection (6) of section 893.135, Florida Statutes, is amended to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(6) A mixture, as defined in s. 893.02, containing any controlled substance described in this section includes, but is not limited to, a solution or a dosage unit, including but not limited to, a pill or tablet, containing a controlled substance. For the purpose of clarifying legislative intent regarding the weighing of a mixture containing a controlled substance described in this section, the weight of the controlled substance is the total weight of the mixture, including the controlled substance and any other substance in the mixture.

However, if the mixture is a prescription drug as defined in s. 499.003(43) and the weight of the controlled substance can be identified using the national drug code, the weight of the controlled substance may not include any other substance in the mixture. If there is more than one mixture containing the same controlled substance, the weight of the controlled substance is calculated by aggregating the total weight of each mixture.

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

Remove lines 66-67 and insert:

directing the department to adopt rules; amending s. 893.135, F.S.; providing that the weight of the controlled substance may not include any other substance in the mixture if the mixture is a prescription drug as defined in s. 499.003(43) and the weight of the controlled substance can be identified using the national drug code; providing an effective date.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 917 (2011)

Amendment No. 02

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	_____

Committee/Subcommittee hearing bill: Rulemaking & Regulation Subcommittee

Representative Porth offered the following:

Amendment (with title amendment)

Between lines 237 and 238, insert:

Section 2. Subsection (8) is added to section 893.135, Florida Statutes, to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(8)(a) Notwithstanding any other provision of law, the court may depart from the prescribed mandatory minimum sentence when sentencing a person convicted of a violation of any provision of this chapter for which there is a mandatory minimum sentence, if the violation did not involve:

1. The use, attempted use, or threatened use of physical force against another person or result in the physical injury or serious physical injury of another person;

2. The display, use, or threatened use of any firearm, deadly weapon, or dangerous instrument; and

3. The representation by word or conduct that such person possessed any firearm, deadly weapon, or dangerous instrument.

(b) The provisions of paragraph (a) must not have previously been invoked on the defendant's behalf.

(c) At the time of sentencing, the court must state in open court the reasons for imposing a particular sentence and the specific reason for imposing any sentence that departs from the prescribed mandatory minimum sentence.

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

Remove lines 66-67 and insert:
directing the department to adopt rules; amending s. 893.135, F.S.; providing the court may depart from the prescribed mandatory minimum sentence when sentencing a person convicted of a violation of trafficking in a controlled substance if certain conditions are met; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB RRS 11-02a Administrative Procedures
SPONSOR(S): Rulemaking & Regulation Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Rulemaking & Regulation Subcommittee		Miller	Rubottom

SUMMARY ANALYSIS

The bill creates a one-time process requiring all agencies to undertake a three-year review of the economic impact of all rules effective on or before November 16, 2010. This follows the pattern of the comprehensive review of statutory authority conducted after the 1996 substantive amendments to the Administrative Procedures Act (APA). Additionally, the bill requires each agency to identify all revenue rules and all rules under which the agency requires data reporting from external sources. The report will include the statutes authorizing the data collection, how the data is used by the agency, and the policies advanced by the program.

The bill creates s. 120.74(3), requiring agencies annually to report to the Legislature their intended rulemaking for the next fiscal year, excluding emergency rulemaking, and s. 120.74(4), modifying existing reporting requirements during the comprehensive review period.

New s. 120.745 creates the comprehensive review and reporting for older rules, including preparation of economic analyses to identify all rules that meet the same criteria that, for rules proposed after 11/16/2010, would require legislative ratification.

The bill also creates s. 120.7455, authorizing an internet-based public survey about the impact of rules, laws, ordinance, and regulations on the ability of Floridians to engage in lawful conduct. This new section also provides immunity from prosecution or enforcement actions for participating in the survey as well as protection from retaliatory agency enforcement actions arising out of a person's providing information to the Legislature.

Those local governmental entities or officers included under the APA by special law are excluded from the comprehensive review required under new s. 120.745.

The comprehensive review will continue through the 2014 regular session of the Legislature to provide sufficient time for the agencies to conduct the review and for public participation, legislative consideration of the reports, and any action the Legislature chooses to take. The bill provides that the sections creating the one time review and the public survey and related immunities are automatically repealed unless amended or extended by the Legislature.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Rulemaking Authority

Chapter 120, F.S., the Administrative Procedures Act (APA), establishes the process for administrative rulemaking. With the enactment of HB 1565 in November, 2010,[1] the Legislature amended the APA to control more closely the adoption of rules with significant economic impacts.

A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.[2] Rulemaking authority is delegated by the Legislature[3] through statute and authorizes an agency to "adopt, develop, establish, or otherwise create"[4] a rule. Agencies do not have discretion whether to engage in rulemaking.[5] To adopt a rule an agency must have a general grant of authority to implement a specific law by rulemaking.[6] The grant of rulemaking authority itself need not be detailed.[7] The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.[8]

The rulemaking requirements of the APA apply to "agencies," defined by s. 120.52(1), F.S. Agencies include executive branch entities acting pursuant to powers other than those derived from the constitution. In addition to the Governor and Cabinet officers, the APA applies to a wide variety of entities with statewide or regional authority, such as all departments and entities specified in s. 20.04, F.S., the Board of Governors of the State University System, and regional water supply authorities, to local entities such as school districts or those specifically made subject to the APA.[9]

The development of the APA parallels the Legislature's refinement of the strictures regulating the exercise of delegated authority by executive branch agencies. The initial version of the APA in 1974 provided a process for public adoption and adjudication of agency rules.[10] A year later the Legislature first required agencies to provide a statement of estimated economic impact in the notice of initial rulemaking.[11] By the early 1990s the Legislature became increasingly concerned about the economic costs of agency rules and amended the APA to compel preparation of economic impact statements under certain circumstances.[12]

The Legislature also determined greater clarity was required to guide and constrain agencies in exercising delegated authority. A comprehensive revision of the APA became law in 1996[13] expressly limiting rulemaking only to those areas where agencies had both the power to make rules and a substantive statute providing specific guidelines for those rules. To ensure all agency rules conformed to this standard of authority, the Legislature required every agency to review the express legal authority for each rule of the agency and to repeal those which lacked proper authority, over period of three years.[14] Further clarification of the rulemaking authority was enacted in 1999 and the process for reviewing the substantive authority for rules was extended into 2001.[15]

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[1] HB 1565 was passed during the 2010 regular session but was vetoed by Governor Crist. On November 16, 2010, the Legislature in special session voted to override that veto and the bill became law as Chapter 2010-279, with an effective date of November 17, 2010.
[2] s. 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region,* 969 So. 2d 527, 530 (Fla. 1st DCA 2007).
[3] *Southwest Florida Water Management District v. Save the Manatee Club, Inc.,* 773 So. 2d 594 (Fla. 1st DCA 2000).
[4] s. 120.52(17), F.S.
[5] s. 120.54(1)(a), F.S.
[6] s. 120.52(8) & s. 120.536(1), F.S.
[7] *Save the Manatee Club, Inc.,* supra at 599.
[8] *Sloban v. Florida Board of Pharmacy,*982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.,* 794 So. 2d 696, 704 (Fla. 1st DCA 2001).
[9] The comprehensive list of entities is found in the definition at s. 120.52(1), F.S. There are certain exclusions for municipalities and municipality-created entities.
[10] Ch. 74-310, Laws of Florida.
[11] Ch. 75-191, s. 3, Laws of Florida, amending s. 120.54(1), F.S. (Supp. 1974).
[12] Ch. 92-166, s. 4, Laws of Florida, amending s. 120.54(2)(b), F.S. (1991).
[13] Ch. 96-159, Laws of Florida.
[14] Ch. 96-159, s. 9, Laws of Florida.
[15] Ch. 99-379, s. 3, Laws of Florida.

These initial review requirements were fulfilled and the reporting requirement was modified into an ongoing requirement. Agencies now are required to review their rules and perform the following:

- Identify and correct deficiencies;
- Clarify and simplify rules;
- Delete obsolete or unnecessary rules;
- Delete rules that are redundant of statutes;
- Improve efficiency, reduce paperwork, decrease costs to government and the private sector;
- Confer with agencies having concurrent jurisdiction and determine whether their rules can be coordinated; and
- Determine whether rules should be amended or repealed to reduce the impact on small business while meeting the stated objectives of the proposed rule.[16]

By October 1 of each odd-numbered year, each agency must file a report with the Speaker, the President, the Joint Administrative Procedures Committee (JAPC), and each substantive committee of the Legislature, certifying compliance with the statute and providing the following information:

- Changes made to the agency's rules as a result of the review;
- Recommended statutory changes to promote efficiency, reduce paperwork, or decrease costs to government and the private sector;
- The economic impact of the rules on small business;
- The types of cases or disputes in which the agency is involved which should be conducted under the summary hearing process described in s. 120.574, F.S.[17]

Economic Review

With the development of stricter standards for exercising rulemaking authority the Legislature also imposed more comprehensive requirements for agencies to address the economic effect of their rules. By 1992 the Legislature had imposed specific elements for inclusion in economic impact statements, developed criteria for agencies to follow in considering the impact of a rule on small businesses, and required agencies to tier their rules in order to lessen economic impacts on small business.[18] The 1996 act expanded the criteria both for considering the impact on small business as well as preparing a more comprehensive statement of estimated regulatory costs.[19] Agencies also were required to consider lower cost alternatives to the proposed rule.[20] Preparation of a statement of estimated regulatory costs (SERC) was mandatory only in response to the filing of a lower cost alternative by a substantially affected party.[21]

Statutory amendments in 2008 mandated preparation of a SERC if the agency's rule would affect small businesses.[22] In the same act the Legislature created the Small Business Regulatory Advisory Council[23] (SBRAC). The primary role of SBRAC is to review existing and proposed agency rules and to advocate for minimizing adverse impacts and economic hardship on small businesses.[24]

The enactment of HB 1565 further increased legislative oversight of agency rulemaking by creating specific economic thresholds for stricter accountability. For all rulemaking initiated on or after November 17, 2010, s. 120.54(3)(b)1. and s. 120.541(1)(b), F.S., require agencies to prepare a SERC if the proposed rule either will have an adverse impact on small businesses or if the rule is likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate in the first year

[16] s. 120.74(1), F.S.
[17] s. 120.74(2), F.S. Section 120.574, F.S., provides a summary procedure for administrative hearings if the parties agree.
[18] s. 120.54(2), F.S. (Supp. 1992).
[19] Ch. 96-159, s. 10, Laws of Florida.
[20] s. 120.54(3)(b)2.b., F.S. (Supp. 1996).
[21] Ch. 96-159, s. 11, Laws of Florida, creating s. 120.541, F.S.
[22] Ch. 2008-149, s. 7, Laws of Florida, amending s. 120.54(3)(b)1., F.S.
[23] s. 288.7001, F.S.
[24] s. 288.7001(3)(c), F.S.

after the rule is implemented. Section 120.541(2)(a), F.S., now requires a complete SERC to include an economic analysis addressing whether the rule is likely to have one of three specific impacts, directly or indirectly, in excess of $1 million within 5 years of going into effect:

- An adverse impact on economic growth, private sector job creation or employment, or private sector employment;
- An adverse impact on business competitiveness, including competition with interstate firms, productivity, or innovation; or
- An increase in regulatory costs, including transactional costs.

The criteria under s. 120.541(2)(a), F.S., creates the threshold for required legislative ratification under s. 120.541(3), F.S. If the economic analysis required for the SERC finds the rule is likely to have one of the foregoing impacts, the rule cannot become effective unless submitted to the Speaker and the President and ratified by the Legislature.

The requirements of HB 1565 apply only to rules which had not become effective as of November 17, 2010, or are proposed for adoption after that date.[25] Rules which went into effect between July 1, 2008 and November 16, 2010, were subject to greater scrutiny about their potential costs to small businesses and Florida's economy due to the increased criteria for statutory review and the participation of SBRAC. For rules which went into effect before July 1, 2008, agencies only had to prepare a SERC if a party offered a lower cost alternative or the rule impacted small businesses.

Governor Scott's first executive order[26] created the Office of Fiscal Accountability and Regulatory Reform (OFARR) and mandated each agency under the Governor's authority to conduct a comprehensive review of all that agency's rules. To date the Governor's agencies have identified over 750 rules which may be repealed.[27] While certain economic factors are included in this review, Executive Order 11-01 does not compel the same level of analysis required for a SERC under s. 120.54(3)(b) and s. 120.541(2), F.S.[28]

Effect of Bill

The bill improves legislative oversight of administrative rulemaking with three general modifications of the APA:

- The bill adds subsection 120.74(3), requiring agencies annually to prepare a regulatory plan of projected rulemaking, excluding emergency rulemaking, and to report these plans to the Legislature.
- The bill creates s. 120.745, requiring all agencies to conduct a comprehensive review of their rules, identify those rules in effect on or before November 16, 2010 (the day before the ratification requirement went into effect) which have one of the significant economic impacts of over $1 million as stated in s. 120.541(2)(a), F.S., complete modified economic reviews of all such rules over a two year period, and provide annual reports to the Legislature. Agencies must also identify and justify rules requiring data submissions from third parties. This provision will expire on July 2, 2014 without further Legislative action.
- The bill creates s. 120.7455, creating the format for a Legislative project to gather information on burdensome administrative rules and providing protections from agency retaliation to those

[25] The APA distinguishes between a rule being "adopted" and being enforceable or "effective." s. 120.54(3)(e)6, F.S. Before a rule becomes "effective" the agency first must complete the rulemaking process and file the rule for adoption with the Department of State.
[26] EO 11-01.
[27] Presentation of Patricia Nelson, Deputy Director of OFARR, at March 23, 2011 meeting of Rulemaking & Regulation Subcommittee.
[28] Id.

parties who participate in the survey. The period to conduct the survey ends on July 2, 2014, but this provision will continue in effect to preserve the provided immunity and protections.

S. 120.74(3): Annual Regulatory Plan and Report

Section 120.74, F.S., requires agencies to conduct a biennial review of their rules and report on specific topics to the Speaker, President, and JAPC. Section 5 of EO 11-01 requires each agency under the authority of the Governor to prepare by July 1 of each year regulatory plan identifying rulemaking the agency expects to pursue in the next fiscal year. The bill codifies this reporting planning requirement for all agencies and provides for annual reporting to the Speaker, President, and JAPC.

S. 120.74(4): Modification of Biennial Reporting Requirement During Effective Period of s. 120.745

The comprehensive review provided in new s. 120.745 coincides with the biennial reviews and reports required under s. 120.74, F.S. This new subsection (4) avoids duplication of effort on the part of the agencies by integrating elements of the report due in 2011 with the more comprehensive report due under s. 120.745(4) and by suspending the biennial report in 2013 due to the detailed reports due in 2012 and 2013 under s. 120.745(6).

S. 120.745: Comprehensive Rule Review with Emphasis on Economic Effects

After the 1996 substantive amendments to the APA, the Legislature adopted a one-time review process for all existing rules. Agencies were given a specific time in which to review their rules for compliance with the substantive law authorizing the rule. Similarly, the bill requires a review of existing rules to ensure conformity with the Legislature's expressed intent to minimize the adverse impacts of agency rulemaking on Florida's economy.

The review and reporting process begins in 2011 and ends in 2013. All agencies will be required to review and categorize their rules and provide a comprehensive report to the Speaker, President, and JAPC by December 1, 2011. For rules in effect on or before November 16, 2010, which the agency wants to retain without amendment, and which have or are projected to have one of the $1 million fiscal impacts delineated in s. 120.541(2)(a), F.S., the agencies are required to divide such rules into two reporting groups: one group to be analyzed and reported by December 1, 2012 (Group 1), and the other by December 1, 2013 (Group 2). For each rule in these Groups the agency shall prepare a compliance economic review incorporating specific information required by the new statute. The bill provides for periods of public comment on the rules to be listed in Group 1 or Group 2 and on the resulting economic reviews, including opportunities to suggest lower cost regulatory alternatives to the existing rule. Comprehensive reports of these economic reviews will be due to the Speaker, President, and JAPC by the above dates. The Legislature thus will receive updated economic evaluations of older rules and may decide what action to take, if any.

The APA definition of "agency" includes most state governmental entities, including constitutionally-created bodies such as the Fish and Wildlife Conservation Commission and regional bodies such as water management districts. Most local governments are exempt but some may be included by special law.[29] Section 120.745(1)(a) will exclude local governments made subject to the APA only by special law[30] from the comprehensive review process. This recognizes the disparity in resources available to these local governmental units as opposed to entities receiving state funding and which enact rules having a regional or statewide impact.

Rules identified for repeal or amendment will not require the economic reviews created under the bill because either action requires compliance with the current economic analysis procedures in the APA.[31]

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[29] s. 120.52(1), F.S.

[30] s. 120.52(1)(c), F.S. The statute excludes from the APA officers and governmental entities with jurisdiction over one county or less unless the officer or entity is expressly made subject to the APA by general law, special law, or existing judicial decision. The full definition of "agency" also excludes a number of specific entities, principally municipalities.

[31] s. 120.54(3)(d)5., Fla. Stat.

In addition to the review and identification of rules by December 1, 2011 based on economic effects, agencies must identify those rules defined as having an impact on state revenues. Agencies must also identify and support defined "data collection rules" which they intend to retain. A number of agency rules require non-governmental entities such as service providers or workers compensation insurance carriers to report certain data to the agency. Because of the economic impact on Florida businesses of these various data reporting requirements, the bill requires each agency to report all rules mandating such data reporting. The December 1, 2011 report will include the statutes authorizing the data collection, how the data is used by the agency, and the policies supporting continuation of the program.

The bill requires public notice of completing reports, listing of rules in Group 1 or Group 2, completing compliance economic reviews, and resolving public objections. Proposed s. 120.745(3) provides exclusive publication requirements, relying primarily on electronic postings on the websites of the agencies. Publication required under s. 120.745 will be deemed complete as of the date the required notice, determination or report is published on the agency's website. Agencies must post the full text of documents required under s. 120.745(4), (5), or (6) using links on their respective websites. Copies of the required notices also must be provided to the Department of State for publication in the Florida Administrative Weekly.

To avoid unnecessary duplication of effort, the bill authorizes OFARR to designate as exempt those rules which have been through the review process implemented under EO 11-01. Agencies will be allowed to indicate these rules in the 2011 report as exempt and will only conduct further economic analysis if the agency's report to OFARR did not contain the information required in the bill. Further, an agency's certification of its biennial review under s. 120.74, F.S., may omit any information included in the reports provided under s. 120.745, the reporting date is extended to December, 2011, and the biennial reporting requirement is excluded for 2013. To further assist agencies in preparing the report required in 2011, the bill provides a model reporting chart. These provisions are intended to streamline the review and reporting process for agencies.

The review proceeds through the 2014 regular session of the Legislature to provide sufficient time for the agencies to conduct the comprehensive review and for public participation, legislative consideration of the reports, and any action the Legislature chooses to take. The bill excludes agency proceedings to repeal rules identified in s. 120.745(4) or s. 120.745(6) from the requirement to prepare a statement of estimated regulatory costs under s. 120.54 and s. 120.541.[32] Every rule listed for repeal in one of the required reports will stand automatically repealed as of July 1 following submission of the report unless the agency completes repeal proceedings earlier.

Timeline for Review and Reporting

The following summarizes the timeline of required reporting under s. 120.745.

Completion Date	GROUP 1 RULES	GROUP 2 RULES
12/1/2011	Report of biennial s. 120.74 review & report of review under s. 120.745(4)(b). • Report includes: o All rules defined in s. 120.745 as "revenue rules." o All "data collection rules," together with authorizing statute(s), uses of date reported, and policies supporting continuation of reporting program. o Rules to be repealed. o Rules to be amended.	Publish list of Group 2 Rules.

[32] Under s. 120.54(3)(d)e, F.S., agencies must use the same procedure to repeal rules as to adopt them, including the potential for mandatory preparation of a statement of estimated regulatory costs under s. 120.54 and s. 120.541, F.S.

	○ Each rule effective after 11/16/2010 and whether the rule required ratification. ○ Rules effective on or before 11/16/2010 and whether the specific rule probably will have one of the effects in s. 120.541(2)(a). ○ Rules included in Group 1 and those included in Group 2. ○ Rules designated as exempt by OFARR. For each of such rules the agency intends to retain without amendment, agency must report limited number of factors in s. 120.745(4)(c). • Publish list of Group 1 Rules. • Report includes regulatory plan for 2011-2012.	
1/29/2012	D/L for parties listed in s. 120.745(5)(b)1. to object to inclusion or exclusion of rules from Group 1 or Group 2 lists.	
5/1/2012	Complete compliance economic reviews for Group 1. • Submit to SBRAC • Publish notice of Group 1 Rules for which compliance economic reviews were prepared, period for public input.	
6/1/2012	• D/L for public to submit Lower Cost Regulatory Alternatives for any Group 1 Rule (LCRA) • D/L for public objections to inclusion or exclusion of rules from Group 1 or Group 2 lists.	
6/21/2012	Latest day for agencies to publish determination on public objections to inclusion or exclusion of rules from Group 1 or Group 2 lists.	
7/1/2012	• Latest day for agencies to publish notice of correcting report in response to sustaining an objection under s. 120.745(5). • Latest day for agencies to file w/JAPC a report on overruling objection as required by s. 120.745(5)(d)3. • **All rules listed for repeal in 12/1/2011 report, and not previously repealed, are automatically repealed.**	
8/1/2012	D/L for SBRAC to submit LCRAs	
12/1/2012	Final report of Group 1 compliance economic reviews to Speaker, President, JAPC. • Report includes regulatory plan for 2012-2013. • Begin 120.54 rulemaking for Group 1 Rules needing amendment or repeal.	Include list of Group 2 Rules which will be reviewed & reported by 12/1/2013.
5/1/2013	End of 2013 regular Session • Legislature may review cost-benefits of Group 1 Rules having required impact which agencies intend to retain without amendment. • Legislature may ratify, expressly nullify, or take no action on retained Group 1 rules.	Complete compliance economic reviews for Group 2. • Submit to SBRAC • Publish notice of rules for which compliance economic reviews were prepared, period for public input.

6/1/2013		D/L for public to submit Lower Cost Regulatory Alternatives for any Group 2 rule (LCRA)
7/1/2013	**All rules listed for repeal in 12/1/2012 report, and not previously repealed, are automatically repealed.**	
8/1/2013		D/L for SBRAC to submit LCRAs
12/1/2013		Final report of Group 2 compliance economic reviews to Speaker, President, JAPC. • Final status of Group 1 rules. • Report includes regulatory plan for 2013-2014. • Begin 120.54 rulemaking for Group 2 Rules needing amendment or repeal.
5/1/2014		End of 2014 regular Session • Legislature may review cost-benefits of Group 2 Rules having required impact which agencies intend to retain without amendment. • Legislature may ratify, expressly nullify, or take no action on retained Group 2 rules.
7/1/2014	• **All rules listed for repeal in 12/1/2013 report, and not previously repealed, are automatically repealed.** •	
7/2/2014	• s. 120.745 stands repealed by terms of the act unless extended by the Legislature.	

S. 120.7455: Legislative survey of Regulatory Impacts

The bill creates s. 120.7455, providing notice that from the effective date of the act to July 2, 2014, the Legislature may implement an internet-based public survey about the impact of regulatory rules in Florida, including the number and nature of regulations and permitting requirements affecting Floridians. Types of information which may be requested include the name of the business as registered in Florida, the number and identification of the agencies regulating the respondent's lawful activities, the number of permits, licenses, or registrations required for the respondent to engage in a lawful activity, and laws, rules, ordinances, or regulations the respondent alleges to be unreasonably burdensome. To encourage participation and candor in any such survey, the new section provides immunity from prosecution based on either the act of responding or the information provided. This section also protects survey respondents from retaliatory acts of an agency based on providing or withholding information in the survey by allowing evidence of retaliatory conduct in mitigation of any proposed sanction, resulting in the presiding judge awarding the minimum of sanctions authorized by the Legislature.

Self-Repeal

Under s. 5 of the bill, s. 120.745 will stand repealed as of June 30, 2014.

B. SECTION DIRECTORY:

Section 1: Creates new s. 120.74(3), requiring all agencies to adopt an annual regulatory plan and file the plan with the Speaker, President, and JAPC, and new s. 120.74(4), modifying the biennial review and reporting requirements of s. 120.74, F.S., for the years 2011 and 2013.

Section 2: Creates new s. 120.745, requiring all agencies to review all their rules in effect on or before November 17, 2010, and submit such rules meeting the $1 million over 5 years criteria in s. 120.541(2)(a), F.S., for legislative consideration.

120.745(1): Creates specific definitions for review process. Excludes certain local governmental entities from the comprehensive review requirement.

120.745(2): Mandates review of all rules in effect on or before 11/16/2010 by all defined agencies. Requires reporting of review. Requires further economic analysis for rules probably exceeding the thresholds in current statute s. 120.541(2)(a), F.S.

120.745(3): Creates specific provisions for notice and publication under the act.

120.745(4): Creates the initial review and reporting requirements due by 12/1/2011.

120.745(5): Creates process for public objection of agency decision on whether rule should be included for economic review.

120.745(6): Creates review and reporting process for rules in effect on or before 11/16/2010. Group 1 report due 12/1/2012. Group 2 report due 12/1/2013. Exempts agencies from filing a report under s. 120.74, F.S., in 2013.

120.745(7): References authority of Legislature to choose whether to act on information reported.

120.745(8): Exempts agency proceedings to repeal rules identified in reports filed under this section from the requirement to prepare a statement of estimated regulatory costs. Provides rules listed for repeal in a report due in 12/2011, 12/2012, or 12/2013, are automatically repealed as of July 1 in the year following the report unless repealed earlier by the agency.

Section 3: Creates s. 120.7455, providing for internet-based public survey to collect information on rules, laws, ordinances, and regulations which impact the lawful activities of respondents, including unreasonably burdensome rules. Creates immunity, protection from retaliatory agency conduct for survey participants.

Section 4: Leaves unchanged the legal status of any rule determined to be invalid. This prevents any agency from using the process of review and submission to the Legislature to override a legal decision invalidating a rule.

Section 5: Section 2 of the act creating s. 120.745 will stand repealed on July 2, 2014.

Section 6: Effective date of law is July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: No new revenue sources are created in the bill.
2. Expenditures:

   Costs of review to agencies are indeterminate. By reducing duplication of activities for the agencies in allowing OFARR to designate rules already reviewed as a result of EO 11-01, and integrating the 2011 report with the review already required under s. 120.74, F.S., the costs for the comprehensive review in 2011 should be reduced. The agencies will experience increased costs in completing a

compliance economic analysis required for each rule being retained without amendment and which are likely to meet the criteria of s. 120.541(2)(a), F.S. An estimate of any significant compliance review costs should be available for consideration in the 2012 Regular Session and ought to be included in agency budgets for FY-2013 and FY-2014. The cost of reporting will be reduced in 2013 by eliminating the rules review and report under s. 120.74, F.S., for that year.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: No new revenues are generated under this bill.

2. Expenditures:

Those local governments subject to the APA will incur costs for the comprehensive review and report, subsequent economic analysis and reports, and costs to repeal rules. The bill excludes local governments made subject to the APA only by special law from s. 120.745 and these local governments will not incur such costs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill creates no direct economic impact on private sector interests. The bill is intended to help identify existing significant private and public economic impacts imposed by agency rules, enabling the public and the Legislature to better evaluate the benefits of programs administered by such rules.

D. FISCAL COMMENTS: No additional comments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities. Local governments subject to the APA are under the economic review requirements for rulemaking in s. 120.54 and 120.541, F.S., the ratification requirement of s. 120.541(3), F.S., and the biennial review and reporting requirement of s. 120.74, F.S. The required comprehensive review in s. 120.745 is an extension of the regulatory oversight to which these entities already are subject. Excluding smaller governmental entities, with jurisdiction over one county or less and made subject to the APA only by a special law, prevents the imposition of a statewide comprehensive process solely due to the ancillary effect of a special law.

2. Other: No other constitutional issues appear.

B. RULE-MAKING AUTHORITY: The bill does not grant rulemaking authority because none is needed. The bill provides the procedure to be followed by agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to administrative procedure; amending s. 120.74, F.S.; providing for agency reporting of annual regulatory plans; creating s. 120.745, F.S., providing for legislative review of agency rules; providing definitions; requiring each dagency to review rules in effect on or before November 16, 2010; providing for publication of notices; specifying information to be provided by agencies; authorizing the Office of Fiscal Accountability and Regulatory Reform to designate rules exempt from particular review; providing for public input and objections; directing the manner of addressing objections; providing for economic review of certain rules over two years; creating s. 120.7455, F.S., authorizing a legislative survey of regulatory impacts; providing immunities for those providing information to the Legislature; providing protections from retaliatory enforcement actions; providing that the validity of a rule is not affected, providing for repeal of section 2 of the act as of July 2, 2014; providing an effective date.

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

Section 1. Subsections (3) and (4) are added to section 120.74, Florida Statutes, to read:

120.74 Agency review, revision, and report.—

(3) No later than July 1 of each year, each agency shall

file with the President of the Senate, the Speaker of the House, and the committee a regulatory plan identifying and describing each rule the agency proposes to adopt for the 12 month period beginning on the July 1 reporting date and ending on the subsequent June 30, excluding emergency rules.

(4) For the year 2011, the certification required in subsection (2) may omit any information included in the reports provided under s. 120.745. Reporting under subsections (1) and (2) shall be suspended for the year 2013, but required reporting under those subsections shall resume in 2015 and biennially thereafter.

Section 2. Section 120.745, Florida Statutes, is created to read:

120.745 .— Legislative review of agency rules in effect on or before November 16, 2010.

(1) DEFINITIONS. The following definitions shall apply exclusively to this act:

(a) "Agency" shall have the same meaning and application as provided in s. 120.52(1), F.S., but for purposes of this section shall exclude each officer and governmental entity in the state having jurisdiction in one county or less than one county, to the extent they are expressly made subject to Ch. 120, F.S., by special law.

(b) "Compliance economic review" shall mean a good faith economic analysis which includes and presents the following information pertaining to a particular rule:

1. All information specified in s. 120.54(3)(b)2.a.;

2. All information specified in s. 120.541(2);

3. The impact on a person's entry into a lawful profession or occupation;

4. The impact on the availability to the public of lawful professional or occupational services;

5. The impact on the creation or retention of lawful employment positions;

6. Whether the rule restricts individuals in seeking lawful employment;

7. The imposition of any additional costs on lawful businesses not described in the analyses under sub-paragraphs 1 or 2; and

8. A justification for the rule summarizing the benefits of the rule.

(c) "Data Collection Rules" shall mean those rules requiring the submission of data to the agency from external sources, including but not limited to local governments, service providers, clients, licensees, other constituents and market participants.

(d) "Revenue Rules" shall mean those rules fixing amounts or providing for the collection of money.

(2) As provided in this section, each agency shall review all rules of that agency in effect on or before November 16, 2010, and which remain in effect on the effective date of this act, to determine whether the economic impact of each rule exceeds any of the criteria established in s. 120.541(2)(a).

(3) PUBLICATION OF NOTICES, DETERMINATIONS AND REPORTS. Agencies shall publish notices, determinations and reports

required under subsections (4), (5), or (6) of this section exclusively in the following manner:

(a) The agency shall publish each notice, determination and complete report on its Internet website.

1. Reports required under subsection (4), including any corrections to reports as a result of a determination under subsection (5), shall be accessible through one or more Internet links using the following URL format:

[Agency's home page internet address]/2011_Rule_review/[Florida Administrative Code (F.A.C.) title and subtitle (if applicable) designation for the rules included].

(Example: http://www.dos.state.fl.us/Rule_review/1S).

2. The lists of Group 1 Rules and Group 2 Rules, required under subsection (4), shall be accessible through an Internet link in the following URL format:

[Agency's home page internet address]/2011_Rule_review/Economic_Review/Schedule.

(Example: http://www.dos.state.fl.us/Rule_review/Economic_Review/Schedule)

3. Determinations under subsection (5) shall be accessible through an Internet link in the following URL format:

[Agency's home page internet address]/2011_Rule_review/Objection_Determination/[F.A.C. Rule number].

(Example: http://www.dos.state.fl.us/Rule_review/Objection_Determinat

ion/1S-1.001).

4. Completed compliance economic reviews shall be accessible through an Internet link in the following URL format:

[Agency's home page internet address]/2011_Rule_review/Economic_Review/[F.A.C.Rule number].

(Example: http://www.dos.state.fl.us/Rule_review/Economic_Review/1S-1.001)

(b)

1. Each notice shall be accessible through an Internet link using the following URL format:

[Agency's home page internet address]/2011_Rule_review/Notices.

(Example: http://www.dos.state.fl.us/Rule_review/Notices).

2. A copy of each notice shall be promptly delivered to the Department of State for publication in the next available issue of the Florida Administrative Weekly.

3. Each notice shall identify the publication for which notice is being given, and include:

1. The name of the agency;

2. The name, physical address, telefacsimile number, and electronic mailing address for the person designated to receive all inquiries, public comments, and objections pertaining to the w publication identified in the notice;

3. The particular URL address for the Internet web page through which the publication is accessible; and

4. The date the notice and publication is first published

on the agency's Internet website.

(c) Publication pursuant to this section is deemed to be complete as of the date the notice, determination or report is posted on the agency's internet website.

(4) INITIAL REVIEW AND REPORTING. By December 1, 2011, each agency shall complete the following:

(a) Notwithstanding s. 120.74(2), each agency's biennial report under s. 120.74 for the year 2011, shall be filed by December 1, 2011.

(b) In addition to the certification required by s. 120.74(2), each agency shall report the following information respecting each rule of the agency in effect as of the reporting date:

1. Whether the rule is a Revenue Rule, identifying the fund or account into which collections are deposited; and for each Revenue Rule, whether the rule authorizes, imposes or implements:

a. Registration, license, or inspection fees;

b. Transportation service tolls, whether for road, bridge, rail, air, waterway, port;

c. Fees for a specific service or purpose not included in a. or b.;

d. Fines, penalties, costs, or attorneys fees;

e. Any tax;

f. Any other amounts collected which are not in the foregoing categories.

2. Whether the rule is a Data Collection Rule and include the following information for each Data Collection Rule:

a. The statute(s) authorizing the collection of such data;

b. The purposes for which the agency uses the data and any purpose for which the data is used by others;

c. The policies supporting reporting and retention of the data;

d. Whether and to what extent the data is exempt from public inspection under ch. 119.

3. Whether the agency plans to repeal the rule and the estimated timetable for repeal, subject to subsection (8).

4. Whether the agency plans to amend the rule and the estimated timetable for amendment.

If the agency does not plan to amend or repeal the Rule on or before December 31, 2012, the following additional information shall be provided:

5. Whether the rule became effective after November 16, 2010, and if so, whether the rule was required to be ratified by the Legislature pursuant to s. 120.541(3).

6. Whether the rule was effective on or before November 16, 2010, and if so, whether the rule probably will have, for the five year period of time beginning January 1, 2011, any of the economic impacts described in s. 120.541(2)(a).

7. Whether the rule is designated as Group 1 or Group 2 based on the following:

Rules effective on or before November 16, 2010, identified under subparagraph (4)(b)6. as probably having one of the

economic impacts listed in s. 120.541(2)(a), shall be divided by the agency into two approximately equal groups designated as Group 1 and Group 2.

(c) The Office of Fiscal Accountability and Regulatory Reform (OFARR) may designate any rule for which information required in this subsection was previously provided to OFARR as exempt from full review under the provisions of this subsection. Each agency shall include in its report any rule so designated, identifying it as exempt. For each rule so designated, if the agency plans to retain the rule without amendment the agency shall report:

1. The information required in subparagraphs (4)(b)1. and 2., and

2. The information required in subparagraphs (4)(b)6. and 7., but only with respect to each rule that OFARR determines to:

a. Adversely affect the availability of business services;

b. Adversely affect job creation or retention;

c. Place unreasonable restrictions on access to employment; or

d. Impose a significant regulatory related cost.

(d) The report required in this subsection shall be published incorporating a table consistent with the following example:

Agency	F.A.C. Rule Number		OFFAR Exempt[1]	REVENUE RULE/Fund or Account[4]						Data Collection Rule[2]	Repeal[3]	Amend[3]	Effective after 11/16/2010	Effective on or before 11/16/2010	
	Title	Number		Licensure fee	Transport. Tolls	Other Fees	Fines	Tax	Other Revenue					Probable 120.541(2)(a) impact Group 1 or 2	Not probable impact
Possible answers			Exempt or blank	Y (G.R.) or N	Y or N	Y or N	Y or N	Y or N	Y or N	Y or N	Y or N	Y or N	Y or N	1 or 2 or blank	N

Footnotes:

1- If Exempt, use "Exempt" for the following columns: Repeal, Amend, and Effective after 11/16/2010.

2- Provide notes indicating the statutory authority for data collection, purpose for which agency uses data, purposes used by others, policies reporting data collection and retention.

3-Provide estimated timetable for repeal or amendment.

4-For Revenue Rules, include fund or account name in which collections are deposited. G.R. may be used for General Revenue

(e) In addition to the report required by this subsection (4), each agency shall publish a notice disclosing its list of its Group 1 Rules and Group 2 Rules by rule number and title in the manner provided in subsection (3).

(5) OBJECTION TO INITIAL REVIEW AND REPORT. Public input on reports required in subsection (4) may be provided by stating an objection to the information in the report, identifying the rule or rules to which the objection relates, submitted in writing or electronically to the person designated in the report.

(a) An objection under this subsection to information provided in response to subparagraph (4)(a)6. must include allegations of fact upon which the objection is based. Allegations of fact related to other objections may be included.

(b) An objection to the information provided in the report must be made by persons as follows:

1. The following may submit objections no later than 60 days from the date of publication of a report required in subsection (4):

a. The Small Business Regulatory Advisory Council;

b. A local government, a school district, or any other

political subdivision;

c. A lobbyist or principal as defined by s. 11.045(1), F.S., or s. 112.3215, F.S.; or

d. A person, or agent of such person, required to submit a Florida Income Tax return for any year after calendar year 2005.

2. Any person not included in subparagraph (5)(b)1. may submit objections no later than June 1, 2012.

(c) The agency shall determine whether or not to sustain an objection based upon the information provided with the objection, treating allegations of fact as if they are true, and any further review of information available to the agency to correct its report.

1. An objection by a person included in subparagraph (5)(b)2., objecting to the failure to designate a rule as Group 1 or Group 2 pursuant to subparagraph (4)(a)7., shall be determined based upon the standard that there is a reasonable likelihood that the rule will have an economic impact described in s. 120.541(2)(a).

2. No objection may be sustained to information provided under subparagraphs (4)(b)3., 4. or 7.

(d) No later than 20 days from the date an objection is submitted the agency shall publish its determination of the objection in the manner provided in subsection (3).

1. The agency's determination with respect to an objection is final and not subject to further proceedings, hearing, or judicial review.

2. If the agency sustains an objection, it shall correct its report within 10 days of such determination and shall

publish notice of the correction in the manner provided in subsection (3). The corrected report shall indicate that corrections have been made and identify corrected portions.

3. If the agency overrules the objection of a person included in subparagraph (5)(b)2., no later than 10 days from the date of publishing the determination the agency shall file with the committee a report consisting of the determination, the rule, the objection and all supporting documentation, and a written explanation of the agency's determination.

(6) ECONOMIC REVIEW OF RULES AND REQUIRED REPORT. Each agency shall review and report with respect to all Group 1 and Group 2 rules, the applicable year being 2012 for Group 1 Rules and 2013 for Group 2 rules.

(a) No later than May 1, each agency shall complete the following:

1. For each rule the agency shall prepare a compliance economic review.

2. The agency shall publish notice of completing the compliance economic review for each rule in the manner provided in subsection (3).

3. The agency shall publish a copy of the compliance economic review, directions on how and when interested parties may submit lower cost regulatory alternatives to the agency, and the date the notice is published, in the manner provided in subsection (3).

4. The agency shall submit each compliance economic review to the Small Business Regulatory Advisory Council for their review.

(b) The Small Business Regulatory Advisory Council may submit lower cost regulatory alternatives to any rule no later than August 1, to the agency that adopted the rule. All other submittals of lower cost regulatory alternatives to any rule shall be filed with the applicable agency no later than June 1.

(c) No later than December 1, each agency shall file with the President of the Senate, the Speaker of the House, and the committee a final report of the agency's review. For each rule the report shall include:

1. The text of the rule;

2. The compliance economic review for the rule;

3. All lower regulatory cost alternatives received by the agency;

4. The agency's written explanation for rejecting submitted lower regulatory cost alternatives;

5. The agency's justification to repeal, amend, or retain without amendment the rule.

(d) Notice of the report shall be published the manner provided in subsection (3).

(e) No later than December 1, each agency shall begin proceedings under s. 120.54, F.S., to amend or repeal those rules so designated in the report. Proceedings to repeal rules so designated in the report are subject to subsection (8).

(7) With respect to Group 1 Rules or Group 2 Rules identified for retention without amendment, the Legislature may consider specific legislation nullifying any such rule, or altering the statutory authority any such rule.

(8) SUMMARY PROCESS FOR REPEALING LISTED RULES. The

requirements for the preparation, consideration, or use of a statement of estimated regulatory costs under s. 120.54, F.S., and the provisions of s. 120.541, F.S., shall not apply in proceedings to repeal rules in accordance with subparagraph (4)(b)3. or paragraph (6)(e) of this section. Each rule listed for repeal in a report filed under subsections (4) or (6) shall stand repealed as of July 1 of the year following the filing of the report unless a repeal of the rule is effective prior to that date.

Section 3. Section 120.7455, Florida Statutes, is created to read:

120.7455 .—Legislative survey of regulatory impacts.

(1) From the effective date of this act, until July 2, 2014, the Legislature may establish and maintain an internet-based public survey of regulatory impact soliciting information from Floridians and other persons regarding the kind and degree of regulation affecting private activities in the state. Such input may include, but need not be limited to:

(a) The registered business name or other name of each reporting person;

(b) The number and identity of agencies licensing, registering or permitting lawful activities of the reporting person;

(c) The types, numbers and nature of licenses, permits and registrations required for various lawful activities of the reporting person;

(d) The identity of local, state and federal agencies, and other entities acting under color of law, regulating the lawful

activities of the reporting person or otherwise exercising power to enforce laws applicable to such activities; and,

(e) The identification and nature of each ordinance, law or administrative rule or regulation deemed unreasonably burdensome by the reporting person.

(2) The President of the Senate and the Speaker of the House may certify in writing to the chair of the committee and to the Attorney General the establishment and identity of any internet-based public survey established under this section.

(3) Any person reporting or otherwise providing information solicited by the Legislature in conformity with this section shall be immune from any enforcement action or prosecution that is

(a) Instituted or relies upon the fact of reporting or non-reporting of information, or

(b) Uses information provided,

in response to the Legislature's solicitation of information pursuant to this section.

(4) Any alleged violator against whom an enforcement action is brought may object to any proposed penalty in excess of the minimum provided by law or rule on the basis that the action is in retaliation for providing or withholding information in response to the Legislature's solicitation of information pursuant to this section. If the presiding judge determines the enforcement action was motivated in whole or in part by such retaliation, any penalty imposed shall be limited to the minimum penalties provided by law for each separate violation adjudicated.

Section 4. Nothing in this act shall be construed to change the legal status of a rule that has otherwise been judicially or administratively determined to be invalid.

Section 5. Section 2 of this act shall stand repealed as of July 2, 2014, unless amended or extended by subsequent act of the Legislature.

Section 6. This act shall take effect July 1, 2011.

Rules of Concern

64E-9.005 Construction Plan or Modification Plan Approval.

It is unlawful for any person(s) to begin construction or modification of any public pool without first having received written approval from the department. Unapproved pools and proposed modifications to previously approved aspects of pools shall satisfy the requirements of the rules in effect at the time of project plans submittal. The department shall allow flow velocities through the main drain and surface overflow system piping which exceed those specified in subsection 64E-9.007(8), F.A.C., when retrofitting the pool recirculation system with a collector tank. However, the design engineer must provide appropriate calculations justifying the design. The flow rate through the main drain grating shall not exceed 1.5 feet per second.

(1) Construction Plan Approval – In counties where the county health department is delegated authority to review and approve plans, projects shall be submitted by the design engineer directly to these county health departments. Projects in all other counties shall be submitted either to the Bureau of Water Programs, 4052 Bald Cypress Way, BIN C-22, Tallahassee, FL 32399-1742 or to the Bureau of Water Programs, 400 West Robinson Street, Suite S-532, Orlando, FL 32801-1752 as appropriate.

(a) The following shall be submitted for each pool with a separate filter system. Except that when several pools are to be constructed at the same site, at the same time, those pools can be submitted on the same set of plans. Each submittal shall include six sets of original applications and drawings or the number required by the reviewing entity:

1. Form DH 914.

2. Construction drawings of the project which contain sufficient detail to clearly apprise the department of the work to be undertaken which includes a site map with nearest cross streets and major thoroughfares, all views of the pool including dimensions, equipment area or enclosure, project layout and location, sanitary facility detail and location, a scaled site plan, a property survey (if available), a pool equipment list including the manufacturer or distributor names, model numbers, and catalog numbers or equipment description. All prints shall be drawn to a standard scale and shall be a minimum size of 18 × 24 inches and a maximum size of 36 × 42 inches. The details on the drawings shall be satisfactory for photographic reproduction. Color coded drawings are not acceptable. A four by six inch blank space shall be left vacant on the lower right hand corner or directly above the title block on each sheet.

3. Fees for each pool as required by Rule 64E-9.015, F.A.C.

4. If available, an electronic copy of the plans in PDF, TIF, DWG, or JPEG format.

(b) All drawings and applications shall be prepared, signed and sealed by a professional engineer, licensed in the State of Florida under provisions of Chapter 471, F.S., and shall fulfill the requirements of Section 471.025, F.S.

(c) If the initial application is not complete, the reviewing engineer shall request the information needed to complete the application.

(d) If the engineering plans are substantially in compliance with these rules, provisional approval shall be granted and the approval shall state all necessary corrective action to be completed prior to issuance of the operating permit. Provisional approvals require that a copy of the provisos be attached to each set of approved plans and the plans shall be marked provisional.

(e) Upon approval, the plans and applications not required for use by the department shall be delivered to the design engineer for distribution to the owner and pool contractor. There shall be one complete set of approved plans and documents on the pool construction site at all times during construction.

(f) Revision of approved plans prior to construction must have written approval from the department. Revision of plans after construction commencement shall be considered a modification.

(g) Individual pieces of equipment which are equivalent to equipment specified on the approved plans may be substituted during construction provided the engineer justifies the equivalency to the department along with the authorization application. Equipment packages, piping, and filters do not qualify for substitution without prior written plans approval from the department.

(h) If construction of the pool shell has not commenced within one year from the date of plans approval, the approval shall expire. After plans approval expires, and there have been no changes to Chapter 64E-9, F.A.C., that affect the proposed plans, the applicant may submit the same plans to the department for re-approval, along with the fee established in paragraph 64E-9.015(1)(b), F.A.C. If there have been changes to Chapter 64E-9, F.A.C., that affect the proposed plans, or if the plans differ from the original submission, then the applicant must submit the fee established in paragraph 64E-9.015(1)(a), F.A.C.

(i) Upon completion of the project the following shall be submitted for each pool to the reviewing entity:

1. Form DH 916, incorporated by reference at paragraph 64E-9.003(2)(d), F.A.C., bearing original signatures of all required signatories and the seal of the professional engineer and three copies.

2. Fees for each pool as required by Rule 64E-9.015, F.A.C.

3. When night swimming is proposed, an engineer licensed in Florida shall provide certification that the deck and surface

lighting requirements of paragraph 64E-9.006(2)(c), F.A.C., have been met.

(j) After satisfactory and timely correction of any deficiencies following the final construction inspection conducted by the department, the initial operating permit will be issued.

(2) Modifications – Modifications include non-equivalent changes or additions to the recirculation system, treatment equipment, physical structure, or appurtenances. Replacement of the pool or spa shell is considered to be construction of a new facility and shall be processed as such. The installation of new decking is not considered a modification if it is installed in conformance with paragraph 64E-9.006(2)(a), F.A.C., and deck markings are upgraded per subparagraph 64E-9.006(1)(c)3., F.A.C. Resurfacing the pool interior to original non-toxic slip-resistant and smooth specifications or equivalent replacement of equipment are not considered modifications. However, the following items shall be addressed during resurfacing projects:

(a) The lip of the gutter must be leveled to within 1/4 inch between the highest and lowest point and the downward slope from the lip to the drain must be maintained as originally designed or increased, but shall not exceed new construction standards.

(b) Tile step markings must be installed meeting the requirements of subparagraph 64E-9.006(1)(d)3., F.A.C.

(c) Where applicable the slope break marking must be installed meeting the requirements of sub-subparagraph 64E-9.006(1)(c)2.b., F.A.C., and the safety line must be installed two feet before the marking.

(d) Depth markers and NO DIVING markers must be installed in accordance with subparagraph 64E-9.006(1)(c)3., F.A.C.

(e) The pool ladder must have a three to six inch clearance from the pool wall. New cross braced ladder(s) shall be installed in place of non-cross braced ladder(s) in conformance with subparagraph 64E-9.006(1)(d)1., F.A.C., during a pool re-surfacing.

(f) Should resurfacing works affect the step riser heights, no riser shall exceed 12 inches and the intermediate risers shall be made uniform.

(g) When fiberglass is used to resurface a pool any existing tile shall not be covered by the fiberglass finish.

(h) The County Health Department shall be notified in writing of any proposed pool resurfacing or upgrades to decking at least 10 days prior to commencement. The notification shall include an itemized list of all proposed work that is to be performed, the license number of the contractor selected and shall indicate that all work will meet the requirements of paragraphs 64E-9.005(2)(a) through (g), F.A.C.

(i) Upon completion of the work the licensed contractor shall provide the County Health Department a letter bearing their license number which certifies that the work was completed in accordance with paragraphs 64E-9.005(2)(a) through (g), F.A.C.

(j) Recessed treads that protrude from the pool wall shall be removed and replaced with a cross braced ladder or reconstructed to meet the requirements of subparagraph 64E-9.006(1)(d)2. , F.A.C.

(3) Approval for pool modifications shall be obtained in the same manner as a construction approval as outlined in subsection 64E-9.005(1), F.A.C., above.

(4) Upon completion of an approved modification, written certification signed by the pool contractor, electrical contractor or inspector and signed and sealed by the engineer shall be provided to the department. This shall read as follows: "I certify that to the best of my knowledge and belief, the modification construction and equipment installation has been completed in conformance with the approved plans and documents."

(5) Upon completion of a modification, the pool shall not be reopened without authorization from the department.

(6) The painting of pools shall not be considered a modification provided the following conditions are met:

(a) Only paints designated by the manufacturer as pool paints are used.

(b) All step stripes, slope break markers and safety line, and depth and NO DIVING markings shall be provided to comply with the applicable subsection 64E-9.005(2), F.A.C.

(7) The installation of copper or copper/silver ionization units and ozone generators capable of producing less than a pool water ozone contact concentration of 0.1 milligrams per liter (mg/L) shall not be considered a pool modification provided compliance with the following is met:

(a) The ionization or ozone generator unit complies with paragraph 64E-9.007(16)(e), F.A.C.

(b) The manufacturer provides one set of signed and sealed engineering drawings indicating the following:

1. The unit does not interfere with the design flow rate.

2. The unit and the typical installation meet the requirements of the National Electrical Code.

3. A copper test kit and information regarding the maximum allowed copper and silver level and the minimum required chlorine level shall be available to the pool owner.

4. The unit shall meet the requirements of the NSF/ANSI standard 50-2007.

(c) At least 7 days before the time of installation, the installer will provide a photocopy of the above drawings and a letter of intent identifying the pool on which the unit is to be installed.

(d) Upon completion of the installation, a professional engineer or electrician licensed in the State of Florida shall provide a letter, to the county health department, indicating the unit was properly installed in accordance with the typical drawings, the National Electrical Code and with local codes.

Rulemaking Authority 381.006, 514.021 FS. Law Implemented 381.006, 514.021, 514.025, 514.03, 514.031, 514.05, 514.06 FS. History–New 10-5-93, Formerly 10D-5.134, Amended 12-27-98, 5-27-04, 5-24-09.

64E-9.007 Recirculation and Treatment System Requirements.

(1) Recirculation and treatment equipment such as filters, recessed automatic surface skimmers, ionizers, ozone generators, disinfection feeders and chlorine generators must be tested and approved using the NSF/ANSI Standard 50-2007, Circulation System Components and Related Materials for Swimming Pool, Spas/Hot Tubs, dated April 2007, which is incorporated by reference in these rules. The standard and a list of approved devices is available from www.NSF.org. If standards do not exist for a specific product, the manufacturer must work with NSF or other American National Standards Institute (ANSI) approved agency to develop such standards.

(2) The recirculation system shall be designed to provide a minimum of four turnovers of the pool volume per day. Pools that are less than 1000 square feet at health clubs shall be required to provide eight turnovers per day.

(3) The design pattern of recirculation flow shall be 100 percent through the main drain piping and 100 percent through the perimeter overflow system or 60 percent through the skimmer system.

(a) Perimeter overflow gutters – The lip of the gutter shall be uniformly level with a maximum tolerance of one-fourth inch between the high and low areas. The bottom of the gutter shall be level or slope to the drains. The spacing between drains shall not exceed 10 feet for two inch drains or 15 feet for two and one-half inch drains, unless hydraulically justified by the design engineer. Gutters may be eliminated along pool edges for no more than fifteen feet and this shall not exceed 10% of the perimeter (at least 90% of the perimeter shall be guttered). In areas where gutters are eliminated, handholds shall be provided within nine inches of the water surface. Handhold design shall be approved by the department prior to construction. The gutter lip shall be tiled with a minimum of 2 inch tile on the pool wall, each a minimum size of one inch on all sides, except that stainless steel gutters are exempt from this requirement.

1. Either recessed type or open type gutters shall be used. Special designs can be approved provided they are within limits of sound engineering practice. Recessed type gutters shall be at least four inches deep and four inches wide, and no part of the recessed gutter shall be visible from a position directly above the gutter sighting vertically down the edge of the deck or curb. Open type gutters shall be at least six inches deep and 12 inches wide. The back vertical wall of the gutter shall be tiled with glazed tile, each a minimum size of one inch on all sides. This tile shall be smooth and easily cleanable. The gutter shall slope downward 2 inches, plus or minus 1/4 inch, from the lip to the drains. When open type gutters are located at pool steps and the gutter is used as a step tread, the gutter slope may be reduced to 1 inch in the area of the steps, and this tread shall be tiled with slip resistant tile. The back of the gutter drains shall be located within 3/4 inch of the back vertical wall of the gutter, where the gutter is deepest and shall be flush with the surrounding area or be recessed no more than 3/8 inch.

2. All gutter systems shall discharge into a collector tank.

3. The department shall waive the requirements of tile on stainless steel gutter systems when it can be shown that the surfaces at the waterline and back of the gutter are smooth and easily cleanable.

(b) Recessed Automatic Surface Skimmers – Recessed automatic surface skimmers may be utilized when the pool water surface area is 1,000 square feet or less excluding offset stairs and swimouts and the width of the pool is not over 20 feet.

1. The recessed automatic surface skimmer piping system shall be designed to carry 60 percent of the pool total design flow rate with each skimmer carrying a minimum 30 gallons per minute. One skimmer for every 400 square feet or fraction thereof of pool water surface area shall be provided.

2. Prevailing wind direction and the pool outline shall be considered by the designer in the selection of skimmer locations and the location of skimmers shall be such that the interference of adjacent inlets and skimmers is minimized. Recessed automatic surface skimmers shall be installed so that there is no protrusion into the pool water area. The deck or curb shall provide for a handhold around the entire pool perimeter and shall not be located more than nine inches above the mid point of the opening of the skimmer.

3. Recessed automatic surface skimmers may be installed with an equalizer valve and an equalizer line when the skimmer piping system is connected directly to pump suction. If installed, the equalizer valve shall be a spring loaded vertical check valve which will not allow direct suction on the equalizer line. Float valves are prohibited. The equalizer line inlet shall be installed at least one foot below the normal pool water level and the equalizer line inlet shall be protected by an ASME/ANSI A112.19.8-2007 compliant cover/grate. The equalizer line shall be sized to handle the expected flow with a two inch minimum line size. For existing pools, within 180 days of effective date of this rule, skimmer equalizer lines shall be permanently plugged or ASME/ANSI A112.19.8-2007 compliant covers/grates shall be installed at the inlet.

4. A wall inlet fitting shall be provided directly across from each skimmer.

5. A minimum 6-inch water line tile shall be provided on all pools with automatic skimmer systems, each a minimum size of one inch on all sides. Glazed tile that is smooth and easily cleanable shall be utilized.

(4) Pumps – If the pump or suction piping is located above the water level of the pool, the pump shall be self-priming. Pumps that take suction prior to filtration shall be equipped with a hair and lint strainer. The recirculation pump shall be selected to provide the required recirculation flow against a minimum total dynamic head of 60 feet unless hydraulically justified by the design engineer. Vacuum filter systems pumps shall provide at least 50 feet of total dynamic head. Should the total dynamic head required not be appropriate for a given project, the design engineer shall provide an alternative.

(5) Filters – Filters sized to handle the required recirculation flow shall be provided.

(a) Filter capacities – The maximum filtration rate in gallons per minute per square foot of filter area shall be: fifteen (twenty if so approved utilizing the procedure stated in subsection 64E-9.007(1), F.A.C.) for high rate sand filters, three for rapid sand filters, three-hundred-seventy-five thousandths for pleated cartridge filters and two for Diatomaceous Earth (D.E.) type filters.

(b) Filter Appurtenances.

1. Pressure filter systems shall be equipped with an air relief valve, influent and effluent pressure gauges with minimum face size of two inches reading 0-60 pounds per square inch (psi), and a sight glass when a backwash line is required.

2. Vacuum filter systems shall be equipped with a vacuum gauge which has a two inch face and reads from 0-30 inches of mercury.

3. Precoat – A precoat pot or collector tank shall be provided for D.E. type systems.

(c) Filter tanks and elements – The filter area shall be determined on the basis of effective filtering surfaces with no allowance given for areas of impaired filtration, such as broad supports, folds, or portions which may bridge. D.E. filter elements shall have a minimum one inch clear spacing between elements up to a four square foot effective area. The spacing between filter elements shall increase one-eighth inch for each additional square foot of filter area or fraction thereof above an effective filter area of four square feet. All cartridges used in public pool filters shall be permanently marked with the manufacturer's name, pore size and area in square feet of filter material. All cartridges with end caps shall have the permanent markings on one end cap. Vacuum filter tanks shall have cover intersections between the wall and the floor and the tank floor shall slope to the filter tank drain. The D.E. filter tank and elements shall be installed such that the recirculation flow draw down does not expose the elements to the atmosphere whenever only the main drain valve is open or only the surface overflow gutter system valve is open.

(6) Piping – All plastic pipe used in the recirculation system shall be imprinted with the manufacturer's name and the NSF-pw logo for potable water applications. Size, schedule, and type of pipe shall be included on the drawings.

(7) Valves – Return lines, main drain lines, and surface overflow system lines, shall each have proportioning valves.

(8) Flow Velocity – Pressure piping shall not exceed 10 feet per second, except that precoat lines with higher velocities may be used when necessary for agitation purposes. The flow velocity in suction piping shall not exceed six feet per second except that flow velocities up to 10 feet per second in filter assembly headers will be acceptable. Main drain systems and surface overflow systems which discharge to collector tanks shall be sized with a maximum flow velocity of three feet per second. The filter and vacuuming system shall have the necessary valves and piping to allow filtering to pool, vacuuming to waste, vacuuming to filter, complete drainage of the filter tank, backwashing for sand and pressure D.E. type filters and precoat recirculation for D.E. type filters.

(9) Inlets – All inlets shall be adjustable with wall type inlets being directionally adjustable and floor type inlets having a means of flow adjustment. Floor inlets shall be designed and installed such that they do not protrude above the pool floor and all inlets shall be designed and installed so as not to constitute sharp edges or protrusions hazardous to pool bathers. Floor inlets for vinyl liner and fiberglass pools, shall be smooth with no sharp edges, and shall not extend more than 3/8 inches above the pool floor. Wall inlets shall be installed a minimum of 12 inches below the normal operating water level unless precluded by the pool depth or intended for a specific acceptable purpose.

(a) Pools 30 feet in width or less, with wall inlets only shall have enough inlets such that the inlet spacing does not exceed 20 feet based on the pool water perimeter.

(b) Pools 30 feet in width or less with floor inlets only shall have a number of inlets provided such that the spacing between adjacent inlets does not exceed 20 feet and the spacing between inlets and adjacent walls does not exceed 10 feet.

(c) A combination of wall and floor inlets may be used in pools 30 feet in width or less only if requirements of paragraph (a) or (b) are fully met.

(d) Pools greater than 30 feet in width shall have either floor inlets only, or a combination of floor inlets and wall inlets. Pools with floor inlets only shall have a number of floor inlets provided such that the spacing between adjacent inlets does not exceed 20

feet and the spacing between inlets and an adjacent wall does not exceed 10 feet.

(e) Pools greater than 30 feet in width with a combination of wall and floor inlets shall have the number of wall inlets such that the maximum spacing between the wall inlets is 20 feet and floor inlets are provided for the pool water area beyond a 15 feet perpendicular distance from all walls. The number of floor inlets shall be such that the spacing between adjacent inlets does not exceed 20 feet and the distance from a floor inlet and an adjacent wall does not exceed 25 feet.

(f) The flow rate through each inlet shall not exceed 20 gpm.

(10) Main Drain Outlets – All pools shall be provided with an outlet at the deepest point.

(a) The depth at the outlet must not deviate more than three inches from the side wall depth marking unless designed and approved as such and dual depth markings are used.

(b) Outlets must be covered by a secured grating which requires the use of a tool to remove and whose open area is such that the maximum velocity of water passing through the openings does not exceed one and one-half feet per second at 100 percent of the design recirculation flow.

(c) Multiple outlets, equally spaced from the pool side walls and from each other, shall be installed in pools where the deep portion of the pool is greater than 30 feet in width.

(d) If the area is subject to high ground water, the pool shall be designed to withstand hydraulic uplift or shall be provided with hydrostatic relief devices.

(e) The main drain outlet shall be connected to a collector tank. The capacity of the collector tank shall be at least one minute of the recirculated flow unless justified by the design engineer. Vacuum filter tanks are considered collector tanks.

(f) All pools built without a main drain collector tank must be retrofitted with a properly sized and piped collector tank as described in the collector tank definition, the first paragraph of Rule 64E-9.005, subsections 64E-9.007(8) and 64E-9.007(10), F.A.C., on or before the following dates to eliminate direct suction through the main drain.

1. For all pools, including wading pools, except spa type pools, with a main drain grate water depth of 4 feet or less, construction shall be completed on or before one year from the effective date of this rule;
For all spa type pools built before 1977, retrofit by July 1, 2010,
For all spa type pools built between 1977 and 1986, retrofit by July 1, 2011,
For all spa type pools built between 1986 and 1995, retrofit by July 1, 2012,
And for all other pools, retrofit by July 1, 2013.

2. All existing public pools with direct suction main drains shall install as soon as possible, but in no case later than 180 days after the effective date of this rule, a main drain cover/grate that meets both the ASME/ANSI A112.19.8-2007 standard for drain covers/grates and the main drain cover/grate 1.5 feet per second water velocity requirement of this rule.

3. A modification permit shall be obtained prior to installation of the collector tank.

4. Pools that cannot be retrofitted by these dates shall be closed on or before these dates.

(g) Main drain covers/grates installed after the effective date of this rule shall comply with the requirements of ASME/ANSI A112.19.8-2007 and the water velocity requirement of this rule.

(11) An automatic and manual water makeup control must be provided to maintain the water level at the lip of the overflow gutter or at the mouth of the recessed automatic surface skimmers and must discharge through an air gap into a fill pipe or collector tank. Over the rim fill spouts are prohibited.

(12) Cleaning system – A portable or plumbed in vacuum cleaning system shall be provided. All vacuum pumps shall be equipped with hair and lint strainers. Recirculation or separate vacuum pumps shall not be used for vacuuming purposes when in excess of 3 horsepower. When the system is plumbed in, the vacuum fittings shall be located to allow cleaning the pool with a 50 foot maximum length of hose. Vacuum fittings shall be mounted no more than 15 inches below the water level, flush with the pool walls, and shall be provided with a spring loaded safety cover which shall be in place at all times. Bag type cleaners which operate as ejectors on potable water supply pressure must be protected by a vacuum breaker. Cleaning devices shall not be used while the pool is open to bathers.

(13) Rate of flow indicators – A rate of flow indicator, reading in gpm, shall be installed on the return line. The rate of flow indicator shall be properly sized for the design flow rate and shall be capable of measuring from one-half to at least one and one-half times the design flow rate. The clearances upstream and downstream from the rate of flow indicator shall comply with manufacturer's installation specifications.

(14) Heaters – Pool heaters shall comply with nationally recognized standards acceptable to the department and to the design

engineer. Pools equipped with heaters shall have a fixed thermometer mounted in the pool recirculation line downstream from the heater outlet. Thermometers mounted on heater outlets do not meet this requirement. A sketch of any proposed heater installation including valves, thermometer, pipe sizes, and material specifications shall be submitted to the department and authorization obtained prior to installation. Piping and influent, effluent and bypass valves which allow isolation or removal of the heater from the system shall be provided. Materials used in solar and other heaters shall be non-toxic and acceptable for use with potable water. Heaters shall not prevent the attainment of the required turnover rate. Heaters shall comply with applicable heating codes. Heater replacement or addition meeting the provisions of this section does not constitute a modification.

(15) Pool waste water disposal – Pool waste water shall be discharged through an air gap; disposal shall be to sanitary sewers, storm sewers, drain fields, or by other means, in accordance with local municipal and building official requirements including obtaining all necessary permits. Each waste line shall have a unique air gap. Waste lines from different sources (e.g., pool, spa, overfill, sump pump) shall not be tied together, but may discharge into a common sump or receptacle after the air gap. Disposal of water from pools using D.E. powder shall be accomplished through separation tanks which are equipped with air bleed valves, bottom drain lines, and isolation valves, or through a settling tank with final disposal being acceptable to local authorities. D.E. separator tanks shall have a capacity as rated by the manufacturer, equal to the square footage of the filter system. All lines shall be sized to handle the expected flow. There shall not be a direct physical connection between any waste or drain line from a pool or recirculation system and any sewer line. Waste D.E. powder shall be collected and disposed of in a manner acceptable to local authorities and solid waste collectors.

(16) Disinfection and pH adjustment shall be added to the pool recirculation flow using automatic feeders meeting the requirement of NSF/ANSI Standard 50-2007. All chemicals shall be fed into the return line after the pump, heater and filters unless the feeder was designed by the manufacturer and approved by the NSF to feed to the collector tank or to the suction side of the pump. Feeding chlorinated isocyanurates disinfectant is prohibited in spas, wading pools and interactive water features, and these existing feeders shall be replaced with non-isocyanurate chlorinators, or equivalent, with a pH adjustment feeder on or before June 1, 2011. Dual or multiuse feeders can be used if approved for and feeding an acceptable rate of alternate disinfectant.

(a) Gas chlorination – When gas chlorination is utilized, the chlorinator shall be capable of continuously feeding a chlorine dosage of six mg/L to the recirculated flow of the filtration system. The application point for chlorine shall be located in the return line downstream of the filter, recirculation pump, heater, and flow meter, and as far as possible from the pool.

1. Gas chlorinators shall be located in above grade rooms and in areas which are inaccessible to unauthorized persons.

a. Chlorine rooms shall have: continuous forced draft ventilation capable of a minimum of one air change per minute with an exhaust at floor level to the outside, a minimum of 30 foot candles of illumination with the switch located outside and the door shall open out and shall not be located adjacent to the filter room entrance or the pool deck. A shatter-proof gas tight inspection window shall be provided.

b. Chlorine areas shall have a roof and shall be enclosed by a chain-link type fence at least six feet high to allow ventilation and prevent vandalism.

2. A gas mask, or a self-contained breathing apparatus, approved for use in chlorine gas contaminated air, shall be provided and shall be located out of the area of possible contamination.

3. When booster pumps are used with the chlorinator, the pump shall use recirculated pool water supplied via the recirculation filtration system. The booster pump shall be electrically interlocked with the recirculation pump to prevent the feeding of chlorine when the recirculation pump is not operating.

4. A means of weighing chlorine containers shall be provided. When 150 pound cylinders are used, platform type scales shall be provided and shall be capable of weighing a minimum of two full cylinders at one time. The elevation of the scale platform shall be within two inches of the adjacent floor level, and the facilities shall be constructed to allow easy placement of full cylinders on the scales.

5. Each cylinder shall be secured at all times, with 150 pound cylinders maintained in an upright position. A protective cap shall be in place at all times when the cylinder is not connected to the chlorinator.

(b) Hypohalogenation and Electrolytic chlorine generators – The hypohalogenation type feeder and electrolytic chlorine generators shall be adjustable from zero to full range. A rate of flow indicator is required on erosion type feeders. The feeders shall be capable of continuously feeding a dosage of 6 mg/L to the minimum required turnover flow rate of the filtration systems. Solution feeders shall be capable of feeding the above dosage using a ten percent sodium hypochlorite solution, or five percent calcium hypochlorite solution, whichever disinfectant is to be utilized at this facility. To prevent the disinfectant from siphoning or feeding

directly into the pool or pool piping under any type failure of the recirculation equipment, an electrical interlock with the recirculation pump shall be incorporated into the system for electrically operated feeders. A flow sensor controller can also be used to turn off the feeders when flow is not sensed. The minimum size of the solution reservoirs shall be at least 50 percent of the maximum daily capacity of the feeder. The solution reservoirs shall be marked to indicate contents.

(c) Feeders for pH adjustment – Feeders for pH adjustment shall be provided on all pools. pH adjustment feeders shall be positive displacement type, shall be adjustable from zero to full range, and shall have an electrical interlock with the circulation pump to prevent discharge when the recirculation pump is not operating. When soda ash is used for pH adjustment, the maximum concentration of soda ash solution to be fed shall not exceed one-half pound soda ash per gallon of water. Feeders for soda ash shall be capable of feeding a minimum of three gallons of the above soda ash solution per pound of gas chlorination capacity. The minimum size of the solution reservoirs shall not be less than 50 percent of the maximum daily capacity of the feeder. The solution reservoirs shall be marked to indicate the contents.

(d) Ozone generating equipment may be used for supplemental water treatment on public swimming pools subject to the conditions of this section.

1. Ozone generating equipment electrical components and wiring shall comply with the requirements of the National Electrical Code and the manufacturer shall provide a certificate of conformance. The process equipment shall be provided with an effective means to alert the user when a component of this equipment is not operating.

2. Ozone generating equipment shall meet the NSF/ANSI Standard 50-2007.

3. The concentration of ozone in the return line to the pool shall not exceed 0.1 mg/L.

4. The injection point for ozone generating equipment shall be located in the pool return line after the filtration and heating equipment, prior to the halogen injection point, and as far as possible from the nearest pool return inlet with a minimum distance of four feet. Injection methods shall include a mixer, contact chamber, or other means of efficiently mixing the ozone with the recirculated water. The injection and mixing equipment shall not prevent the attainment of the required turnover rate of the recirculation system. Ozone generating equipment shall be equipped with a check valve between the generator and the injection point. Ozone generating equipment shall be equipped with an air flow meter and a means to control the flow. The generator shall be electrically interlocked with the recirculation pump to prevent the feeding of ozone when the recirculation pump is not operating. A flow sensor controller can also be used to turn off the feeder when flow is not sensed.

5. Ventilation requirements – Ozone generating equipment shall be installed in equipment rooms with either forced draft or cross draft ventilation. Below grade equipment rooms with ozone generators shall have forced draft ventilation and all equipment rooms with forced draft ventilation shall have the fan control switch located outside the equipment room door. The exhaust fan intake for forced draft ventilation and at least one vent grille for cross draft ventilation shall be located at floor level.

6. A self-contained breathing apparatus designed and rated by it's manufacturer for use in ozone contaminated air shall be provided when ozone generator installations are capable of exceeding the maximum pool water ozone contact concentration of 0.1 milligrams per liter (mg/L). The self-contained breathing apparatus shall be available at all times and shall be used at times when the maintenance or service personnel have determined that the equipment room ozone concentration exceeds 10 mg/L. Ozone generator installations which require the self-contained breathing apparatus shall also be provided with Draeger type detector tube equipment which is capable of detecting ozone levels of 10 mg/L and greater.

7. In lieu of the above self contained breathing apparatus an ozone detector capable of detecting 1 mg/L may be used. Said detector must be capable of stopping the production of ozone, venting the room and sounding an alarm once ozone is detected.

(e) Ionization units may be used as supplemental water treatment on public pools subject to the condition of this paragraph.

1. Ionization equipment and electrical components and wiring shall comply with the requirements of the National Electrical Code and the manufacturer shall provide a certification of conformance.

2. Ionization equipment shall meet the NSF/ANSI Standard 50-2007, Circulation System Components and Related Materials for Swimming Pools, Spas/Hot Tubs, or equivalent, shall meet UL standards and shall be electrically interlocked with recirculation pump.

(f) Ultraviolet (UV) light disinfectant equipment may be used as supplemental water treatment on public pools (and additional treatment on IWFs) subject to the conditions of this paragraph and manufacturer's specifications. UV is encouraged to be used to eliminate or reduce chlorine resistant pathogens, especially the protozoan *Cryptosporidium.*

1. UV equipment and electrical components and wiring shall comply with the requirements of the National Electrical Code and the manufacturer shall provide a certification of conformance to the department.

2. UV equipment shall meet UL standards and shall be electrically interlocked with recirculation pump(s) on all pools and with feature pump(s) on an IWF such that when the UV equipment fails to produce the required dosage as measured by an automated sensor, the feature pump(s) are disabled so the water features do not operate.

3. UV equipment shall be validated by a capable party that it delivers the required and predicted UV dose at the validated flow, lamp power and water UV transmittance conditions, and has complied with all professional practices summarized in the USEPA Ultraviolet Disinfectant Guidance Manual dated November, 2006, which is publication number EPA 815-R-06-007 available from the department at http://www.floridashealth.org/Environment/water/swim/index.html or at http://www.epa.gov/safewater/disinfection/lt2/pdfs/guide_lt2_uvguidance.pdf.

4. UV equipment shall constantly produce a validated dosage of at least 40 mJ/cm2 (milliJoules per square centimeter) at the end of lamp life.

5. The UV equipment shall not be located in a side stream flow and shall be located to treat all water returning to the pool or water features.

(17) Water features such as waterfalls or fountains in pools may use up to 20% of the return water from the filter system, however all waters used in the feature shall not be counted toward attaining the designed turnover rate. Return piping system shall be designed and capable of handling the additional feature flow when the feature is turned off. Features that require more than 20% of the flow rate shall be supplied by an additional pump that drafts from a suitable collector tank. All water features that utilize water from the pool shall be designed to return the water to the pool. Spray features mounted in the pool deck shall be flush with the pool deck and shall be designed with the safety of the pool patron in mind.

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