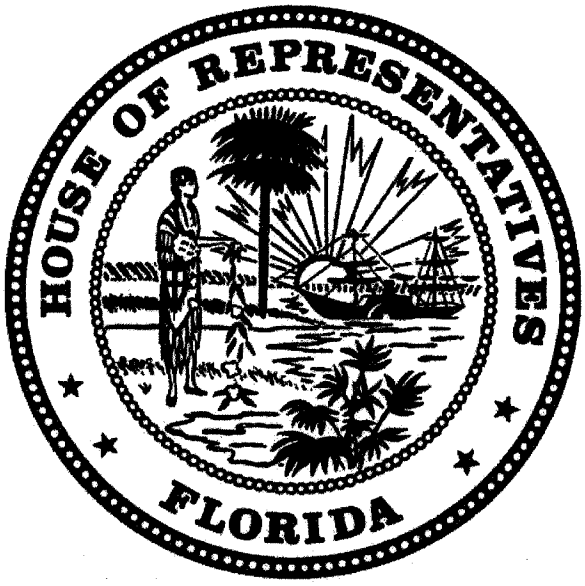

Regulatory Affairs Committee

Friday, March 22, 2013
8:30 AM
404 HOB

REVISED

Will Weatherford
Speaker

Doug Holder
Chair

The Florida House of Representatives

Regulatory Affairs Committee

Will Weatherford
Speaker

Doug Holder
Chair

AGENDA

March 22, 2013
404 HOB - 8:30 AM – 10:00 AM

I. Call to Order and Roll Call

II. CS/HB 45 by *Business & Professional Regulation Subcommittee; Rep. Hooper*
Vehicle Permits for the Transportation of Alcoholic Beverages

III. CS/HB 269 by *Energy & Utilities Subcommittee; Rep. Beshears*
Public Construction Projects

IV. HB 425 by *Rep. Goodson*
Consumer Finance Charges

V. CS/HB 649 by *Energy & Utilities Subcommittee; Rep. Cummings*
Public Records/Proprietary Confidential Business

VI. CS/HB 695 by *Business & Professional Regulation Subcommittee; Rep. Holder*
Tied House Regulation

VII. HB 4001 by *Reps. Gaetz, Perry*
Florida Renewable Fuel Standard Act

VIII. CS/HB 7023 by *Agriculture & Natural Resources Appropriations Subcommittee; Business & Professional Regulation Subcommittee; Rep. Cummings*
Department of Agriculture & Consumer Services

IX. HB 7025 by *Business & Professional Regulation Subcommittee; Rep. Eagle*
Timeshares

303 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4870 Fax: (850) 413-0419

X. HB 7093 by *Insurance & Banking Subcommittee; Rep. Nelson*
Establishment of Clearinghouse Program within Citizens Property Insurance Corporation

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Regulatory Affairs Committee

Start Date and Time:	Friday, March 22, 2013 08:30 am
End Date and Time:	Friday, March 22, 2013 10:00 am
Location:	404 HOB
Duration:	1.50 hrs

Consideration of the following bill(s):

CS/HB 45 Vehicle Permits for Transportation of Alcoholic Beverages by Business & Professional Regulation Subcommittee, Hooper
CS/HB 269 Public Construction Projects by Energy & Utilities Subcommittee, Beshears
HB 425 Consumer Finance Charges by Goodson
CS/HB 649 Public Records/Proprietary Confidential Business by Energy & Utilities Subcommittee, Cummings
CS/HB 695 Tied House Regulation by Business & Professional Regulation Subcommittee, Holder
HB 4001 Florida Renewable Fuel Standard Act by Gaetz, Perry
CS/HB 7023 Department of Agriculture & Consumer Services by Agriculture & Natural Resources Appropriations Subcommittee, Business & Professional Regulation Subcommittee, Cummings
HB 7025 Timeshares by Business & Professional Regulation Subcommittee, Eagle
HB 7093 Establishment of Clearinghouse Program within Citizens Property Insurance Corporation by Insurance & Banking Subcommittee, Nelson

Pursuant to rule 7.12, the filing deadline for amendments to bills on the agenda by a member who is not a member of the committee or subcommittee considering the bill is 6:00 p.m., Thursday, March 21, 2013.

By request of the Chair, all Regulatory Affairs Committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Thursday, March 21, 2013.

NOTICE FINALIZED on 03/20/2013 16:20 by Ellinor.Martha

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 45 Vehicle Permits for the Transportation of Alcoholic Beverages
SPONSOR(S): Business & Professional Regulation Subcommittee; Hooper and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 372

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	10 Y, 0 N, As CS	Livingston	Luczynski
2) Regulatory Affairs Committee		Livingston	Hamon

SUMMARY ANALYSIS

Florida's alcoholic beverage law provides for a structured three-tiered distribution system: manufacturer, distributor (wholesaler), and vendor (retailer).The Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation is responsible for enforcing the provisions of the beverage laws.

Current law authorizes retail vendors to transport alcoholic beverages from a distributor's place of business in vehicles which are owned or leased by the vendor. The bill expands this authority to include vehicles which are owned or leased by a person that has been identified on the vendor's license application and the person is approved by the division. A vehicle permit must be obtained from the division to authorize the use of the vehicle by the vendor and by the designated driver. The signature of the designated driver is required on the vehicle permit application.

A designated driver, with a valid vehicle permit, transporting alcoholic beverages is subject to the same conditions regarding inspection and search as is under current law. These conditions allow warrantless searches of the vehicle by authorized enforcement personnel.

The bill removes language which references the division authority to issue vehicle decals to be attached to the vehicle. Decals are no longer used by the division. However, the bill requires that the invoices or sales tickets for the purchased alcoholic beverages must be carried in the vehicle used by the vendor or the driver when the alcoholic beverages are being transported.

The bill is anticipated by the DBPR to have minimal, but indeterminate, increase on state revenue due to the anticipated increase in the number of $5 vehicle permits issued.

The effective date of the bill is July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present situation

The Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation (DBPR) is responsible for regulating the conduct, management, and operation of the manufacturing, packaging, distribution, and sale within the state of alcoholic beverages.

Florida's alcoholic beverage law provides for a structured three-tiered distribution system: manufacturer, distributor (wholesaler), and vendor (retailer). The retailer makes the ultimate sale to the consumer. Alcoholic beverage excise taxes are collected at the wholesale level based on inventory depletions and the state "sales tax" is collected at the retail level.

Activities between the license groups are extensively regulated and constitute the basis for Florida's "Tied House Evil" law. Among those restrictions, s. 561.42, F.S., prohibits a manufacturer or distributor from having any financial interest, directly or indirectly, in the establishment or business of a retailer. Many restrictions apply to business and market activities between the three tiers.

Subsection 561.01(14), F.S., defines "licensee" to mean a legal or business entity, person, or persons that hold a license issued by the division. Subsection (20) defines "permit carrier" to mean a licensee authorized to make deliveries as provided in s. 561.57, F.S.

Subsection 561.57(1), F.S., specifies that vendors may make deliveries away from their places of business of sales actually made at the licensed place of business. Section 561.57(2), F.S., allows deliveries by a manufacturer, distributor, or vendor away from his or her place of business to be made only in vehicles which are owned or leased by the licensee.

Subsection 561.57(3), F.S., specifies that a retail vendor may transport alcoholic beverages that have been purchased from a distributor by the vendor from the place of business of the distributor to the vendor's licensed premises or the vendor's storage facility. A vehicle permit or decal is required to be attached to the vendor's owned or leased vehicle to authorize the use of the vehicle for transporting the beverages.

This subsection further specifies that by acceptance of an alcoholic beverage license and the use of the vendor's permitted vehicles, the licensee agrees that the vehicle may be inspected and searched without a search warrant, for the purpose of determining compliance with provisions of the alcoholic beverage laws. Warrantless searches are authorized for employees of the division and also by sheriffs, deputy sheriffs, and police officers during business hours or other times the vehicle is being used to transport or deliver alcoholic beverages.

The statute currently authorizes the division to issue vehicle permits or decals upon payment of a $5 fee by the retail vendor. However, the division no longer issues decals for attachment to the vehicle but issues paper permits. Vehicle permit holders are required to keep the paper permits in their vehicles.

Current provisions specify that a permit is valid and does not expire unless the vendor disposes of the vehicle, or the vendor's alcoholic beverage license is transferred, canceled, not renewed, or is revoked by the division.

Various exemptions from the vehicle permit requirements are specified in s. 561.57, F.S., such as for a licensed salesperson of wine and spirits on behalf of a distributor and common carriers are not required to have vehicle permits to transport alcoholic beverages, among others.

Effect of proposed changes

The bill continues to authorize licensed vendors to make deliveries in vehicles owned or leased by the vendor and expands the delivery authority to include vehicles which are owned or leased by a person that has been identified on the vendor's beverage license application and is approved by the division. A vehicle permit must be obtained from the division to authorize the use of the vehicle by the vendor and by the designated driver to transport alcoholic beverages. The signature of the designated driver is required on the vehicle permit application.

The bill specifies that the vehicles must be operated pursuant to the vehicle permit when transporting alcoholic beverages from a distributor's place of business to the vendors licensed premises or off-premises storage.

As with a vendor's vehicle permit, the bill also provides that the authorized person's permit would expire when the driver disposes of the vehicle, or the vendor's alcoholic beverage license is transferred, canceled, not renewed, or is revoked by the division, whichever occurs first. In addition, the vehicle permit is canceled by the division upon the vendor's or authorized person's request.

The bill removes language which references the issuance of vehicle decals to be attached to the vehicle. Decals are no longer used by the division. However, the bill requires that the invoices or sales tickets for the purchased alcoholic beverages must be carried in the vehicle used by the vendor or the driver when the alcoholic beverage are being transported. The bill continues to require the payment of the $5 vehicle permit fee.

The bill is anticipated by the DBPR to have minimal, but indeterminate increase on state revenue due to the anticipated increase in the number of $5 vehicle permits issued.

B. SECTION DIRECTORY:

Section 1 amends s. 561.57, F.S., to authorize a designated driver of an alcoholic beverage vendor to transport alcoholic beverages from a distributor's place of business to the vendors place of business in vehicles owned or leased by the driver under the authority of a vehicle permit issued by the division.

Section 2 amends s. 562.07 F.S., to cross reference changes to s. 561.57, F.S., in section 1 of the bill.

Section 3 provides for an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The DBPR estimates "The legislation is anticipated to have minimal, but indeterminate increase on state revenue due to the increase in the number of $5 vehicle permits issued."

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 7, 2013, the Business & Professional Regulation Subcommittee considered a proposed committee substitute and reported the proposed committee substitute favorably with a committee substitute (CS).

The proposed committee substitute made the following changes to the filed version of the bill:

- Amends s. 561.57(3), F.S., to permit licensed retail vendors to transport alcoholic beverages in vehicles which are owned or leased by any person required to have been disclosed on a license application filed by a vendor and approved by the division.
- Amends s. 561.57(4), F.S., to provide that the signature of the person authorized in s. 561.57(3), F.S., is required in the vehicle permit application.
- Amends s. 562.57(4), F.S., to require that the invoices or sales tickets for the purchased alcoholic beverages must be carried in, the vehicle used by the vendor or the authorized person when the alcoholic beverages are being transported.

The staff analysis is drafted to reflect the committee substitute.

A bill to be entitled

An act relating to vehicle permits for the transportation of alcoholic beverages; amending s. 561.57, F.S.; authorizing a licensed vendor to transport alcoholic beverages from a distributor's place of business in vehicles owned or leased by any person who has been disclosed on a license application filed by the vendor and approved by the Division of Alcoholic Beverages and Tobacco of the Department and Business and Professional Regulation; revising permit requirements for such vehicles; providing for cancellation of vehicle permits; authorizing the inspection and search of such vehicles without a search warrant; providing requirements for the use and storage of vehicle permits; amending s. 562.07, F.S.; revising an exception to the illegal transportation of beverages; providing an effective date.

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

Section 1. Subsections (3) and (4) of section 561.57, Florida Statutes, are amended to read:

561.57 Deliveries by licensees.—

(3) A licensed ~~Any~~ vendor may transport alcoholic beverage purchases from a distributor's place of business to the vendor's licensed premises or off-premises storage, if the ~~provided that a~~ vehicle used to transport the alcoholic beverages is owned or leased by the vendor or any person who has been disclosed on a

license application filed by the vendor and approved by the division and a valid vehicle permit has been ~~or decal is~~ issued for such ~~attached to the vendor's owned or leased~~ vehicle. A vehicle owned or leased by a person disclosed on a license application filed by the vendor and approved by the division under this subsection must be operated by such person when transporting alcoholic beverage purchases from a distributor's place of business to the vendor's licensed premises or off-premises storage.

(4) A vehicle permit ~~The division shall have prepared for issuance vehicle permits or decals suitable to be attached to such vehicles, with the words, "Beverage Vehicle No. ....," which~~ may be obtained by a licensed ~~any~~ vendor or any person authorized in subsection (3) upon application and payment of a fee of $5 per vehicle to the division. The signature of the person authorized in subsection (3) must be included on the vehicle permit application. Such permit remains ~~permits shall be~~ valid and does ~~will~~ not expire unless the vendor or any person authorized in subsection (3) disposes of his or her vehicle, or the vendor's alcoholic beverage license is transferred, canceled, not renewed, or is revoked by the division, whichever occurs first. The division shall cancel a vehicle permit issued to a vendor upon request from the vendor. The division shall cancel a vehicle permit issued to any person authorized in subsection (3) upon request from that person or the vendor. By acceptance of a vehicle permit, the vendor or any person authorized in subsection (3) ~~licensee~~ agrees that such vehicle is ~~shall~~ always ~~be~~ subject to inspection and search ~~be inspected~~

~~and searched~~ without a search warrant, for the purpose of ascertaining that all provisions of the alcoholic beverage laws are complied with, by authorized employees of the division and also by sheriffs, deputy sheriffs, and police officers during business hours or other times that the vehicle is being used to transport or deliver alcoholic beverages. A vehicle permit issued under this subsection and invoices or sales tickets for alcoholic beverages purchased and transported must be carried in the vehicle used by the vendor or any person authorized in subsection (3) when the vendor's alcoholic beverages are being transported or delivered.

Section 2. Subsection (2) of section 562.07, Florida Statutes, is amended to read:

562.07 Illegal transportation of beverages.—It is unlawful for alcoholic beverages to be transported in quantities of more than 12 bottles except as follows:

(2) In the owned or leased vehicles of licensed vendors or any persons authorized in s. 561.57(3) transporting alcoholic beverage purchases from the distributor's place of business to the vendor's licensed place of business or off-premises storage and to which said vehicles are carrying ~~attached~~ a permit and invoices or sales tickets for alcoholic beverages purchased and transported ~~or decal~~ as provided for in the alcoholic beverage law;

Section 3. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 269 Public Construction Projects
SPONSOR(S): Energy & Utilities Subcommittee; Beshears
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 1080

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	12 Y, 1 N, As CS	Whittier	Collins
2) Government Operations Appropriations Subcommittee	11 Y, 0 N	White	Topp
3) Regulatory Affairs Committee		Whittier	Hamon

SUMMARY ANALYSIS

Section 255.252(3), F.S., provides that, "[I]t is the policy of the state that buildings constructed and financed by the state be designed and constructed to comply with a sustainable building rating or a national model green building code" and "[i]t is further the policy of the state that the renovation of existing state facilities be in accordance with a sustainable building rating or a national model green building code." "Sustainable building rating or national model green building code" means a rating system established by one of the following:

- United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system,
- International Green Construction Code (IgCC),
- Green Building Initiative's Green Globes rating system,
- Florida Green Building Coalition standards, or
- A nationally recognized, high-performance green building rating system as approved by the Department of Management Services (DMS).

The bill clarifies that when a state agency is constructing new buildings or renovating existing buildings and are required to select a sustainable building rating system or national model green building code in accordance with s. 255.257(4)(a), F.S., the selection is made on a project-by-project basis and is not a choice that encompasses all projects within that particular agency.

The bill requires all state agencies, when constructing public bridges, buildings and other structures, to use lumber, timber, and other forest products produced and manufactured in Florida if such products are available and their price, fitness, and quality are equal. This language is copied from s. 255.20(3), F.S., dealing with local bids and contracts for public construction works, with state agencies being added to the list of entities required to use Florida timber products for those projects.

The bill appears to have no fiscal impact on the state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Timber Industry

According to the Florida Forestry Association, there are almost 16 million acres of forests in Florida. Seventy percent (11.2 million acres) is privately owned, 16 percent (2.6 million acres) is owned by the state, 11 percent (1.7 million acres) is owned by the federal government, and three percent (0.5 million acres) is owned by local governments.[1, 2] Although forests cover about 50% of the state's land area, Florida's timberlands are located mostly north of Orlando. In the northern half of the state most counties are at least 50% forested. Liberty County in northwest Florida is the most forested with timber lands covering more than 90% of its area. The peninsula is forested at 40% or less and a number of counties in southeast Florida are less than 10% forested.[3]

In 2010, there were 59 primary wood-using mills in Florida. Almost half of those are sawmills (27). Other types of mills include mulch (7), pulp/paper (6), chip-and-saw (5), chip mill (3), post (3), plywood (2), pole (2), pellet, strand board, veneer and firewood (1 each). The primary wood-using mills in Florida are located mostly in the northern part of the state.[4]

There are several forest certification standard programs that provide guidance and certification that timber land is being used in a sustainable manner. The Forest Stewardship Council, the American Tree Farm System, and the Sustainable Forestry Initiative are some commonly-used programs.

The Forest Stewardship Council (FSC) is an independent, non-profit organization. "[M]embership consists of three equally weighted chambers -- environmental, economic, and social -- to ensure the balance and the highest level of integrity. Independent FSC-accredited certification bodies verify that all FSC-certified forests conform to the requirements contained within an FSC forest management standard....Certifiers are independent of FSC and the companies they are auditing."[5]

The Sustainable Forestry Initiative (SFI) program is a widely-used standard. The organization asserts that their "forest certification standard is based on principles that promote sustainable forest management, including measures to protect water quality, biodiversity, wildlife habitat, species at risk, and Forests with Exceptional Conservation Value." Further, that the standard "has strong acceptance in the global marketplace so we can deliver a steady supply of wood and paper products from legal and responsible sources. This is especially important at a time when there is growing demand for green building and responsible paper purchasing, and less than 10 percent of the world's forests are certified."[6]

The American Tree Farm System (ATFS), another commonly-used program, "offers certification to landowners who are committed to good forest management....Forest certification is the certification of land management practices to a standard of sustainability. A written certification is issued by an independent third-party that attests to the sustainable management of a working forest...protect[ing] economic, social and environmental benefits."[7]

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[1] Florida Forestry Association website: http://floridaforest.org/about-us/fl-forests-facts/.
[2] *2010 Florida's Forestry and Forest Product Industry Economic Impacts*, by the Florida Forest Service (PDF file accessed at http://floridaforest.org/about-us/fl-forests-facts/).
[3] *Ibid.*
[4] *Ibid.*
[5] Forest Stewardship Council website: https://us.fsc.org/about-certification.198.htm.
[6] Sustainable Forestry Initiative website: http://www.sfiprogram.org/sustainable-forestry-initiative/.
[7] American Tree Farm System website: https://us.fsc.org/about-certification.198.htm.

Florida Energy Conservation and Sustainable Buildings Act

In recent years, the Florida Legislature has placed an increased emphasis on promoting renewable energy, energy conservation, and enhanced energy efficiency on a state and local level. In 2008, the Legislature passed a comprehensive energy package,[8] which contained the Florida Energy Conservation and Sustainable Buildings Act (Act). This Act (ss. 255.51-255.2575, F.S.) provides that, "Significant efforts are needed to build energy-efficient state-owned buildings that meet environmental standards and provide energy savings over the life of the building structure. With buildings lasting many decades and with energy costs escalating rapidly, it is essential that the costs of operation and maintenance for energy-using equipment and sustainable materials be included in all design proposals for state-owned buildings."[9]

Section 255.252(3), F.S., provides legislative intent that, "[I]t is the policy of the state that buildings constructed and financed by the state be designed and constructed to comply with a sustainable building rating or a national model green building code" and "[i]t is further the policy of the state that the renovation of existing state facilities be in accordance with a sustainable building rating or a national model green building code."

"Sustainable building rating or national model green building code" means a rating system established by one of the following:

- United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system,
- International Green Construction Code (IgCC),
- Green Building Initiative's Green Globes rating system,
- Florida Green Building Coalition standards, or
- A nationally recognized, high-performance green building rating system as approved by the Department of Management Services.[10]

Direction is again provided in s. 255.257(4)(a), F.S.: "All state agencies shall adopt a sustainable building rating system or use a national model green building code for all new buildings and renovations to existing buildings." Section 255.2575(2), F.S., provides that, "All county, municipal, school district, water management district, state university, community college, and state court buildings shall be constructed to comply with a sustainable building rating system or a national model green building code."[11]

The DMS states on its website, the following:

> State agencies are required by law to comply with the various green aspects of a sustainable rating system such as LEED or the others approved in statute. However, when it comes to energy consumption in particular, state agencies are now required by rule to consider at least one design option that far outperforms their preferred rating system. Nevertheless, an agency's ultimate decision must be made on the basis of long-term cost-effectiveness.[12]

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[8] HB 7135 (Chapter 2008-227, L.O.F.)
[9] Section 255.252(2), F.S.
[10] Section 255.253(7), F.S.
[11] This section applies to all county, municipal, school district, water management district, state university, community college, and state court buildings the architectural plans of which are commenced after July 1, 2008.
[12] http://www.dms.myflorida.com/business_operations/real_estate_development_management/facilities_management/sustainablebuildings_and_energy_initiatives.

The DMS Rules pertaining to sustainable building ratings[13] implement the statutes by requiring all agencies that are designing, constructing, or renovating a facility to perform a life-cycle cost analysis for at least three distinct energy-related designs that progressively meet and exceed the minimum energy performance requirements of the particular sustainable building rating or national model green building code adopted by the agency. The DMS then evaluates this life-cycle cost analysis for technical correctness and completeness.[14] According to the DMS, these Rules allow the agencies sole discretion as it pertains to the selection of a sustainable building rating or national model green building code.

The following are basic, brief descriptions of the four statutorily-authorized sustainable building rating systems:

- **Leadership in Energy and Environmental Design (LEED)** is a "voluntary, consensus-based, market-driven" program that provides third-party verification of green buildings [and] addresses the entire lifecycle of a building. LEED projects have been established in 135 countries.... For commercial buildings and neighborhoods, to earn LEED certification, a project must satisfy all LEED prerequisites and earn a minimum 40 points on a 110-point LEED rating system scale.[15]

- **International Green Construction Code (IgCC)** is the "first model code to include sustainability measures for the entire construction project and its site - from design through construction, certificate of occupancy and beyond. The new code is expected to make buildings more efficient, reduce waste, and have a positive impact on health, safety and community welfare...." The IgCC "creates a regulatory framework for new and existing buildings, establishing minimum green requirements for buildings and complementing voluntary rating systems, which may extend beyond baseline of the IgCC. The code acts as an overlay to the existing set of *International Codes*...."[16]

- **Green Globes** is a web-based program for green building guidance and certification that includes an onsite assessment by a third party. "Green Globes offers a streamlined and affordable...way to advance the overall environmental performance and sustainability of commercial buildings. The program has modules supporting new construction...[and]...existing buildings.... It is suitable for a wide range of buildings from large and small offices, multi-family structures, hospitals, and institutional buildings such as courthouses, schools, and universities."[17]

- The **Florida Green Building Coalition (FGBC)** is a nonprofit corporation "dedicated to improving the built environment, [whose] mission is to lead and promote sustainability with environmental, economic, and social benefits through regional education and certification programs. FGBC was conceived and founded in the belief that green building programs will be most successful if there are clear and meaningful principles on which 'green' qualification and marketing are based."[18]

According to proponents of the bill, LEED is the only sustainable building rating system that does not award points for timber that is grown on a majority of Florida's 16 million acres of forest, leaving only approximately 200 acres of Florida-grown wood being certified under this rating system, because LEED only awards points for timber that is grown under the Forest Stewardship Council requirements.[19]

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[13] Chapter 60D, F.A.C.
[14] Rule 60D-4.004(1)(c)1 and 2, F.A.C.
[15] http://new.usgbc.org/leed.
[16] http://www.iccsafe.org/cs/igcc/pages/default.aspx.
[17] http://www.thegbi.org/green-globes/.
[18] http://www.floridagreenbuilding.org/home.
[19] February 13, 2013, correspondence with staff from the Florida Forestry Association and a representative from Plum Creek Timber Company.

The DMS is the lead agency for implementing the Florida Energy Conservation and Sustainable Buildings Act and has chosen the LEED rating system to meet its own needs. Proponents of the bill have stated that there may be widespread perception that since DMS has selected LEED as its rating system, other state and local agencies will view this as a recommendation or endorsement of LEED by DMS[20] and that personnel within those entities will assume that once a rating system has been adopted, the agency must use that system for all projects within that particular agency in perpetuity.

Effects of Proposed Changes

The bill clarifies that when a state agency is constructing new buildings or renovating existing buildings and are required to select a sustainable building rating system or national model green building code in accordance with s. 255.257(4)(a), F.S., the selection is made on a project-by-project basis and is not a choice that encompasses all projects within that particular agency.

The bill requires all state agencies, when constructing public bridges, buildings and other structures, to use lumber, timber, and other forest products produced and manufactured in Florida if such products are available and their price, fitness, and quality are equal. This language is copied from s. 255.20(3), F.S., dealing with local bids and contracts for public construction works, with state agencies being added to the list of entities required to use Florida timber products for those projects. In addition, the requirements are for energy efficiency and sustainable building purposes.

According to DMS,

> The Florida wood, timber, and lumber included in this requirement is primarily used for residential construction, such as housing and apartments. In the last 20 years, DMS has only constructed 2 or 3 projects with wood framing. Nearly all construction performed by DMS is commercial, non-combustible construction. That is, the only wood or timber found within our construction would be plywood specified for monolithic concrete forms, not applicable to the requirement under this statute, or for light framing or millwork. In this construction, DMS does not procure "wood or timber" directly, but rather competitively procures a general contractor or construction manager for a low bid, lump sum of materials and labor.[21]

B. SECTION DIRECTORY:

Section 1. Amends s. 255.257, F.S., to require state agencies to use certain building rating systems and building codes for new construction and renovation projects.

Section 2. Amends s. 255.2575, F.S., to require governmental entities to specify certain products associated with public works projects.

Section 3. Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

[20] February 13, 2013, correspondence with staff from the Florida Forestry Association and a representative from Plum Creek Timber Company.
[21] February 22, 2013, correspondence with staff from the Department of Management Services.

2. Expenditures:

This bill appears to have no fiscal impact on state expenditures by stating that contracts for public work, for the construction of public bridges, buildings, and other structures must specify lumber, timber, and other forest products produced and manufactured in Florida **if such products are available and their price, fitness, and quality are equal.**

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Florida-based lumber and timber companies could see an increase in sales.

D. FISCAL COMMENTS:

DMS and the Department of Corrections have indicated the bill has no fiscal impact on those agencies.[22, 23]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to spend funds or take 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 state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The language dealing with entities that are charged with the letting of contracts for public work, the construction of public bridges, buildings, and other structures, was copied, and subsequently amended, from a section of law that is being reported by the construction industry as outdated and is widely discounted by the industry because the use of wood for public bridges, *et al*, is not current practice for most state projects.

[22] March 6, 2013 Department of Management Services Bill Analysis on file with the House Government Operations Appropriations Subcommittee.
[23] February 4, 2013 Department of Corrections Bill Analysis on file with the House Government Operations Appropriations Subcommittee.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 19, 2013, the Energy & Utilities Subcommittee passed the bill with the following changes and reported the bill out as a committee substitute:

- Clarified that each state agency shall use a sustainable building rating system or national model green building code for ***each*** new building and renovation to an existing building.

- Rather than amending "state agencies" into a section of law dealing with local contracting, the amended language was copied and added to a more encompassing section of statute.

A bill to be entitled

An act relating to public construction projects; amending s. 255.257, F.S.; requiring state agencies to use certain building rating systems and building codes for each new construction and renovation project; amending s. 255.2575, F.S.; requiring governmental entities to specify certain products associated with public works projects; providing an effective date.

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

Section 1. Paragraph (a) of 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) Each ~~All~~ state agency ~~agencies~~ shall use ~~adopt~~ a sustainable building rating system or ~~use~~ a national model green building code for each ~~all~~ new building ~~buildings~~ and renovation ~~renovations~~ to an existing building ~~buildings~~.

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

255.2575 Energy-efficient and sustainable buildings.—

(4) All state agencies, county officials, boards of county commissioners, school boards, city councils, city commissioners, and all other public officers of state boards or commissions that are charged with the letting of contracts for public work, for the construction of public bridges, buildings, and other

structures must specify lumber, timber, and other forest products produced and manufactured in Florida if such products are available and their price, fitness, and quality are equal. This subsection does not apply to plywood specified for monolithic concrete forms, if the structural or service requirements for timber for a particular job cannot be supplied by native species, or if the construction is financed in whole or in part from federal funds with the requirement that there be no restrictions as to species or place of manufacture.

Section 3. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 425 Consumer Finance Charges
SPONSOR(S): Goodson
TIED BILLS: **IDEN./SIM. BILLS:** SB 282

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 1 N	Bauer	Cooper
2) Regulatory Affairs Committee		Bauer GB	Hamon K.W.H.

SUMMARY ANALYSIS

Chapter 516, Florida Statutes ("the Act"), governs consumer finance loans, which are loans or lines of credit in an amount up to $25,000 for which the interest rate is greater than 18 percent a year. These loans are made by entities that are required to be licensed with the Office of Financial Regulation (OFR). Currently, there are 262 licensed locations in Florida.

Under the act, consumer finance lenders who obtain a license with the OFR may charge a maximum interest rate of 30% a year, computed on the first $2,000 of the principal amount; 24% a year on that part of principal exceeding $2,000 but not exceeding $3,000; and 18% per year on that part of principal exceeding $3000. In addition, licensees are permitted to collect specified fees and charges, including a maximum delinquency charge of $10 for each payment in default.

The principal amounts upon which these interest rates are computed were last adjusted in 1997, and the last time the maximum delinquency charge was adjusted was in 2000. HB 425 increases the principal amount from $2,000 to $3,000, upon which a maximum annual interest rate of 30% may be charged. Likewise, the bill also increases the principal amount from $3,000 to $4000 upon which the maximum annual interest rate of 24% may be charged. A maximum interest rate of 18 percent per year will apply to that part of that principal amount exceeding $4,000.

The bill increases the maximum delinquency charge from $10 to $15.

The bill makes technical, grammatical, and clarifying changes to the Act.

The bill has no fiscal impact on state or local government, but does have a private sector impact. Borrowers will be subject to increased interest charges, depending upon the principal amount of the loan, as well as increased delinquency charges.

The bill contains an effective date of July 1, 2013, and specifies that it applies to all consumer finance loans entered into on or after that date.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 516, F.S., is the Florida Consumer Finance Act (the Act) and sets forth maximum interest rates for consumer finance loans, which are "loan[s] of money, credit, goods, or a provision of a line of credit, in an amount or to a value of $25,000 or less at an interest rate greater than 18 percent per annum.[1]" These loans are made by entities that are required to be licensed by the Office of Financial Regulation (OFR), which has regulatory authority over the Act. The Act does not apply to persons doing business under state or federal laws governing banks, savings banks, trust companies, building and loan associations, credit unions, or industrial loan and investment companies.[2] As of February 4, 2013, there are 262 licensed consumer finance loan locations in Florida.

The Office of Financial Regulation also has regulatory authority over entities providing small consumer loans authorized under Chapter 520 (retail installment sellers), Chapter 537 (title loans), and Part IV of Chapter 560, (deferred presentment transactions or payday loans). Each of these loans, in addition to consumer finance loans authorized under the Act, provides for an exception from the 18 percent per year simple interest cap that is set forth in s. 687.02, F.S.

Consumer finance loan licensees may charge a maximum rate of 30% a year, computed on the first $2,000 of the principal amount; 24% a year on that part of principal exceeding $2,000 but not exceeding $3,000; and 18% per year on that part of principal exceeding $3000.[3] These are also the amounts that a licensee is permitted to continue charging for up to 12 months on unpaid balances at the expiration of the scheduled maturity date of a loan; after 12 months, the licensee may charge interest up to the permissible rate of interest in ch. 687.[4] In addition, the annual percentage rate (APR) must be computed and disclosed to the consumer in accordance with the federal Truth in Lending Act (TILA) and Regulation Z.

The Act allows a licensee to charge a borrower up to $25 for the costs of a credit check and an annual fee of $25 on the anniversary date of the line-of-credit account in addition to interest. Current law also allows for specified other charges, such as delinquency, insurance premiums, and costs associated with property pledged as security. The authorized delinquency fee, not to exceed $10 for each payment in default, must be agreed to in writing before the fee can be imposed.

Information provided by the Florida Financial Services Association, a trade organization that represents consumer finance loan companies, indicates that the average loan amount for a regional member is approximately $1,700, while larger national companies report an average loan amount of $3,500.[5] These consumer finance loans are typically used for household expenses by borrowers whose credit histories make it more difficult to obtain loans through commercial banks.

The principal amounts upon which interest rates are computed were last adjusted in 1997.[6] The ability to charge a delinquency fee of up to $10 for each payment in default was added to the act in 2000,[7] and has not been amended since then.

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[1] Section 516.01(2), F.S.
[2] Section 516.02(4), F.S.
[3] Section 516.031(1), F.S.
[4] Section 516.035, F.S.
[5] Meeting with the Florida Financial Services Association on February 5, 2012. Information on file with the Insurance & Banking Subcommittee.
[6] Section 1, ch. 97-181, Laws of Florida.
[7] Section 1, ch. 2000-127, Laws of Florida.

Effect of the Bill

The bill increases the proportionate loan amount by $1,000 in each "tier" that are subject to descending maximum annual rates of interest. Under the bill, a licensee may charge a maximum interest rate of 30% per year on the first $3,000 of principal; 24% per year on that principal exceeding $3,000 and up to $4,000; and 18% per year on that part of principal exceeding $4,000. The following chart illustrates these changes:

Annual Interest Rate	Current Law	HB 425
30%	Principal up to $2,000	Principal up to $3,000
24%	Principal from $2,001 to $3,000	Principal from $3,001 to $4,000
18%	Principal from $3,001 to $25,000	Principal from $4,001 to $25,000

The following chart compares the annual interest of several hypothetical loan amounts under current law and under the bill, and assumes a 12-month loan term:

Principal Amount	Annual Interest Under Current Law	Annual Interest Under HB 275	Amount of Annual Interest Increase
$2,000	$339.68	$339.68	0
$3,400	$549.50	$574.34	$24.84
$5,000	$744.34	$804.10	$59.76

The bill increases the delinquency charge for each payment in default from $10 to $15.

The bill also makes a technical clarification that a person who violates specified provisions of the Act has committed a misdemeanor of the first degree, not that the violator is guilty.

The act takes effect on July 1, 2013, and applies prospectively to all consumer finance loans entered into on or after that date.

B. SECTION DIRECTORY:

Section 1. Amends s. 516.031, F.S. to increase the proportionate loan amounts that are subject to descending maximum rates of interest; increases the maximum delinquency charge that may be imposed for each loan payment in default for not less than a specified time.

Section 2. Reenacts and amends s. 516.19, F.S., relating to penalties, for the purpose of incorporating the amendment made to s. 516.031, F.S.

Section 3. Specifies that the act takes effect on July 1, 2013, and applies prospectively to all consumer finance loans entered into on or after that date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Borrowers will be subject to increased interest charges, depending on the principal amount of the consumer finance loan, and increased delinquency charges.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to consumer finance charges; amending s. 516.031, F.S.; increasing the proportionate loan amounts that are subject to descending maximum rates of interest; increasing the maximum delinquency charge that may be imposed for each loan payment in default for not less than a specified time; reenacting and amending s. 516.19, F.S., relating to penalties, for the purpose of incorporating the amendment made to s. 516.031, F.S., in a reference thereto; providing penalties; making technical and grammatical changes; providing applicability; providing an effective date.

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

Section 1. Subsection (1) and paragraph (a) of subsection (3) of section 516.031, Florida Statutes, are amended to read:

516.031 Finance charge; maximum rates.—

(1) INTEREST RATES.—A ~~Every~~ licensee may lend any sum of money up to ~~not exceeding~~ $25,000. A licensee may not take a security interest secured by land on any loan less than $1,000. The licensee may charge, contract for, and receive thereon interest charges as provided and authorized by this section. The maximum interest rate shall be 30 percent per annum, computed on the first $3,000 ~~$2,000~~ of the principal amount ~~as computed from time to time~~; 24 percent per annum on that part of the principal amount ~~as computed from time to time~~ exceeding $3,000 ~~$2,000~~ and up to $4,000 ~~not exceeding $3,000~~; and 18 percent per annum on

that part of the principal amount ~~as computed from time to time~~ exceeding $4,000 ~~$3,000~~ and up to ~~not exceeding~~ $25,000. The original principal amount as used in this section is ~~shall be~~ the same ~~amount~~ as the amount financed as defined by the federal Truth in Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System. In determining compliance with the statutory maximum interest and finance charges set forth herein, the computations used ~~utilized~~ shall be simple interest and not add-on interest or any other computations. If ~~When~~ two or more interest rates are ~~to be~~ applied to the principal amount of a loan, the licensee may charge, contract for, and receive interest at that single annual percentage rate which, if applied according to the actuarial method to each of the scheduled periodic balances of principal, would produce at maturity the same total amount of interest as would result from the application of the two or more rates otherwise permitted, based upon the assumption that all payments are made as agreed.

(3) OTHER CHARGES.—

(a) In addition to the interest, delinquency, and insurance charges ~~herein~~ provided in this section ~~for~~, ~~no~~ further or other charges or amount ~~whatsoever~~ for any examination, service, commission, or other thing or otherwise may not ~~shall~~ be directly or indirectly charged, contracted for, or received as a condition to the grant of a loan, except:

1. An amount of up to ~~not to exceed~~ $25 to reimburse a portion of the costs for investigating the character and credit of the person applying for the loan;

2. An annual fee of $25 on the anniversary date of each

line-of-credit account;

3. Charges paid for the brokerage fee on a loan or line of credit of more than $10,000, title insurance, and the appraisal of real property offered as security if ~~when~~ paid to a third party and supported by an actual expenditure;

4. Intangible personal property tax on the loan note or obligation if ~~when~~ secured by a lien on real property;

5. The documentary excise tax and lawful fees, if any, actually and necessarily paid out by the licensee to any public officer for filing, recording, or releasing in any public office any instrument securing the loan, which ~~fees~~ may be collected when the loan is made or at any time thereafter;

6. The premium payable for any insurance in lieu of perfecting any security interest otherwise required by the licensee in connection with the loan~~,~~ if the premium does not exceed the fees which would otherwise be payable, which ~~premium~~ may be collected when the loan is made or at any time thereafter;

7. Actual and reasonable attorney ~~attorney's~~ fees and court costs as determined by the court in which suit is filed;

8. Actual and commercially reasonable expenses for ~~of~~ repossession, storing, repairing and placing in condition for sale, and selling of any property pledged as security; or

9. A delinquency charge of up to $15 ~~not to exceed $10~~ for each payment in default for at least ~~a period of not less than~~ 10 days~~,~~ if the charge is agreed upon, in writing, between the parties before imposing the charge.

Any charges, including interest, in excess of the combined total of all charges authorized and permitted by this chapter constitute a violation of chapter 687 governing interest and usury, and the penalties of that chapter apply. In the event of a bona fide error, the licensee shall refund or credit the borrower with the amount of the overcharge immediately but within 20 days <u>after</u> ~~from~~ the discovery of such error.

Section 2. For the purpose of incorporating the amendment made by this act to section 516.031, Florida Statutes, in a reference thereto, section 516.19, Florida Statutes, is reenacted and amended to read:

516.19 Penalties.—Any person who violates any of the provisions of s. 516.02, s. 516.031, s. 516.05(3), s. 516.05(6), or s. 516.07(1)(e) <u>commits</u> ~~is guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 3. This act shall take effect July 1, 2013, and applies to all consumer finance loans entered into on or after that date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 649 Public Records/Proprietary Confidential Business Information
SPONSOR(S): Energy & Utilities Subcommittee and Cummings
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 714

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	12 Y, 1 N, As CS	Keating	Collins
2) Government Operations Subcommittee	13 Y, 0 N	Harrington	Williamson
3) Regulatory Affairs Committee		Keating	Hamon

SUMMARY ANALYSIS

Unless specifically exempted, all agency records are available for public inspection. Current law does not provide an exemption for proprietary confidential business information held by a municipal electric utility in conjunction with a due diligence review of projects related to the provision of electric service.

The bill creates a new public record exemption for proprietary confidential business information held by an electric utility that is subject to chapter 119, F.S., in conjunction with a due diligence review of an electric project as defined in s. 163.01(3)(d), F.S., or a project to improve the delivery, cost, or diversification of fuel or renewable energy resources. The bill provides that such information is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. Further, the bill requires that such information be retained for one year after the due diligence review has been completed and the electric utility has decided whether or not to participate in the project.

The bill provides that the public record exemption created by the bill is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall be repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill also provides a statement of public necessity for the exemption. The statement provides that:

- The purpose for the public record exemption is to remove an impediment to the opportunities for electric utilities to find cost-effective or strategic solutions for providing electric service or improving the delivery, cost, or diversification of fuel or renewable energy.
- An electric utility, in performing a due diligence review of such projects, may need to obtain proprietary confidential business information, which may consist of trade secrets; internal auditing controls and reports; security measures, systems, or procedures; or other information relating to competitive interests.
- The disclosure of this information could injure the provider of the information in the marketplace, thus discouraging the provider from doing business with the electric utility and limiting the utility's opportunities to identify cost-effective projects, which may also impact costs to customers.

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

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Public Records Law

Article I, s. 24(a) of the State Constitution, sets forth the state's public policy regarding access to government records. The State Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.[1]

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act[2] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

Information Provided to Electric Utilities Subject to the Public Records Law

Electric utilities, from time to time, seek or receive proposals from business entities concerning the development of projects related to the provision of electric service. Information received from these business entities by municipal electric utilities, which are subject to the requirements of Florida's public records law, is available to the public for inspection and copying. According to municipal electric utilities, this discourages some providers of new technologies from sharing information about opportunities to participate in projects for fear of harming their business by exposing competitively sensitive information.

Section 119.071, F.S., provides a list of general exemptions from the inspection and copying requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. Section 119.0713, F.S., provides a list of exemptions specific to local governments. There is no current exemption for proprietary confidential business information held by a municipal electric utility in conjunction with a due diligence review of projects related to the provision of electric service.

Effect of Proposed Changes

The bill creates a new public record exemption for proprietary confidential business information held by an electric utility that is subject to chapter 119, F.S., in conjunction with a due diligence review of an

[1] Article I, s. 24(c) of the State Constitution.
[2] Section 119.15, F.S.

electric project as defined in s. 163.01(3)(d), F.S.,[3] or a project to improve the delivery, cost, or diversification of fuel or renewable energy resources. The bill provides that such information is confidential and exempt[4] from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. Further, the bill requires that such information be retained for one year after the due diligence review has been completed and the electric utility has decided whether or not to participate in the project.

The bill defines "proprietary confidential business information" as:

> [I]nformation, regardless of form or characteristics, which is owned or controlled by an electric utility that is subject to chapter 119, is intended to be and is treated by the entity that provided the information to the electric utility as private in that the disclosure of the information would cause harm to the providing entity or its business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. The term includes, but is not limited to:
>
> 1. Trade secrets.
> 2. Internal auditing controls and reports of internal auditors.
> 3. Security measures, systems, or procedures.
> 4. Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the company or its affiliates to contract for goods or services on favorable terms.
> 5. Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of information.

This definition is substantially similar to existing provisions of law defining proprietary confidential business information.[5]

The bill provides that the public record exemption created by the bill is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and will be repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill also provides a finding that there is a public necessity for this exemption. This finding notes that the disclosure of proprietary confidential business information, as defined by the bill, could injure the provider of that information in the marketplace by giving its competitors insight into its financial status and strategic plans, thus putting the provider at a competitive disadvantage. The finding also states that, without this exemption, business entities might be unwilling to enter into discussions with an electric utility regarding the feasibility of future contracting, which may limit opportunities for the utility to find cost-effective or strategic solutions for providing electric service or improving the delivery, cost, or diversification of fuel or renewable energy. This finding further states that disclosure of such proprietary

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[3] Section 163.01(3)(d), F.S., defines an "electric project" as:

1. Any plant, works, system, facilities, and real property and personal property of any nature whatsoever, together with all parts thereof and appurtenances thereto, which is located within or without the state and which is used or useful in the generation, production, transmission, purchase, sale, exchange, or interchange of electric capacity and energy, including facilities and property for the acquisition, extraction, conversion, transportation, storage, reprocessing, or disposal of fuel and other materials of any kind for any such purposes.
2. Any interest in, or right to, the use, services, output, or capacity of any such plant, works, system, or facilities.
3. Any study to determine the feasibility or costs of any of the foregoing, including, but not limited to, engineering, legal, financial, and other services necessary or appropriate to determine the legality and financial and engineering feasibility of any project referred to in subparagraph 1. or subparagraph 2.

[4] There is a difference between records that the Legislature has made exempt from public inspection and those that are confidential and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute. Florida Attorney General Opinion 85-62. If instead, the record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So.2d 289 (Fla. 1991).

[5] *See*, e.g., ss. 364.183 (telecommunications), 366.093 (investor-owned electric and natural gas utilities), 367.156 (water and wastewater utilities), and 368.108, F.S. (natural gas transmission companies).

confidential business information would cause economic harm to ratepayers through reduced competition for the provision of vital electric utility services. The bill provides an additional finding that the public and private harm in disclosing such proprietary confidential business information significantly outweighs any public benefit derived from disclosure of the information.

B. SECTION DIRECTORY:

Section 1. Amends s. 119.0713, F.S., relating to local government agency exemptions from inspection or copying of public records.

Section 2. Provides a legislative finding of public necessity for a public record exemption.

Section 3. Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may expand opportunities for private sector entities to do business with municipal electric utilities by creating a public record exemption for proprietary confidential business information. The public record exemption may encourage more private sector participation and sharing of information that the private sector entity would not otherwise wish to have disclosed.

D. FISCAL COMMENTS:

This bill could create a minimal fiscal impact on affected agencies, because staff responsible for complying with public record requests could require training related to expansion of the public record exemption. In addition, those agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agency.

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:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement justifying a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption and includes a public necessity statement, which provides that:

- The purpose for the public record exemption is to remove an impediment to the opportunities for electric utilities to find cost-effective or strategic solutions for providing electric service or improving the delivery, cost, or diversification of fuel or renewable energy.
- An electric utility, in performing a due diligence review of such projects, may need to obtain proprietary confidential business information, which may consist of trade secrets; internal auditing controls and reports; security measures, systems, or procedures; or other information relating to competitive interests.
- The disclosure of this information could injure the provider of the information in the marketplace, thus discouraging the provider from doing business with the electric utility and limiting the utility's opportunities to identify cost-effective projects, which may also impact costs to customers.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution, requires that an exemption be no broader than necessary to accomplish its stated purpose. The public necessity statement provides that the purpose for the public record exemption is to remove an impediment to the opportunities for electric utilities to find cost-effective or strategic solutions for providing electric service or improving the delivery, cost, or diversification of fuel or renewable energy. Based on the statement of public necessity, as summarized above, it appears that the exemption is no broader than necessary to accomplish its stated purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 5, 2013, the Energy & Utilities Subcommittee adopted a Proposed Committee Substitute (PCS) for the bill and passed the bill as a Committee Substitute. The PCS made the following changes to the filed version of the bill:

- Provided a definition for "proprietary confidential business information."
- Provided that proprietary confidential business information held by an electric utility in conjunction with certain due diligence reviews is confidential and exempt (rather than just exempt) under Florida's public records law and must be retained by the electric utility for one year.

The staff analysis has been updated to reflect the Committee Substitute.

A bill to be entitled

An act relating to public records; amending s. 119.0713, F.S.; providing an exemption from public records requirements for specified proprietary confidential business information held by an electric utility that is subject to chapter 119, F.S., in conjunction with a due diligence review of an electric project or a project to improve the delivery, cost, or diversification of fuel or renewable energy resources; providing for the retention of such information for a specified time; providing for future review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Subsection (4) is added to section 119.0713, Florida Statutes, to read:

119.0713 Local government agency exemptions from inspection or copying of public records.—

(4)(a) Proprietary confidential business information means information, regardless of form or characteristics, which is held by an electric utility that is subject to chapter 119, is intended to be and is treated by the entity that provided the information to the electric utility as private in that the disclosure of the information would cause harm to the entity providing the information or its business operations, and has not been disclosed unless disclosed pursuant to a statutory

provision, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public. Proprietary confidential business information includes, but is not limited to:

1. Trade secrets.

2. Internal auditing controls and reports of internal auditors.

3. Security measures, systems, or procedures.

4. Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the electric utility to contract for goods or services on favorable terms.

5. Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

(b) Proprietary confidential business information held by an electric utility that is subject to chapter 119 in conjunction with a due diligence review of an electric project as defined in s. 163.01(3)(d) or a project to improve the delivery, cost, or diversification of fuel or renewable energy resources is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(c) All proprietary confidential business information described in paragraph (b) shall be retained for 1 year after the due diligence review has been completed and the electric utility has decided whether or not to participate in the project.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand

repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity that proprietary confidential business information held by an electric utility that is subject to chapter 119, Florida Statutes, in conjunction with a due diligence review of an electric project as defined in s. 163.01(3)(d), Florida Statutes, or a project to improve the delivery, cost, or diversification of fuel or renewable energy resources be made confidential and exempt from public records requirements. The disclosure of such proprietary confidential business information, such as trade secrets, internal auditing controls and reports, security measures, systems, or procedures, or other information relating to competitive interests, could injure the provider in the marketplace by giving its competitors detailed insights into its financial status and strategic plans, thereby putting the provider at a competitive disadvantage. Without this exemption, providers might be unwilling to enter into discussions with the electric utility regarding the feasibility of future contracting. This could, in turn, limit opportunities the electric utility might otherwise have for finding cost-effective or strategic solutions for providing electric service or improving the delivery, cost, or diversification of fuel or renewable energy. This would put public providers of electric utility services at a competitive disadvantage by limiting their ability to optimize services to their customers and adversely affecting the customers of those utilities by depriving them of opportunities for rate reductions or other improvements in

services.

(2) Proprietary confidential business information derives actual or potential independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who can derive economic value from its disclosure or use. An electric utility, in performing the appropriate due diligence review of electric projects or projects to improve the delivery, cost, or diversification of fuel or renewable energy sources, may need to obtain proprietary confidential business information. Without an exemption from public records requirements for this information, it becomes a public record when received by an electric utility and must be disclosed upon request. Disclosure of any propriety confidential business information under the public records law would destroy the value of that property and cause economic harm not only to the entity or person providing the information, but to the ratepayers through reduced competition for the provision of vital electric utility services.

(3) In finding that the public records exemption created by this act is a public necessity, the Legislature also finds that the public and private harm in disclosing such proprietary confidential business information significantly outweighs any public benefit derived from disclosure of the information and that the exemption created by this act will enhance the ability of electric utilities to optimize their performance, thereby benefiting the ratepayers.

Section 3. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 695 Tied house regulation
SPONSOR(S): Business & Professional Regulation Subcommittee; Holder
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 864

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	10 Y, 3 N, As CS	Livingston	Luczynski
2) Regulatory Affairs Committee		Livingston	Hamon

SUMMARY ANALYSIS

The Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation is responsible for regulating the conduct, management, and operation of the manufacturing, packaging, distribution, and sale within the state of alcoholic beverages. Florida's alcoholic beverage law provides for a structured three-tiered distribution system: manufacturer, distributor (wholesaler), and vendor (retailer). Activities between the license groups are extensively regulated and constitute the basis for Florida's "Tied House Evil" law. Among the restrictions, a manufacturer or distributor is prohibited from having any financial interest, directly or indirectly, in the establishment or business of a retailer. Many restrictions apply to business and market activities between the three tiers.

Currently, tied house provisions statutorily prohibit a beer distributor from furnishing discount coupons to consumers when the coupons are redeemable by a retail beer vendor.

The bill prohibits an alcoholic beverage licensee from possessing or using malt beverage coupons, if the coupon is:

- furnished by an alcohol beverage manufacturer, distributor, importer, brand owner, or brand registrant or any broker, sales agent, or sales person of the licensee; and
- redeemable by a vendor who sells malt beverages to consumers.

The bill authorizes the Division of Alcoholic beverages and Tobacco to adopt rules to establish administrative sanctions for violations of the provisions of the bill.

The bill deletes the existing beer distributor coupon prohibition that is included within the broader coupon prohibition of the bill.

The bill is not anticipated to have a fiscal impact on revenues or expenditures.

The effective date of the bill is July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present situation

Federal alcoholic beverage regulation applies to manufacturers of wine and spirits, importers, and wholesalers of distilled spirits, wine, or malt beverages. Permits are obtained from the Department of Treasury Alcohol and Tobacco Tax and Trade Bureau (TTB). Federal law provides the platform from which state trade practice laws follow. The laws constrain relations between the three tiers: manufacturer (suppliers), wholesaler, and retailer. Federal law identifies acts by supply tier members that are means to induce retail tier members to buy alcohol products and mandates that they are unlawful if they have an exclusionary effect on trade.

TTB administers the Tied-House provisions of the Federal Alcohol Administration Act (FAA Act) as adopted under Title 27, Code of Federal Regulations (CFR), part 6 (27 CFR part 6). The regulations, among other things, restate the statutorily prohibited means to induce, subject to exceptions listed under Subpart D (27 CFR 6.81 – 6.102).

Currently, 27 CFR 6.96(a), consumer promotions, specifies that the act by an industry member of furnishing to consumers coupons which are redeemable at a retail establishment does not constitute a means to induce provided the following conditions are met:

- All retailers within the market where the coupon offer is made may redeem such coupons; and
- An industry member may not reimburse a retailer for more than the face value of all coupons redeemed, plus a usual and customary handling fee for the redemption of coupons.

The term "coupon" does not appear to be defined by federal or state law or rule. The common reference is intended to include financial assist activities, such as, cents off (cost/price reduced) at the time of retail sale or redemption by the purchaser from a third party of the amount of discount after the retail sale.

The Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation (DBPR) is responsible for regulating the conduct, management, and operation of the manufacturing, packaging, distribution, and sale within the state of alcoholic beverages. Florida's alcoholic beverage law provides for a structured three-tiered distribution system: manufacturer, distributor (wholesaler), and vendor (retailer).

Activities between the license groups are extensively regulated and constitute the basis for Florida's "Tied House Evil" law. Among those restrictions, s. 561.42, F.S., prohibits a manufacturer or distributor from having any financial interest, directly or indirectly, in the establishment or business of a retailer. Many restrictions apply to business and market activities between the three tiers.

Currently, tied house exception provisions specify that a licensed manufacturer or distributor may give, lend, or sell certain products to a vendor who sells the beverages of the licensee. The products include neon or electric signs, posters, and other specified advertising material. The division is authorized to adopt rules governing promotional displays and advertising, chapter 61A-1, F.A.C. Currently, division rules have not been adopted relating to coupons.

Statutorily, section 561.42(12)(e), F.S., specifies that "Coupons redeemable by vendors shall not be furnished by distributors of beer to consumers"(emphasis added). Distributors, manufacturers, and importers do not sell beer to consumers, they sell beer to vendors. Manufacturer coupons are typically provided to the vendor, not to the consumer. It is the vendor that sells to consumers and provides the coupons to consumers. Neither, current law or the changes to current law in the bill, prohibit the vendor

from providing beer coupons to consumers, regardless of who supplies the vendor with the coupons as long as the coupons are not redeemable by the vendor.

Effect of proposed changes

The bill creates a new s. 561.42(13), F.S., to prohibit an alcoholic beverage licensee from possessing or using malt beverage coupons, if the coupon is:

- furnished by an alcohol beverage manufacturer, distributor, importer, brand owner, or brand registrant or any broker, sales agent, or sales person of the licensee; and
- redeemable by a vendor who sells malt beverages to consumers.

The bill amends s. 561.42(8), F.S., to specifically authorize the division to adopt rules to establish administrative sanctions for violations of the provisions of the bill.

The bill deletes language that specifically prohibits a beer distributor from furnishing discount coupons to consumers when the coupons are redeemable by a retail beer vendor.

B. SECTION DIRECTORY:

Section 1 amends s. 561.42, F.S., to impose administrative sanctions for certain violations and to prohibit alcoholic beverage licensees from possessing or using certain coupons for malt beverage.

Section 2 provides an effective date of July 1, 2013.

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:

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill prohibits manufacturer and importers of beer from providing coupons that are redeemable by the vendor to consumers. It could be anticipated that the consumer may see less opportunity to purchase malt beverages at a reduced price.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

   None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 12, 2013, the Business & Professional Regulation Subcommittee considered a strike-all amendment and two amendments to the strike-all amendment. The subcommittee reported the bill favorably with a committee substitute (CS).

The CS makes the following changes to the filed version of the bill:

- Amends the title to remove reference to "coupons furnished by manufacturers, distributors, or importers of beer" and makes the CS an act relating to "tied house regulation."
- Amends s. 561.42(8), F.S., to specifically authorize the division to adopt rules to establish administrative sanctions for violations of the provisions of the CS.
- Creates a new s. 561.42(13), F.S., to prohibit a licensee from possessing or using malt beverage coupons, if the coupon is:
  - furnished by an alcohol beverage manufacturer, distributor, importer, brand owner, or brand registrant or any broker, sales agent, or sales person of the licensee; and
  - redeemable by a vendor who sells malt beverages to consumers.
- Amends the new s. 562.42(14), F.S., to remove language that is included in the new broader provision of the CS as filed.

The staff analysis is drafted to reflect the CS.

A bill to be entitled

An act relating to tied house regulation; amending s. 561.42, F.S.; authorizing the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to impose administrative sanctions for violations of specified provisions of the Beverage Law under certain circumstances; prohibiting licensees from possessing or using certain coupons for malt beverages; removing a provision prohibiting distributors of beer from furnishing certain coupons to consumers; providing an effective date.

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

Section 1. Subsections (8) and (12) of section 561.42, Florida Statutes, are amended, and subsections (13) and (14) are added to that section, to read:

561.42 Tied house evil; financial aid and assistance to vendor by manufacturer, distributor, importer, primary American source of supply, brand owner or registrant, or any broker, sales agent, or sales person thereof, prohibited; procedure for enforcement; exception.—

(8) The division may adopt ~~establish~~ rules and require reports to enforce, and may impose administrative sanctions for any violation of, the limitations established in this section ~~herein-established limitation~~ on ~~upon~~ credits, coupons, and other forms of assistance. ~~Nothing herein shall be taken to~~

~~affect the provisions of s. 563.08, but shall govern all other sales of intoxicating liquors.~~

(12) Any manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant, or any broker, sales agent, or sales person thereof, may give, lend, furnish, or sell to a vendor who sells the products of such manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant any of the following: neon or electric signs, window painting and decalcomanias, posters, placards, and other advertising material herein authorized to be used or displayed by the vendor in the interior of his or her licensed premises.

(13) A licensee under the Beverage Law may not possess or use, in physical or electronic format, any type of malt beverage coupon or malt beverage cross-merchandising coupon in this state, where:

(a) The coupon is produced, sponsored, or furnished, whether directly or indirectly, by an alcohol beverage manufacturer, distributor, importer, brand owner, or brand registrant or any broker, sales agent, or sales person thereof; and

(b) The coupon is or purports to be redeemable by a vendor or other person who sells malt beverages to consumers in the state.

(14) The division shall adopt ~~make~~ reasonable rules governing promotional displays and advertising, which rules shall not conflict with or be more stringent than the federal regulations pertaining to such promotional displays and

advertising furnished to vendors by distributors, manufacturers, importers, primary American sources of supply, or brand owners or registrants, or any broker, sales agent, or sales person thereof; ~~provided,~~ however~~, that~~:

(a) If a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any broker, sales agent, or sales person thereof, provides a vendor with expendable retailer advertising specialties such as trays, coasters, mats, menu cards, napkins, cups, glasses, thermometers, and the like, such items shall be sold at a price not less than the actual cost to the industry member who initially purchased them, without limitation in total dollar value of such items sold to a vendor.

(b) Without limitation in total dollar value of such items provided to a vendor, a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any broker, sales agent, or sales person thereof, may rent, loan without charge for an indefinite duration, or sell durable retailer advertising specialties such as clocks, pool table lights, and the like, which bear advertising matter.

(c) If a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any broker, sales agent, or sales person thereof, provides a vendor with consumer advertising specialties such as ashtrays, T-shirts, bottle openers, shopping bags, and the like, such items shall be sold at a price not less than the actual cost to the industry member who initially purchased them, but may be sold without limitation in total value of such items sold to a vendor.

(d) A manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any broker, sales agent, or sales person thereof, may provide consumer advertising specialties described in paragraph (c) to consumers on any vendor's licensed premises.

~~(e) Coupons redeemable by vendors shall not be furnished by distributors of beer to consumers.~~

(e)~~(f)~~ Manufacturers, distributors, importers, brand owners, or brand registrants of beer, and any broker, sales agent, or sales person thereof, shall not conduct any sampling activities that include tasting of their product at a vendor's premises licensed for off-premises sales only.

(f)~~(g)~~ Manufacturers, distributors, importers, brand owners, or brand registrants of beer, and any broker, sales agent, or sales person thereof, shall not engage in cooperative advertising with vendors.

(g)~~(h)~~ Distributors of beer may sell to vendors draft equipment and tapping accessories at a price not less than the cost to the industry member who initially purchased them, except there is no required charge, and a distributor may exchange any parts which are not compatible with a competitor's system and are necessary to dispense the distributor's brands. A distributor of beer may furnish to a vendor at no charge replacement parts of nominal intrinsic value, including, but not limited to, washers, gaskets, tail pieces, hoses, hose connections, clamps, plungers, and tap markers.

Section 2. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4001 Florida Renewable Fuel Standard Act
SPONSOR(S): Gaetz and others
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 320

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	7 Y, 6 N	Whittier	Collins
2) Regulatory Affairs Committee		Whittier	Hamon

SUMMARY ANALYSIS

In 2008, the Legislature passed the Florida Renewable Fuel Standard Act (ss. 526.201-526.207, F.S.), which required that, beginning December 31, 2010, all gasoline sold or offered for sale in Florida by a terminal supplier, importer, blender, or wholesaler be blended gasoline.[1] The Act did not address retail sales of gasoline. In 2012, the Legislature clarified that the Act does not prohibit a retail dealer from selling or offering to sell unblended gasoline.

"Blended gasoline" is defined in the law as a mixture of 90 to 91 percent gasoline and 9 to 10 percent fuel ethanol or other alternative fuel, by volume.

The Act provides specific exemptions from the standard.[2] They include the following:

- Fuel used in aircraft.
- Fuel sold for use in boats and similar watercraft.
- Fuel sold to a blender.
- Fuel sold for use in collector vehicles or vehicles eligible to be licensed as collector vehicles, off-road vehicles, motorcycles, or small engines.
- Fuel unable to comply due to requirements of the United States Environmental Protection Agency.
- Fuel transferred between terminals.
- Fuel exported from the state in accordance with s. 206.052.
- Fuel qualifying for any exemption in accordance with chapter 206.
- Fuel for a railroad locomotive.
- Fuel for equipment, including vehicle or vessel, covered by a warranty that would be voided, if explicitly stated in writing by the vehicle or vessel manufacturer, if the equipment were to be operated using fuel meeting the requirements of the Act.

HB 4001 repeals the entire Florida Renewable Fuel Standard Act from the statutes, thereby removing the requirement that all gasoline sold or offered for sale in Florida by a terminal supplier, importer, blender, or wholesaler shall be blended gasoline.

The bill also removes the requirement that each terminal supplier, importer, blender, or wholesaler include in their monthly report to the Department of Revenue, the number of gallons of blended and unblended gasoline sold.

The bill appears to have no fiscal impact on state or local government.

[1] Section 526.203(2), F.S.
[2] Section 526.203(3), F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Federal Renewable Fuel Standard

The federal government requires the Environmental Protection Agency (EPA) to develop and implement regulations to ensure that transportation fuel sold in the United States contains a minimum volume of renewable fuel, through a Renewable Fuel Standard (RFS). The RFS program was created under the Energy Policy Act of 2005, which established the first federal renewable fuel volume mandate in the United States. Originally, the program required 7.5 billion gallons of renewable fuel to be blended into gasoline by 2012.[3] However, the federal Energy Independence and Security Act of 2007, signed into law on December 19, 2007, increased the renewable fuel standard minimum annual goal for renewable fuel use to 9 billion gallons in 2008 and 36 billion gallons by 2022.[4]

Also in accordance with Section 211(o) of the Clean Air Act, as amended by the Energy Independence and Security Act of 2007, the EPA is required to set the annual standards under the RFS program each November for the following year based on gasoline and diesel projections from the Energy Information Administration (EIA) and is required to set the cellulosic biofuel standard each year based on the volume projected to be available during the following year, using EIA projections and assessments of production capability from industry.[5]

Florida Renewable Fuel Standard Act (Act)

In 2008, the Legislature passed the Florida Renewable Fuel Standard Act (ss. 526.201-526.207, F.S.), which provided findings that "it is vital to the public interest and to the state's economy to establish a market and the necessary infrastructure for renewable fuels in this state by requiring that all gasoline offered for sale in this state include a percentage of agriculturally derived, denatured ethanol." Further, "that the use of renewable fuel reduces greenhouse gas emissions and dependence on imports of foreign oil, improves the health and quality of life for Floridians, and stimulates economic development and the creation of a sustainable industry that combines agricultural production with state-of-the-art technology."[6]

Based on these findings, the Legislature established the standard that, beginning December 31, 2010, all gasoline sold or offered for sale in Florida by a terminal supplier, importer, blender, or wholesaler shall be blended gasoline.[7] The original Act did not address retail sales of gasoline. In 2012, the Legislature clarified that the Act "does not prohibit a retail dealer...from selling or offering to sell unblended gasoline."[8] Terminal suppliers, importers, blenders, and wholesalers are required in their monthly report to the Department of Revenue (DOR) to include the number of gallons of blended and unblended gasoline sold.

"Blended gasoline" is defined as a mixture of 90 to 91 percent gasoline and 9 to 10 percent fuel ethanol or other alternative fuel, by volume, which meets the specifications as adopted by the Department of Agriculture and Consumer Services (DACS or Department). The fuel ethanol or other alternative fuel

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[3] See the EPA website: http://www.epa.gov/otaq/fuels/renewablefuels/.
[4] *Id.*
[5] *EPA Proposes 2012 Renewable Fuel Standards and 2013 Biomass-Based Diesel Volume,* EPA-420-F-11-018, Office of Transportation and Air Quality, June 2011, p. 1.
[6] Section 526.202, F.S.
[7] Section 526.203(2), F.S.
[8] Section 526.203(6), F.S.; CS/CS/HB 7117 (Chapter 2012-117, L.O.F.)

portion may be derived from any agricultural source. "Fuel ethanol" means an anhydrous denatured alcohol produced by the conversion of carbohydrates which meets the specifications as adopted by the Department.[9]

Chapter 206, F.S., relating to Motor and Other Fuel Taxes provides the following definitions:

- "Terminal supplier" means any position holder that has been licensed by the department as a terminal supplier, that has met the requirements of ss. 206.05 and 206.90, and that is registered under s. 4101 of the Internal Revenue Code for transactions involving the bulk storage and transfer of taxable motor or diesel fuels.[10]
- "Importer" means any person that has met the requirements of s. 206.051 and is licensed by DOR to import motor fuel or diesel fuel upon which no precollection of tax has occurred, other than through bulk transfer, into this state by common carrier or company-owned trucks.[11]
- "Blender" means any person who blends any product with motor or diesel fuel and who has been licensed or authorized by the DOR as a blender.[12]
- "Wholesaler" means any person who holds a valid wholesaler of taxable fuel license issued by the DOR.[13]
- "Retail dealer" means any person who is engaged in the business of selling fuel at retail at posted retail prices.[14]

The Act provides specific exemptions from the standard.[15] They include the following:

- Fuel used in aircraft.
- Fuel sold for use in boats and similar watercraft.
- Fuel sold to a blender.
- Fuel sold for use in collector vehicles or vehicles eligible to be licensed as collector vehicles, off-road vehicles, motorcycles, or small engines.
- Fuel unable to comply due to requirements of the United States Environmental Protection Agency.
- Fuel transferred between terminals.
- Fuel exported from the state in accordance with s. 206.052, F.S.
- Fuel qualifying for any exemption in accordance with chapter 206, F.S.[16]
- Fuel for a railroad locomotive.
- Fuel for equipment, including vehicle or vessel, covered by a warranty that would be voided, if explicitly stated in writing by the vehicle or vessel manufacturer, if the equipment were to be operated using fuel meeting the requirements of the Act.

All records of sale of unblended gasoline by terminal suppliers, importers, blenders, and wholesalers are required to include the following statement: "Unblended gasoline may be sold only for the purposes authorized under s. 526.203(3), F.S."[17]

Further, the Act provides that if a terminal supplier, importer, blender, or wholesaler is unable to obtain fuel ethanol or blended gasoline at the same or lower price as unblended gasoline, then the sale or delivery of unblended gasoline by the terminal supplier, importer, blender, or wholesaler is not a violation of the Act. The terminal supplier, importer, blender, or wholesaler shall, upon request of the

[9] Section 526.203(1)(c) and (d), F.S.
[10] Section 206.01(22), F.S.
[11] Section 206.01(3), F.S.
[12] Section 206.01(30), F.S.
[13] Section 206.01(4), F.S.
[14] Section 206.01(5), F.S.
[15] Section 526.203(3), F.S.
[16] Chapter 206, F.S., is entitled *Motor and Other Fuel Taxes*.
[17] Section 526.203(3), F.S.

Department, provide the required documentation regarding the sales transaction and price of fuel ethanol, blended gasoline, and unblended gasoline.[18]

If the Department determines that the Act has been violated, the Department must enter an order imposing one or more of the following penalties:[19]

- Issuance of a warning letter.
- Imposition of an administrative fine of not more than $1,000 per violation for a first-time offender. For a second-time or repeat offender, or any person who is shown to have willfully and intentionally violated any provision of the Act, the administrative fine shall not exceed $5,000 per violation.

If imposing a fine, the Department is to consider the monetary benefit to the violator as a result of noncompliance, whether the violation was committed willfully, and the compliance record of the violator.[20]

The Department reports that, as of February 13, 2013, there have been no penalties issued for noncompliance with the Renewable Fuel Standard.[21]

Ethanol

The U.S. Department of Energy (DOE) describes "ethanol" as a "clear, colorless liquid... [whose] molecules contain a hydroxyl group (-OH) bonded to a carbon atom." Ethanol is made of the same chemical compound regardless of whether it is produced from starch- and sugar-based feedstocks, such as corn grain or sugar cane, or from cellulosic feedstocks, which are dedicated energy crops, such as wood chips or crop residues.[22]

Florida currently has an ethanol production facility that is in the start-up phase, and is projected to begin production in the Spring of 2013.[23, 24] In November 2011, the Florida Biofuels Association reported that there were several commercial advanced biofuel ethanol projects in development.[25] Since 2006, the Department has expended approximately $26.3 million of grant monies for research and development of biofuels.[26]

There is great debate over the benefits of blending ethanol in gasoline. Proponents of ethanol claim that there has not been enough time for the market to respond to the new standard. Proponents of ethanol also state that by reducing the amount of greenhouse gases and ozone created by car exhaust, ethanol is a much better alternative to pure gasoline. The DOE states, on a life-cycle analysis basis, corn-based ethanol production and use reduces greenhouse gas emissions (GHGs) by up to 52% compared to gasoline production and use, and that cellulosic ethanol use could reduce GHGs by as much as 86%.[27] Further, proponents assert that ethanol comes from a renewable energy source, reducing reliance on fossil fuels, thereby reducing dependence on other countries for the United States' energy. According to the DOE, "The Renewable Fuels Association's *2012 Ethanol Industry Outlook* calculated that in 2011 the ethanol industry replaced the gasoline produced from more than 485 million

[18] Section 526.204(1), F.S.
[19] Section 526.205(2), F.S.
[20] Section 526.205(2), F.S.
[21] February 13, 2013, email correspondence with staff of the Department of Agriculture and Consumer Services.
[22] U.S. Department of Energy website: http://www.afdc.energy.gov/afdc/ethanol/what_is.html.
[23] INEOS New Planet BioEnergy, located in Vero Beach, Florida.
[24] See article located at http://www.chemicals-technology.com/projects/ineosbioenergyfacili/.
[25] These include, but are not limited to INEOS – New Planet BioEnergy; Highlands EnviroFuels, LLC; Algenol; LS9; and Southeast Renewable Fuels, LLC.
[26] February 15, 2013, correspondence with the Department of Agriculture and Consumer Services.
[27] U.S. Department of Energy website: http://www.afdc.energy.gov/afdc/ethanol/benefits.html.

barrels of imported oil. Ethanol represents 25% of domestically produced and refined motor fuel for gasoline engines."[28]

It is argued that the production of ethanol benefits the economy by increasing employment among many sectors within the industry, such as farming, processing, building plants, transportation, etc.

Opponents of ethanol rebut that in order to produce enough corn or other crops to meet the demands of the ethanol industry, farmers may have to restrict how much of their crop will be available for other uses, which would result in higher prices for corn, flour, animal feed, and many other products. Further, that the gasoline gallon equivalent (the number of gallons of a fuel that has the equivalent amount of energy as 1 gallon of gasoline) of ethanol is approximately 1.5 gallons, resulting in lower fuel economy.

The DOE notes, "Ethanol has a higher octane number than gasoline, providing premium blending properties. Minimum octane number requirements prevent engine knocking and ensure drivability. Low-level ethanol blends generally have a higher octane rating than unleaded gasoline. Low-octane gasoline is blended with 10% ethanol to attain the standard 87 octane requirement."[29]

Most opponents, however, claim that the major disadvantage of ethanol is that it can be very corrosive and can damage certain types of engines. Ethanol can absorb water and dirt easily, which can impair and corrode the inside of the engine block. Many boaters have reported that ethanol use has caused damage to their boats.

Another common grievance has been an inability to obtain unblended gasoline for engines that may be damaged by ethanol. In 2012, the Legislature directed the Department to compile a list of retail fuel stations that sell or offer to sell unblended gasoline and to provide the information on its website.[30] This information may be accessed using Internet hyperlinks found on the Department's website: http://www.800helpfla.com/Standards/AltSiteMap.html. According to pure-gas.org, which can accessed through the Department's website, there are 363 stations in Florida that sell unblended gasoline.

Currently, almost three-fourths of the gasoline sold by terminal suppliers, importers, blenders, or wholesalers in Florida is blended gasoline. [See chart of Sales of Unblended and Blended Gasoline in 2011-2012 by Terminal Suppliers, Importers, Blenders, and Wholesalers, provided by the Department of Revenue.]

[28] U.S. Department of Energy website: http://www.afdc.energy.gov/afdc/ethanol/benefits.html.
[29] U.S. Department of Energy website: http://www.afdc.energy.gov/afdc/ethanol/what_is.html.
[30] Section 526.203(6), F.S.

Sales of Unblended and Blended Gasoline in 2011-2012 by Terminal Suppliers, Importers, Blenders, and Wholesalers

Applied Date	Product	Sales to Licensed Dealers	Sales to End Users, Retail Dealers, and Resellers	Total Sales	Percent of Total Sales
Nov-11	Gasoline (gallons)	171,744,683.4	154,927,579.2	326,672,262.6	26.7%
	Blended Gasoline (gallons)	361,597,680.0	501,837,975.4	863,435,655.4	70.6%
	Fuel Grade Ethanol (gallons)	32,177,312.8	208,986.0	32,386,298.8	2.6%
		565,519,676.2	656,974,540.6	1,222,494,216.8	
Dec-11	Gasoline (gallons)	181,859,935.0	160,230,823.1	342,090,758.1	27.0%
	Blended Gasoline (gallons)	371,689,983.3	525,328,309.9	897,018,293.2	70.7%
	Fuel Grade Ethanol (gallons)	29,319,912.6	233,278.0	29,553,190.6	2.3%
		582,869,830.9	685,792,411.0	1,268,662,241.9	
Jan-12	Gasoline (gallons)	178,610,236.9	156,184,296.8	334,794,533.7	27.2%
	Blended Gasoline (gallons)	358,687,326.4	508,114,278.8	866,801,605.2	70.5%
	Fuel Grade Ethanol (gallons)	28,184,339.0	214,641.0	28,398,980.0	2.3%
		565,481,902.3	664,513,216.6	1,229,995,118.9	
Feb-12	Gasoline (gallons)	190,612,532.2	222,531,632.1	413,144,164.3	33.0%
	Blended Gasoline (gallons)	363,374,193.0	447,654,680.3	811,028,873.3	64.8%
	Fuel Grade Ethanol (gallons)	26,372,022.0	212,623.0	26,584,645.0	2.1%
		580,358,747.2	670,398,935.4	1,250,757,682.6	
Mar-12	Gasoline (gallons)	207,446,195.5	171,762,356.3	379,208,551.8	27.5%
	Blended Gasoline (gallons)	401,174,013.4	565,101,335.5	966,275,348.9	70.2%
	Fuel Grade Ethanol (gallons)	31,260,862.0	231,143.0	31,492,005.0	2.3%
		639,881,070.9	737,094,834.8	1,376,975,905.7	
Apr-12	Gasoline (gallons)	193,985,076.4	160,496,998.4	354,482,074.8	27.7%
	Blended Gasoline (gallons)	369,670,524.1	524,679,041.5	894,349,565.6	70.0%
	Fuel Grade Ethanol (gallons)	28,793,371.0	218,126.0	29,011,497.0	2.3%
		592,448,971.5	685,394,165.9	1,277,843,137.4	
May-12	Gasoline (gallons)	191,224,477.6	161,961,736.2	353,186,213.8	27.6%
	Gasohol (gallons)	370,210,003.6	526,612,317.5	896,822,321.1	70.2%
	Fuel Grade Ethanol (gallons)	27,347,213.0	234,085.0	27,581,298.0	2.2%
		588,781,694.2	688,808,138.7	1,277,589,832.9	

Jun-12	Gasoline (gallons)	181,964,995.5	152,832,297.6	334,797,293.1	27.3%
	Blended Gasoline (gallons)	359,202,821.0	504,252,819.9	863,455,640.9	70.5%
	Fuel Grade Ethanol (gallons)	26,784,900.0	210,787.0	26,995,687.0	2.2%
		567,952,716.5	657,295,904.5	1,225,248,621.0	
Jul-12	Gasoline (gallons)	184,999,412.1	157,604,181.6	342,603,593.7	27.3%
	Blended Gasoline (gallons)	368,509,816.3	516,453,406.2	884,963,222.5	70.6%
	Fuel Grade Ethanol (gallons)	26,478,583.0	220,541.0	26,699,124.0	2.1%
		579,987,811.4	674,278,128.8	1,254,265,940.2	
Aug-12	Gasoline (gallons)	194,147,452.3	158,701,965.9	352,849,418.2	27.9%
	Blended Gasoline (gallons)	368,871,816.3	517,658,078.6	886,529,894.9	70.0%
	Fuel Grade Ethanol (gallons)	26,614,832.0	221,671.0	26,836,503.0	2.1%
		589,634,100.6	676,581,715.5	1,266,215,816.1	
Sep-12	Gasoline (gallons)	171,504,745.7	142,492,867.8	313,997,613.5	26.8%
	Blended Gasoline (gallons)	343,588,141.2	489,293,081.2	832,881,222.4	71.1%
	Fuel Grade Ethanol (gallons)	24,336,135.0	207,942.0	24,544,077.0	2.1%
		539,429,021.9	631,993,891.0	1,171,422,912.9	
Oct-12	Gasoline (gallons)	193,758,196.8	154,789,287.0	348,547,483.8	27.4%
	Blended Gasoline (gallons)	369,828,128.8	528,079,519.1	897,907,647.9	70.6%
	Fuel Grade Ethanol (gallons)	24,678,332.0	156,075.0	24,834,407.0	2.0%
		588,264,657.6	683,024,881.1	1,271,289,538.7	
	Grand Totals	6,980,610,201.2	8,112,150,763.8	15,092,760,965.0	

12 Month Totals and Percentages

Total Gasoline	**4,196,373,961.4**	**27.8%**
Total Blended Gasoline	**10,561,469,291.3**	**70.0%**
Total Fuel Grade Ethanol	**334,917,712.4**	**2.2%**
Grand Total	**15,092,760,965.0**	**100.0%**

Source: Department of Revenue

Effect of Proposed Changes

HB 4001 repeals the entire Florida Renewable Fuel Standard Act from the statutes, thereby removing the requirement that all gasoline sold or offered for sale in Florida by a terminal supplier, importer, blender, or wholesaler shall be blended gasoline. The bill also removes the requirement that each terminal supplier, importer, blender, or wholesaler include in their monthly report to the Department of Revenue, the number of gallons of blended and unblended gasoline sold.

B. SECTION DIRECTORY:

Section 1. Repeals ss. 526.201, 526.202, 526.203, 526.204, 526.205, 526.206, and 526.207, F.S.

Section 2. Amends s. 206.43, F.S.; removes blended gasoline reporting requirements to the Department of Revenue.

Section 3. Provides an effective date of July 1, 2013.

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:

Removal of the requirement that gasoline sold in the state contain 9 to 10 percent ethanol may result in less damage to watercraft and small engines.

Removal of the requirement may negatively impact the renewable fuel industry if the removal results in less of a demand for the products. See *Fiscal Comments*.

D. FISCAL COMMENTS:

Highlands EnviroFuels reports that, "A recent economic impact study by John Urbanchuk demonstrated that the Highlands EnviroFuels' 30 million gallon per year ethanol facility will generate 65 direct jobs, 760 indirect and induced jobs, $44 million in annual household income, and $51 million in annual GDP. The facility will use non-food crops including biofuel cane and sweet sorghum, and provide Florida farmers another crop to grow."[31]

According to INEOS Bio, their new bio-energy plant will provide approximately 400 jobs that are created and retained for the project, 63 permanent positions jobs with an average annual wage of $50,000 and a total investment of more than $130 million."[32]

[31] Information originally supplied by Florida Biofuels Association on November 30, 2011. Confirmed by Highlands EnviroFuels on February 15, 2013.
[32] INEOS Bio powerpoint presentation provided by Dan Cummings, Vice President, at the Energy & Utilities Subcommittee meeting on February 19, 2012.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to spend funds or take 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 state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Agriculture and Consumer Services recommends that the blended and unblended gasoline reporting requirements being stricken in s. 206.43, F.S. (Section 2 of the bill), be retained to provide information and statistics on blended fuel use in the state.[33]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[33] February 15, 2013, email correspondence with staff of the Department of Agriculture and Consumer Services.

A bill to be entitled

An act relating to the Florida Renewable Fuel Standard Act; repealing ss. 526.201-526.207, F.S., the Florida Renewable Fuel Standard Act, to remove the requirement that all gasoline offered for sale in this state include a percentage of ethanol, subject to specified exemptions, waivers, suspensions, extensions, enforcement, and reporting; amending s. 206.43, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Sections 526.201, 526.202, 526.203, 526.204, 526.205, 526.206, and 526.207, Florida Statutes, are repealed.

Section 2. Subsection (2) of section 206.43, Florida Statutes, is amended to read:

206.43 Terminal supplier, importer, exporter, blender, and wholesaler to report to department monthly; deduction.—The taxes levied and assessed as provided in this part shall be paid to the department monthly in the following manner:

(2)~~(a)~~ Such report may show in detail the number of gallons so sold and delivered by the terminal supplier, importer, exporter, blender, or wholesaler in the state, and the destination as to the county in the state to which the motor fuel was delivered for resale at retail or use shall be specified in the report. The total taxable gallons sold shall agree with the total gallons reported to the county destinations

for resale at retail or use. All gallons of motor fuel sold shall be invoiced and shall name the county of destination for resale at retail or use.

~~(b) Each terminal supplier, importer, blender, and wholesaler shall also include in the report to the department the number of gallons of blended and unblended gasoline, as defined in s. 526.203, sold.~~

Section 3. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7023 PCB BPRS 13-01 Department of Agriculture and Consumer Services
SPONSOR(S): Agriculture & Natural Resources Appropriations Subcommittee; Business & Professional Regulation Subcommittee; Cummings
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1040

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Business & Professional Regulation Subcommittee	11 Y, 0 N	Livingston	Luczynski
1) Agriculture & Natural Resources Appropriations Subcommittee	13 Y, 0 N, As CS	Lolley	Massengale
2) Regulatory Affairs Committee		Livingston	Hamon

SUMMARY ANALYSIS

The bill contains modifications to several regulatory and consumer activities under the jurisdiction of the Florida Department of Agriculture and Consumer Services (DACS). Specifically, the bill:

- Revises the definition of repossession to specify when a recovery agent actually has active possession and command of a recovered vehicle or other equipment (i.e., when the repossession is complete);
- Clarifies that proof of annual firearms training for class "G" and "K" licensees be submitted to DACS upon completion and provides suspension or non-renewal for non-compliance and creates a third-degree felony penalty for anyone to issue a fraudulent training certificate to a person applying for licensure or to the division as part of an application for licensure;
- Updates the requirements for filing of financial reports for charitable organizations, specifies that charitable organizations and sponsors renewal statements must be issued 30 days prior to registration and may be sent via electronic mail, removes notary requirements as a part of solicitation of contributions registration packages, increases the application/renewal processing time from 10 days to 15 days, and clarifies criminal reporting requirements for charitable organizations and sponsors;
- Exempts charities that have a total revenue of less than $25,000, have no employees or members compensated to do fundraising, and that do not use a professional solicitor from the $10 annual registration fee;
- Eliminates a requirement that charitable organizations and sponsors place a statement on all printed material stating the percentage of each contribution that is retained by a professional solicitor and the percentage of each contribution that is received by the organization or sponsor;
- Makes it unlawful for solicitors of contributions to provide false, misleading, or inaccurate information;
- Authorizes the issuance of an immediate cease and desist order for certain prohibited acts such as knowingly filing false, misleading or inaccurate information by charitable organizations;
- Reduces the required security for certain health studios from $50,000 to $25,000;
- Amends the Florida Do Not Call statute to prohibit unsolicited calls for charitable donations;
- Eliminates the requirement that telemarketing salespersons provide a three-year work history, requires that a telemarketing business keep their bond or other security in force as long as the business is open and operating, and authorizes onsite inspection authority for investigators;
- Requires moving brokers to supply a list of affiliated movers, requires that moving brokers only contract with properly registered movers, and eliminates bond requirement for moving brokers;
- Amends the definition of alternative fuel to provide for appropriate authority to adopt fuel quality standards that cover new and emerging blended fuels;
- Transfers motor fuel inspection fees collection to the Department of Revenue to centralize collection of motor fuel taxes and inspection fees;
- Eliminates the option of obtaining a bond for operators of amusement rides; and
- Extends the sunset repeal provision from July 1, 2014 to July 1, 2020, relating to permitting fees.

The bill is not anticipated to have a significant fiscal impact on state funds and no impact on local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The website of the Florida Department of Agriculture and Consumer Services (DACS) states that the mission of the DACS is to safeguard the public and support Florida's agricultural economy by:

- Ensuring the safety and wholesomeness of food and other consumer products through inspection and testing programs;
- Protecting consumers from unfair and deceptive business practices and providing consumer information;
- Assisting Florida's farmers and agricultural industries with the production and promotion of agricultural products; and
- Conserving and protecting the state's agricultural and natural resources by reducing wildfires, promoting environmentally safe agricultural practices, and managing public lands.[1]

The bill includes modifications to several regulatory and consumer activities under the jurisdiction of the DACS and, specifically, the Division of Consumer Services and the Division of Licensing. See below the section directory portion of this analysis. Each subject is followed by a listing of the applicable sections of the bill.

B. SECTION DIRECTORY:

The following includes the Present Situation and Effect of Proposed Changes.

Division of Licensing

Security Officers & Private Investigators: Firearms, ch. 493, F.S.

Currently, holders of the Class "G" statewide firearm license must complete four hours of recertification training annually. These licensees are required to submit proof of training completion at the time of renewal of the license.

The bill requires proof of completion of annual recertification training to be submitted to the DACS upon completion of that training. If the documentation of completion of the required training is not submitted by the end of the first year of the two-year valid term of the license, the individual's license is automatically suspended until proof of the required training is submitted. If the documentation is not submitted by the end of the second year of the two-year valid term of the license, the license may not be renewed unless the renewal applicant completes the minimum number of hours of range and classroom training required at the time of initial licensure.

The bill specifies that failure to include re-certification training for Class "G" applicants and licensees is a basis for disciplinary action. The bill specifies that failure of a Class "K" applicant or licensee to maintain active certification as a professional firearms instructor is also grounds for disciplinary action.

Bill sections: Section 3 amends s. 493.6113, F.S.; Section 5 amends 493.6118, F.S.

Private Investigators & Recovery Agents: Internships ch. 493, F.S.

Currently, individuals who do not have the requisite experience for licensure as a private investigator or recovery agent must serve an internship with a licensed private investigator or recovery agent to gain

[1] http://www.freshfromflorida.com/about_fdacs.html, (Last accessed on February 16, 2013)

that experience. The law requires that the distance between a sponsor's place of business and the intern's assigned place of business be within a 50-mile radius.

The bill removes mileage restrictions on internship sponsorships so that an intern may be sponsored by any licensee in the state, but specifies that the intern's duties must be performed within state.

Bill section: Section 4 amends s. 493.6116, F.S.

Recovery Agents ch. 493, F.S.

Currently, s. 493.6101(22) defines the term "repossession." The definition includes the following statement:

> A repossession is complete when a licensed recovery agent is in control, custody, and possession of such repossessed property.

Control, custody, and possession of a vehicle or other equipment is a legal concept with respect to the act of repossession because it identifies that moment at which the person conducting the repossession has taken active possession and command of the property being repossessed.

Persons engaged in the repossession of vehicles and other equipment are licensed under ch. 493, F.S. Recovery agents have primary responsibility for the repossession of vehicles and equipment as a result of defaulted loans. Repossession is conducted under the provisions and authority of the Uniform Commercial Code. The Code establishes a secured party's right to take possession after default and stipulates that repossession can proceed without judicial process if the party proceeds without breach of the peace. The application of a breach of the peace is removed if a lawful repossession is conducted.[2]

The bill revises the definition of repossession to specify when a recovery agent actually has active possession and command of a recovered vehicle or other equipment, that is, when the repossession is complete. The bill specifies that property is considered to be in the control, custody, and possession of a recovery agent if the vehicle or equipment has been secured in preparation for transport from the site of the recovery by means of having been attached to or placed on the towing transport vehicle or if the vehicle or equipment being recovered is being operated or about to be operated by an employee of the recovery agency.

Bill section: Section 2 amends s. 493.6101, F.S.

Firearm Licensure: Fraudulent Training Certificates ch. 493, F.S.

Recently, the DACS has seen an increase in the number of fraudulent training certificates being submitted as verification/certification of training to obtain individual licenses issued under the authority of ch. 493, F.S., and in particular, the private security industry.

Under the law, an applicant for a Class "D" Security Officer License must complete 40 hours of training at a school licensed by the division. Individuals applying for the Class "G" Statewide Firearm License, the companion license that allows a security officer to perform regulated duties while carrying a firearm, must complete 28 hours of classroom and range training.

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[2] DACS 2013 Legislative Proposal, Division of Licensing, Short Title - Defining "Control, Custody, and Possession" as that Phrase Relates To Property Recovery," 12-18-2012, page 4, copy available in subcommittee files. DACS commentary notes that "Therefore, by including a technical definition of control, custody, and possession in the statute, we have provided a standard and a benchmark that can be applied both by the recovery industry as well as by law enforcement agents when they are called to get involved with a repossession."

The bill makes it a third-degree felony for anyone who knowingly possesses, issues, causes to be issued, sells, or submits a fraudulent training certificate to a person applying for licensure or to the division as part of an application for licensure.

Bill section: Section 6 amends s. 493.6120, F.S.

Division of Consumer Services

Business Opportunity Registration Repeal, Sale of Business Opportunities Act

Currently, businesses offering the sale or lease of business opportunities in the State of Florida file with the DACS. The Federal Trade Commission regulates business opportunities and the DACS has limited regulatory authority and limited resources to continue to register and monitor these entities.

The bill deregulates sellers of business opportunities. The bill:

- Removes mandatory registration requirements and associated fees and DACS oversight;
- Maintains voluntary filing for exempted franchises;
- Maintains disclosure requirements and private cause of action for nonexempt sellers;
- Removes DACS as an enforcing authority, but leaves the Attorney General and State Attorney with jurisdiction; and
- Specifies that business opportunities complainants could still use DACS non-regulated complaint department.

Bill sections: Section 38 amends s. 559.802, F.S.; Section 39 amends s. 559.803, F.S., Section 40, F.S. repeals s. 559.805, F.S.; Section 41 amends s.559.807, F.S.; Section 42 amends s. 559.813, F.S., Section 43 amends s. 559.815, F.S.

Do Not Call Program (DNC), s. 501.059, F.S., Telephone Solicitation.

Under the Florida Do Not Call program, some unsolicited phone calls do not meet the definition of a 'telephonic sales call' as defined by the statute, typically because the entity is not selling a product or service. This includes charitable organizations seeking donations. The department receives frequent complaints from individuals who are frustrated because they have subscribed to the Florida Do Not Call Program and continue to receive calls, primarily from professional solicitors calling on behalf of charitable organizations.

The bill expands the state DNC to include solicitors seeking donations on behalf of charities. The bill authorizes the DACS to enforce the DNC provisions against charities and professional solicitors.

Bill section: Section 16 amends s. 501.059, F.S.

Repeal Bond For Amusement Ride Entities, ch. 616, F.S., Public Fairs & Expositions.

Currently, an owner of an amusement ride may not operate such ride without meeting the insurance requirements that may be satisfied with an insurance policy or a bond.

The bill eliminates the option of obtaining a bond. Although the bill removes a bond option, DACS reports that no entity has used the bond option.

Bill section: Section 45 amends s. 616.242, F.S.

Bond Reduction for Health Studios, ss. 501.012-.019, F.S., Health Studios

Currently, health studios that sell contracts for services are required to obtain a bond, certificate of deposit, or letter of credit in the amount of $50,000 for each business location. The security is then

available to compensate consumers in the event that the health studio violates any of the provisions of the Health Studio Act. A Health Studio that is in business for five years under the same ownership and control with no unresolved consumer complaints is allowed to waive the security requirement.

The bill reduces the required bond for Health Studios from $50,000 per location to $25,000 per location. DACS reports that over last two years only one payout exceeded $25,000 and most were significantly less.

Bill section: Section 15 amends s. 501.016, F.S.

Household Moving Services, ch. 507, F.S.

Currently, the DACS does not interpret the definition of a moving broker to include online brokering services. Additionally, the DACS feels the current definition fails to take into account modern corporate structures. The DACS states that proliferation of online brokering services in recent years has made it easy for unregistered movers to advertise and get referrals from moving brokers.

Currently, moving brokers are required to obtain a $25,000 bond. Since the enactment of the statute, the DACS has never had to use the bond.

The bill requires moving brokers to report affiliated movers upon request for this information by DACS. The bill removes the $25,000 bond requirement for moving brokers. The bill specifies that it is a violation of this statute for a moving broker to contract for services with a mover who is not registered with the DACS. Similarly, the bill specifies that it is a violation for a mover to contract for services with a moving broker who is not registered with DACS.

Bill sections: Section 24 amends s. 507.03, F.S.; Section 25 amends s. 507.04, F.S.; Section 26 amends s.507.07, F.S.

LP Gas Licensees ch. 527, F.S.

License year - Currently, LP gas licenses expire on August 31 of each year.

The bill amends the renewal sequence of licenses to include the period from either September 1 through the following August 31, or April 1 through the following March 31, depending upon the type of license.

Bill sections: section 30 amends s. 527.01, F.S., Section 32 amends s. 527.03, F.S.

Examinations – Section 527.0201, F. S., authorizes the DACS to issue competency examinations to licensees depending upon licensure category. This section currently states that the applicant for licensure must "prove competency by passing a written examination administered by the department or its agent with a grade of 75 percent or above." This language appears to require that an overall score of 75 percent must be achieved, not a score of 75 percent on each area tested on the examination.

The bill specifies that an applicant taking the master qualifier examination must pass each area tested with a score of 75 percent or above.

Bill section: Section 31 amends s. 527.0201, F.S.

Continuing education – Currently, a minimum of 12 hours of continuing education courses is required to maintain certification as a qualifier or master qualifier. The industry recommends a minimum of 16 hours.

The bill increases the minimum number of hours of continuing education courses required to maintain qualifier and master qualifier statuses from 12 to 16.

Bill section: Section 31 amends s. 527.0201, F.S.

Motor Vehicle Repair Advisory Council, ss. 559.901-559.9221, F.S., Florida Motor Vehicle Repair Act.

Currently, the 11 member Motor Vehicle Repair Advisory Council exists to advise and assist DACS in carrying out the provisions of the Motor Vehicle Repair Act.

The bill decreases the size of the Motor Vehicle Repair Council from 11 to 9 members. The bill merges the position of independent automotive collision shops with franchise or company-owned automotive collision shops and merges the position of independent tire dealer with franchise or company-owned tire dealer.

Bill section: Section 44 amends s. 559.9221, F.S.

Fingerprints for Pawn Brokers, ch. 539, F.S.

Currently, pawn shop owners must submit fingerprints taken by a law enforcement agency as part of the registration requirements.

The bill allows pawn shop owners to have their fingerprints taken at a fingerprinting service provider authorized by the Florida Department of Law Enforcement (FDLE) in lieu of submitting fingerprints taken by a law enforcement agency directly to the DACS.

Bill section: Section 37 amends s. 539.001, F.S.

Petroleum Inspection Fees, ch. 531, F.S., Weights and Measures Act of 1971.

Currently, DACS and the Department of Revenue (DOR) collect taxes and/or fees on petroleum products. Regulated entities currently must remit motor fuel taxes to the Department of Revenue and petroleum inspection fees to the DACS.

Motor fuel inspection fee collection transfer to DOR from DACS - Currently, a motor fuel inspection fee is assessed by DACS on gasoline, kerosene (except when used as aviation fuel), and #1 fuel oil (heating oil) sold or used in this state. Virtually, the entire fee comes from gasoline assessments and collections. The DACS notes that there is very little kerosene (not used as aviation fuel) and #1 fuel oil used in this state so the collections are negligible.

The bill moves the assessment and collection responsibility to the DOR and assesses the inspection fee based on the DOR definition of "motor fuel." The DOR definition of "motor fuel" states that "motor fuel" or "fuel" means all gasoline products or any product blended (such as ethanol) with gasoline. Thus under DOR, the inspection fee will not be assessed on kerosene or #1 fuel oil, but will be assessed on the ethanol portion of blended gasoline.

The DACS estimates that eliminating these two fuels from the inspection fee collections should have virtually no impact on revenues. Additionally, the DACS states that many petroleum companies are already remitting the inspection fee for the ethanol portion of the fuels they sell although ethanol is not currently subject to the fee. The DACS indicates that the net fee collected on the basis of "motor fuel" is not anticipated to change actual revenues.

Aviation fuel permit exemption - Currently, certain petroleum products assessed inspection fees by s. 525.09, F.S., are exempt from the commercial weights and measures instruments permit requirements

of ss. 531.60 – 531.66, F.S. Currently, weights and measures instruments or devices may not be used for commercial purposes, as defined by DACS rule, within this state without a commercial use permit issued by the DACS, unless exempted as provided in s. 531.61, F.S. Typically, the DACS does not measure aviation fuel.

The bill specifies that if a device is used exclusively for measuring aviation fuel it is exempt from the permit requirements pursuant to ss. 531.60 – 531.66, F.S.

Bill sections: Section 1 amends s. 206.41, F.S.; Section 28 amends s. 525.09, F.S.; Section 29 amends s. 525.10, F.S., Section 33 amends s. 531.415, F.S.; Section 34, F.S. amends s. 531.61, F.S.

Alternative Fuels, ch. 525, F.S.

Currently, fuel products are being developed that are not covered under the definition of alternative fuels found in s. 525.01,F.S. Specifically, the current standard for E85 has been amended by ASTM International. ASTM provides a forum for the development and publication of voluntary consensus standards for materials, products and services. The State of Florida adopts ASTM standards on a variety of fuel products. Current ASTM standards have altered the definition of E85 to allow for a gasoline-ethanol blend containing 51percent to 83 percent ethanol.

The bill amends the definition of alternative fuels to broaden the definition. The change is designed to allow DACS the flexibility to adjust to changing fuel quality standards and to adjust to new and emerging blended fuels.

Bill section: Section 27 amends s. 525.01, F.S.

Charitable Solicitations, ch. 496, F.S., Solicitation of Funds.

Financial Report Filing Requirements -

Currently, ss. 496.405 and 496.407, F.S., allows for charities to submit 990s with a Schedule A to meet the financial reporting requirements required at registration and renewal. The IRS Form 990 and 990EZ have been redesigned. As a result of this revision, the Schedule A no longer provides the same information that it did when the statute was enacted.

The bill updates the solicitation of contributions statutes related to the filing of financial reports for charitable organizations. The bill requires submission of updated IRS reports that are required by statute to replace specific outdated IRS reports.

Bill sections: Section 7 amends s. 496.405, F.S.; Section 9 amends s. 496.407, F.S.

Processing Timelines – Currently applications and renewals for charitable organizations and sponsors, professional solicitors and professional fundraising consultants must be processed within 10 days by the DACS or the organization is automatically approved.

The bill increases the application/renewal processing time by the DACS from 10 to 15 days for charitable organizations and sponsors.

Bill section: Section 7 amends s. 496.405, F.S.; Section 10 amends s. 496.409, F.S.; Section 11 amends s. 496.410, F.S.

Annual Registration

Currently, registrations of professional solicitors and professional fundraising consultants expire on March 31 of each year regardless of the date the license was issued.

The bill amends the statute so that professional solicitors and professional fundraising consultants have an annual registration requirement based on the date of issuance rather than all registrations expiring on March 31.

Bill section: Section 10 amends s. 496.409, F.S.

Renewal

Currently, s. 496.405, F.S., requires that the DACS send renewal notices by mail 60 days before the expiration date of the charitable organization or sponsor. Because the notices are sent so far in advance of expiration, many organizations ignore the notice and then a second reminder is necessary. Additionally, for good cause organizations may avail themselves of a 60-day extension if necessary.

The bill adds the option to send a renewal statement by electronic mail and reduces the time before renewal that the statement be submitted from 60 days to 30 days.

Bill section: Section 7 amends s. 496.405, F.S.

Cease And Desist

Charitable organization registrations have continued to increase over the last several years along with the number of organizations receiving increased media scrutiny for inappropriate use of solicited funds. Several organizations based in Florida have been the subject of high profile investigations for filing false documents and for failing to use proceeds as intended.

The bill creates authority to allow DACS to issue an immediate cease and desist order for certain specified prohibited acts. The bill amends s. 496.415, F.S., prohibited acts, to include submitting false, misleading, or inaccurate information to the public by a charitable organization or sponsor.

Bill sections: Section 13 amends s. 496.415, F.S.; Section 14 amends s. 496.419, F.S.

Felony Reporting

Currently, s. 496.405, F.S., specifies the contents of registration statements that are required to be submitted by charitable organizations and sponsors. DACS states that the current language seems to confuse applicants.

The bill is designed to clarify past criminal activities that must be reported by charitable organizations and sponsors.

Bill section: Section 7 amends s. 496.405, F.S.

Small Charity Fee Exemption

Currently, charities who solicit funds from the public must register with the DACS. Charities who receive less than $25,000 in contributions must pay a $10 filing fee and file similar financial records as larger charities.

The bill allows charities who have less than $25,000 in total revenue, have no employees or members who are compensated and that do not use a professional solicitor to file an affidavit of exemption that contains basic information about the charity with limited financial information. These charities will also be exempted from the current $10 registration fee.

Bill section: section 8 amends s. 496.406, F.S.

Financial Reporting

Currently, the statute requires professional solicitors to file a financial report of campaign (FROC) detailing the gross revenue received and an itemization of expenses incurred within 90 days of the end of a solicitation campaign or on the anniversary date of a campaign lasting more than one year. The financial information requested for campaigns lasting longer than a year must contain data for the previous year. The DACS allows professional solicitor's to file FROCs within 30 days of the anniversary date for campaigns lasting more than one year. The current statute allows for 90 days to file the FROC for campaigns that last less than a year.

The bill reduces time for professional solicitors to file necessary financial documentation for campaigns lasting less than a year from 90 days to 45 days. The bill delays the due date for financial reporting on campaigns lasting more than a year from on the anniversary date to within 45 days of the anniversary.

Bill section: Section 11 amends s. 496.410, F.S.

Financial Disclosure

Currently, charitable organizations and sponsors are required to place a statement on printed solicitations, receipts, and contribution reminders stating the percentage of contributions that goes to the charity and the percentage that will go to a professional solicitor. The DACS notes that the state of North Carolina has a similar provision, which has been deemed unconstitutional in a Supreme Court decision in 1988 Riley v. National Federation of the Blind, 487 U.S. 781 (1988). As a result of this decision, the DACS does not enforce this statute.

The bill removes the requirement that charitable organizations and sponsors place a statement on printed material stating the percentage of each contribution that is retained by a professional solicitor and the percentage of each contribution that is received by the organization or sponsor.

Bill section: Section 12 amends s. 496.411, F.S.

Remove Notary Requirement

Currently, charitable organizations and sponsors, professional solicitors and professional fundraisers must all sign their applications under oath. The DACS intends to move to an online application process for all registrations. The notarization requirement is a barrier to having this registration process move online because the online filing can't be notarized.

The bill removes notarization requirement for charitable organizations and sponsors, professional solicitors and professional fundraisers applications. The bill allows DACS to add a statement to each registration package that certifies the filing is true and correct and that the person signing the registration is authorized to do so.

Bill sections: Section 7 amends s. 496.405, F.S.; Section 10 amends s. 496.409, F.S.; Section 11 amends s. 496.410, F.S.

Consumer Services – Telemarketing, ss. 501.601-501.626, F.S., Florida Telemarketing Act

Inspections

The DACS has regulatory authority over telemarketing businesses and regularly conducts onsite investigations looking for unlicensed or unlawful activity. Businesses may refuse entry to or refuse to provide required materials, such as scripts, to investigators. Currently, DACS has subpoena power under normal judicial procedures.

The bill expands DACS' investigative authority to give onsite investigators authority to view business records during regulatory inspections of telemarketing businesses.

Bill section: Section 23 amends s. 501.617, F.S.

Bond

The Telemarketing Act requires that commercial telephone sellers obtain a bond, certificate of deposit, or letter of credit when they register or renew their license. If the security expires before the renewal date, an ambiguity in the statute prevents the DACS from requiring the commercial telephone seller to provide a valid security prior to their next renewal period.

The bill specifies that the required bond for telemarketers must remain in force throughout the registration period, not just be in effect for registration and renewal.

Bill section: Section 21 amends 501.611, F.S.

Timeshares

Currently, the DACS regulates telemarketers who engage in timeshare advertising. The DACS enforces only the provisions of the telemarketing statute (ch. 501, F.S.). Currently, telemarketers are required to be licensed pursuant to ch. 721, F.S., by the Department of Business and Professional Regulation. Telemarketers who sell timeshares may not be aware that they must comply with the requirements of both chapters of the law.

The bill is designed to reconcile the new DBPR timeshare reseller language in ch. 721, F.S., with the DACS telemarketing statute.

Bill sections: Section 22 amends s. 501.615, F.S.; Section 46 amends s. 721.20, F.S.

Work History

Currently, the Telemarketing Act requires that telemarketing salespersons provide a three-year work history on their application. The DACS does not have a way to verify the accuracy of the data reported and, therefore, the data is of limited value to the DACS in the enforcement of this statute.

The bill removes the requirement for telemarketing salespersons to provide a three-year work history as a part of their application.

Bill section: Section 19 amends s. 501.607, F.S.

Exemption Status

Currently, the definition of a commercial telephone seller does not include persons exempted by statutory definition. The current language states the DACS must accept such affidavit on its face with no authority to determine whether the exemption is actually appropriate.

The bill authorizes the DACS to review, request additional information, and approve affidavits of exemption by issuing a receipt for the filing. The licensee or the person operating under a valid exemption must display his or her license or the receipt of filing of the affidavit, rather than the affidavit itself.

Bill section: Section 20 amends s. 501.608, F.S.

Definition

The current activities of a commercial telephone solicitation contain three separate definitions that delineate what types of activities fall under the statute. Two of the definitions reference consumer goods or services, but one does not. A strict interpretation could expand the definition to non-consumer goods and services.

Some interpretations expand the definition to non-consumer goods and services. This has caused confusion by DACS and individuals seeking licensure.

The bill adds a third reference to consumer goods and services and includes all three definitions.

The bill updates reference to entities that are exempt from the Telemarketing Act by removing the outdated reference to "National Association of Securities Dealers" and updates the reference by substituting the exemption for the current "Financial Industry Regulatory Authority.

Bill sections: Section 17 amends s. 501.603, F.S.; Section 18 amends s. 501.604, F.S.

Consumer Services - Extend Sunset Provision of Weights and Measures Fees, ch. 531, F.S., Weights and Measures Act of 1971.

Currently the statutes set maximum fees for commercial weighing and measuring devices that are assessed per device. Actual fees are established by rule. The permits are issued on a per device basis, but businesses with multiple devices in one location are assessed less per device since certain economies of scale are realized by the regulatory program when conducting multiple inspections at one location.

When the statute was enacted in 2009, a provision was written in the bill that would allow the permitting fees to sunset (automatic repeal) on July 1, 2014. Prior to 2009, the weights and measures program was funded by General Revenue.

The bill extends the sunset provision relating to permitting fees for weighing and measuring devices from July 1, 2014 to July 1, 2020.

Bill sections: Section 35 creates s. 531.67, F.S.; Section 36 repeals s. 40 of ch. 2009-66, Laws of Florida.

Effective date

The bill is effective July 1, 2013.

Bill section: Section 47.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

General Inspection Trust Fund

	FY 2013-14	FY 2014-15
Deregulation of Sellers of Business Opportunities	($14,000)	$0
Charities (5,900 x $10 annual fee)	($59,000)	$0
Petroleum Inspection Fee penalties	($1,400)	$0

Total	($74,400)	$0

By amending s. 501.059, F.S., the department may receive insignificant increased revenues as a result of fines for Do Not Call violations.

2. Expenditures:

The Criminal Justice Impact Conference met on February 27, 2013, and determined that there will be an insignificant impact on prison beds as a result of a person convicted of submitting a fraudulent training certificate for licensure under chapter 493, F.S.

According to the Department of Revenue, transferring the collection of motor fuel inspection fees from the Department of Agriculture and Consumer Services will have an insignificant operational impact on DOR.

By amending s. 496.405, F.S., the department may reduce mailing costs as a result of sending renewal statements to charitable organizations by electronic mail.

By amending s. 496.406, F.S., the department may process fewer applications as a result of small charities no longer having to register.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill eliminates a $10 annual fee for small charities that meet certain criteria.

The bill increases the minimum number of hours of continuing education courses required to maintain qualifier and master qualifier status from 12 to 16 hours.

Centralizing petroleum tax and fee collections with the DOR may reduce cost of regulation, reduce duplication and simplify tax payments for licensees.

Businesses will continue to pay permitting fees for weighing and measuring devices.

D. FISCAL COMMENTS:

The bill transfers the petroleum inspection fee collection from DACS to DOR. Currently, DACS collects petroleum inspection fees on gasoline, kerosene (except when used as aviation fuel), and #1 fuel oil sold or used in this state. Moving the fee collection process to DOR and assessing it as "motor fuel" will eliminate the fee on kerosene and #1 fuel oil and add the fee for the ethanol in most motor fuels.

Revenues from kerosene (not used as aviation fuel) and #1 fuel oil have averaged $2,010 over the past three years. The remaining revenues are from gasoline assessments and collections. The current inspection fee is one-eighth cent per gallon of gasoline. Although ethanol is not currently subject to the fee, many companies already include it as part of the inspection fee.

DACS indicates there will be an insignificant change in revenues as a result of the elimination of the fee on kerosene and #1 fuel oil and the additional fee on ethanol.

The bill extends the sunset repeal provision relating to permitting fees for weighing and measuring devices from July 1, 2014 to July 1, 2020.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 13, 2013, the Agriculture and Natural Resources Appropriations Subcommittee amended and reported HB 7023 favorably as a committee substitute (CS).

- The CS specifies that a licensed commercial telephone seller or a person operating under a valid exemption must display his or her license or a copy of the receipt of filing of the affidavit, rather than a copy of the affidavit.

A bill to be entitled

An act relating to the Department of Agriculture and Consumer Services; transferring, redesignating, and amending s. 525.09(1), F.S.; transferring collection of a motor fuel inspection fee from the Department of Agriculture and Consumer Services to the Department of Revenue; amending s. 493.6101, F.S.; revising the definition of the term "repossession"; amending s. 493.6113, F.S.; revising firearms recertification training requirements for specified licenses of the private security, private investigative, and repossession industries; amending s. 493.6116, F.S.; deleting a provision prohibiting specified licensees from sponsoring certain interns; requiring interns to perform regulated duties within the state; amending s. 493.6118, F.S.; providing additional grounds for disciplinary action against firearm licensees; amending s. 493.6120, F.S.; providing criminal penalties for a person who knowingly obtains a fraudulent document declaring a licensure applicant to have completed specified training; amending s. 496.405, F.S.; revising procedures and requirements with respect to the submission and processing of registration statements and renewal statements by charitable organizations and sponsors; amending s. 496.406, F.S.; exempting specified organizations and sponsors from filing a registration statement; requiring exempt organizations and sponsors to file

specified documents; providing for applicability; amending s. 496.407, F.S.; revising financial reporting requirements; amending s. 496.409, F.S.; revising registration procedures and requirements for professional fundraising consultants; amending s. 496.410, F.S.; revising registration procedures and requirements for professional solicitors; amending s. 496.411, F.S.; revising the information required to be displayed on specified solicitation materials; amending s. 496.415, F.S.; revising a provision prohibiting specified persons from submitting false, misleading, or inaccurate information related to a solicitation or a charitable or sponsor sales promotion; amending s. 496.419, F.S.; revising the responsibility of the Department of Agriculture and Consumer Services to report specified criminal violations; authorizing the department to issue a cease and desist order for specified violations; amending s. 501.016, F.S.; revising the amount of a surety bond, letter of credit, or guaranty agreement furnished to the department by a health studio; amending s. 501.059, F.S.; prohibiting a telephone solicitor from calling certain consumers; amending s. 501.603, F.S.; conforming a cross-reference; revising definitions; amending s. 501.604, F.S.; revising exemptions from specified provisions of the Florida Telemarketing Act; amending s. 501.607, F.S.; revising salesperson application requirements; amending s.

501.608, F.S.; requiring commercial telephone sellers seeking an affidavit of exemption to provide the department with certain information at the department's request; requiring licensees and exempt persons to display certain documentation; authorizing the department to issue a cease and desist order and to order a salesperson to leave an office if the salesperson is unable to properly display or produce a license or a receipt of filing of an affidavit of exemption; amending s. 501.611, F.S.; providing that a surety bond filed with the department by a commercial telephone seller remains in force for a specified period; amending s. 501.615, F.S.; revising the contract requirements and restrictions on telephonic sales by commercial telephone sellers; amending s. 501.617, F.S.; authorizing an enforcing authority to conduct regulatory inspections; amending s. 507.03, F.S.; requiring moving brokers to provide certain information at the request of the department; amending s. 507.04, F.S.; deleting the requirement for a moving broker to maintain certain liability coverage; amending s. 507.07, F.S.; prohibiting movers and moving brokers from entering into certain service contracts with certain unregistered persons; amending s. 525.01, F.S.; revising the definition of the term "alternative fuel"; repealing s. 525.09(2)-(4), F.S., relating to the payment and applicability of an inspection fee for testing and analyzing petroleum

fuels; amending s. 525.10, F.S.; deleting a provision requiring certain moneys to be paid into the State Treasury before being deposited into a specified trust fund; amending s. 527.01, F.S.; defining the term "license year" applicable to certain liquefied petroleum gas licenses; amending s. 527.0201, F.S.; revising examination requirements for applicants seeking certain licenses; revising continuing education requirements for specified qualifiers; amending s. 527.03, F.S.; revising the requirements and procedure for renewal of liquefied petroleum gas licenses; amending s. 531.415, F.S.; revising a provision exempting certain petroleum equipment from specified fees; amending s. 531.61, F.S.; revising a provision exempting certain devices from permitting requirements; creating s. 531.67, F.S., and repealing s. 40, ch. 2009-66, Laws of Florida, relating to permits for weights and measures instruments or devices, to provide for codification in the Florida Statutes of the expiration of specified provisions and extending the expiration date; amending s. 539.001, F.S.; revising fingerprinting requirements for a pawnbroker license application; amending s. 559.802, F.S.; requiring a specified notice to be filed on a form adopted by the department; amending s. 559.803, F.S.; revising the requirements of the mandatory written disclosure statement provided to purchasers of business opportunities; repealing s. 559.805, F.S.,

relating to mandatory filings and disclosure of advertisement identification numbers by sellers of business opportunities; amending s. 559.807, F.S.; deleting a provision providing for the use of certain securities requirements relating to selling business opportunities; amending s. 559.813, F.S.; deleting a provision authorizing the department to impose specified penalties for certain violations relating to selling business opportunities; deleting a provision authorizing the department to adopt rules; deleting a provision naming the department as an enforcing authority; amending s. 559.815, F.S.; conforming provisions to changes made by the act; amending s. 559.9221, F.S.; revising the membership of the Motor Vehicle Repair Advisory Council; amending s. 616.242, F.S.; revising amusement ride insurance coverage requirements; amending s. 721.20, F.S.; requiring specified persons who sell timeshare plans to be licensed as commercial telephone sellers or salespersons under ch. 501, F.S.; providing an effective date.

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

Section 1. Subsection (1) of section 525.09, Florida Statutes, is transferred, redesignated as paragraph (h) of subsection (1) of section 206.41, Florida Statutes, and amended to read:

206.41 State taxes imposed on motor fuel.—

(1) The following taxes are imposed on motor fuel under the circumstances described in subsection (6):

(h) ~~(1)~~ An additional 0.125 cents per net gallon is levied on all motor fuel for sale or use in this state for the purpose of defraying the expenses incident to inspecting, testing, and analyzing motor fuel ~~petroleum fuels~~ in this state~~, there shall be paid to the department a charge of one-eighth cent per gallon on all gasoline, kerosene (except when used as aviation turbine fuel), and #1 fuel oil for sale or use in this state~~. All moneys collected pursuant to this paragraph shall be deposited into the State Treasury. Such moneys shall be distributed monthly into the General Inspection Trust Fund. ~~This inspection fee shall be imposed in the same manner as the motor fuel tax pursuant to s. 206.41. Payment shall be made on or before the 25th day of each month.~~

Section 2. Subsection (22) of section 493.6101, Florida Statutes, is amended to read:

493.6101 Definitions.—

(22) "Repossession" means the recovery of a motor vehicle as defined under s. 320.01(1), a mobile home as defined in s. 320.01(2), a motorboat as defined under s. 327.02, an aircraft as defined in s. 330.27(1), a personal watercraft as defined in s. 327.02, an all-terrain vehicle as defined in s. 316.2074, farm equipment as defined under s. 686.402, or industrial equipment, by an individual who is authorized by the legal owner, lienholder, or lessor to recover, or to collect money payment in lieu of recovery of, that which has been sold or

leased under a security agreement that contains a repossession clause. As used in this subsection, the term "industrial equipment" includes, but is not limited to, tractors, road rollers, cranes, forklifts, backhoes, and bulldozers. The term "industrial equipment" also includes other vehicles that are propelled by power other than muscular power and that are used in the manufacture of goods or used in the provision of services. A repossession is complete when a licensed recovery agent is in control, custody, and possession of such repossessed property. Property that is being repossessed shall be considered to be in the control, custody, and possession of a recovery agent if the property being repossessed is secured in preparation for transport from the site of the recovery by means of being attached to or placed on the towing or other transport vehicle or if the property being repossessed is being operated or about to be operated by an employee of the recovery agency.

Section 3. Paragraph (b) of subsection (3) of section 493.6113, Florida Statutes, is amended to read:

493.6113 Renewal application for licensure.—

(3) Each licensee is responsible for renewing his or her license on or before its expiration by filing with the department an application for renewal accompanied by payment of the prescribed license fee.

(b) Each Class "G" licensee shall additionally submit proof that he or she has received during each year of the license period a minimum of 4 hours of firearms recertification training taught by a Class "K" licensee and has complied with such other health and training requirements which the department

shall ~~may~~ adopt by rule. Proof of completion of firearms recertification training shall be submitted to the department upon completion of the training. If documentation of completion of the required training is not submitted by the end of the first year of the 2-year term of the license, the individual's license shall be automatically suspended until proof of the required training is submitted to the department. If documentation of completion of the required training is not submitted by the end of the second year of the 2-year term of the license, the license shall not be renewed unless ~~If proof of a minimum of 4 hours of annual firearms recertification training cannot be provided,~~ the renewal applicant completes ~~shall complete~~ the minimum number of hours of range and classroom training required at the time of initial licensure. The department may waive the ~~foregoing~~ firearms training requirement if:

1. The applicant provides proof that he or she is currently certified as a law enforcement officer or correctional officer under the Criminal Justice Standards and Training Commission and has completed law enforcement firearms requalification training annually during the previous 2 years of the licensure period;~~.~~

2. The applicant provides proof that he or she is currently certified as a federal law enforcement officer and has received law enforcement firearms training administered by a federal law enforcement agency annually during the previous 2 years of the licensure period; or~~.~~

3. The applicant submits a valid firearm certificate among

those specified in s. 493.6105(6)(a) and provides proof of having completed requalification training during the previous 2 years of the licensure period.

Section 4. Subsection (3) of section 493.6116, Florida Statutes, is amended to read:

493.6116 Sponsorship of interns.—

(3) Internship is intended to serve as a learning process. Sponsors shall assume a training status by providing direction and control of interns. Sponsors ~~shall only sponsor interns whose place of business is within a 50-mile distance of the sponsor's place of business and~~ shall not allow interns to operate independently of such direction and control~~,~~ or require interns to perform activities that ~~which~~ do not enhance the intern's qualification for licensure. Interns must perform regulated duties within the boundaries of this state during the period of internship.

Section 5. Paragraphs (u) and (v) of subsection (1) of section 493.6118, Florida Statutes, are redesignated as paragraphs (w) and (x), respectively, and new paragraphs (u) and (v) are added to that subsection to read:

493.6118 Grounds for disciplinary action.—

(1) The following constitute grounds for which disciplinary action specified in subsection (2) may be taken by the department against any licensee, agency, or applicant regulated by this chapter, or any unlicensed person engaged in activities regulated under this chapter.

(u) For a Class "G" licensee, failing to timely complete recertification training as required in s. 493.6113(3)(b).

(v) For a Class "K" licensee, failing to maintain active certification specified under s. 493.6105(6).

Section 6. Subsection (1) of section 493.6120, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

493.6120 Violations; penalty.—

(1) Any person who violates any provision of this chapter except subsection (5) and s. 493.6405 commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(5) A person may not knowingly possess, issue, cause to be issued, sell, submit, or offer a fraudulent training certificate, proficiency form, or other official document that declares an applicant to have successfully completed any course of training required for licensure under this chapter when that person either knew or reasonably should have known that the certificate, form, or document was fraudulent. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 7. Paragraph (b) of subsection (1) and subsections (2) and (7) of section 496.405, Florida Statutes, are amended to read:

496.405 Registration statements by charitable organizations and sponsors.—

(1)

(b) Any changes in the information submitted on the initial registration statement or the last renewal statement must be updated annually on a renewal statement provided by the

department on or before the date that marks one year after the date the department approved the initial registration statement as provided in this section. The department shall annually provide a renewal statement to each registrant by mail or by electronic mail at least 30 ~~60~~ days before the renewal date.

(2) The initial registration statement must be submitted on a form prescribed by the department, signed ~~under oath~~ by an authorized official ~~the treasurer or chief fiscal officer~~ of the charitable organization or sponsor who shall certify that the registration statement is true and correct, and include the following information or material:

(a) A copy of the financial report or Internal Revenue Service Form 990 and all attached schedules ~~Schedule A~~ or Internal Revenue Service Form 990-EZ and Schedule O required under s. 496.407 for the immediately preceding fiscal year. A newly organized charitable organization or sponsor with no financial history must file a budget for the current fiscal year.

(b) The name of the charitable organization or sponsor, the purpose for which it is organized, the name under which it intends to solicit contributions, and the purpose or purposes for which the contributions to be solicited will be used.

(c) The name of the individuals or officers who are in charge of any solicitation activities.

(d) A statement of whether:

1. The charitable organization or sponsor is authorized by any other state to solicit contributions;

2. The charitable organization or sponsor or any of its

officers, directors, trustees, or principal salaried executive personnel have been enjoined in any jurisdiction from soliciting contributions or have been found to have engaged in unlawful practices in the solicitation of contributions or administration of charitable assets;

3. The charitable organization or sponsor has had its registration or authority denied, suspended, or revoked by any governmental agency, together with the reasons for such denial, suspension, or revocation; and

4. The charitable organization or sponsor has voluntarily entered into an assurance of voluntary compliance in any jurisdiction or agreement similar to that set forth in s. 496.420, together with a copy of that agreement.

5. The charitable organization or sponsor or any of its officers, directors, trustees, or employees, regardless of adjudication, has been convicted of, or found guilty of, or pled guilty or nolo contendere to, or has been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, any felony ~~or any crime involving fraud, theft, larceny, embezzlement, fraudulent conversion, misappropriation of property, or any crime arising from the conduct of a solicitation for a charitable organization or sponsor~~ within the last 10 years and, if so, the name of such person, the nature of the offense, the date of the offense, the court having jurisdiction in the case, the date of conviction or other disposition, and the disposition of the offense.

6. The charitable organization or sponsor or any of its

officers, directors, trustees, or employees, regardless of adjudication, has been convicted of, or found guilty of, or pled guilty or nolo contendere to, or has been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, any crime involving fraud, theft, larceny, embezzlement, fraudulent conversion, misappropriation of property, or any crime enumerated in this chapter or resulting from acts committed while involved in the solicitation of contributions within the last 10 years and, if so, the name of such person, the nature of the offense, the date of the offense, the court having jurisdiction in the case, the date of conviction or other disposition, and the disposition of the offense.

7.~~6.~~ The charitable organization or sponsor or any of its officers, directors, trustees, or employees has been enjoined from violating any law relating to a charitable solicitation, and, if so, the name of such person, the date of the injunction, and the court issuing the injunction.

(e) The names, street addresses, and telephone numbers of any professional solicitor, professional fundraising consultant, and commercial co-venturer who is acting or has agreed to act on behalf of the charitable organization or sponsor, together with a statement setting forth the specific terms of the arrangements for salaries, bonuses, commissions, expenses, or other remunerations to be paid the fundraising consultant and professional solicitor.

(f) With initial registration only, a statement showing

when and where the organization was established and the tax-exempt status of the organization together with a copy of any federal tax exemption determination letter. If the charitable organization or sponsor has not received a federal tax exemption determination letter at the time of initial registration, a copy of such determination must be filed with the department within 30 days after receipt of the determination by the charitable organization or sponsor. If the organization is subsequently notified by the Internal Revenue Service of any challenge to its continued entitlement to federal tax exemption, the charitable organization or sponsor shall notify the department of this fact within 30 days after receipt.

(g) The following information must be filed with the initial registration statement and must be updated when any change occurs in the information that was previously filed with the initial registration statement:

1. The principal street address and telephone number of the organization and the street address and telephone numbers of any offices in this state or, if the charitable organization or sponsor does not maintain an office in this state, the name, street address, and telephone number of the person that has custody of its financial records. The parent organization that files a consolidated registration statement on behalf of its chapters, branches, or affiliates must additionally provide the street addresses and telephone numbers of all such locations in this state.

2. The names and street addresses of the officers, directors, trustees, and the principal salaried executive

personnel.

3. The date when the charitable organization's or sponsor's fiscal year ends.

4. A list or description of the major program activities.

5. The names, street addresses, and telephone numbers of the individuals or officers who have final responsibility for the custody of the contributions and who will be responsible for the final distribution of the contributions.

(7) The department must examine each initial registration statement or annual renewal statement and the supporting documents filed by a charitable organization or sponsor and shall determine whether the registration requirements are satisfied. Within 15 ~~10~~ working days after its receipt of a statement, the department must examine the statement, notify the applicant of any apparent errors or omissions, and request any additional information the department is allowed by law to require. Failure to correct an error or omission or to supply additional information is not grounds for denial of the initial registration or annual renewal statement unless the department has notified the applicant within the 15-working-day ~~10-working-day~~ period. The department must approve or deny each statement, or must notify the applicant that the activity for which she or he seeks registration is exempt from the registration requirement, within 15 ~~10~~ working days after receipt of the initial registration or annual renewal statement or the requested additional information or correction of errors or omissions. Any statement that is not approved or denied within 15 ~~10~~ working days after receipt of the requested additional

information or correction of errors or omissions is approved. Within 7 working days after receipt of a notification that the registration requirements are not satisfied, the charitable organization or sponsor may request a hearing. The hearing must be held within 7 working days after receipt of the request, and any recommended order, if one is issued, must be rendered within 3 working days of the hearing. The final order must then be issued within 2 working days after the recommended order. If a recommended order is not issued, the final order must be issued within 5 working days after the hearing. The proceedings must be conducted in accordance with chapter 120, except that the time limits and provisions set forth in this subsection prevail to the extent of any conflict.

Section 8. Section 496.406, Florida Statutes, is amended to read:

496.406 Exemption from registration.—

(1) The following charitable organizations and sponsors are exempt from the requirements of s. 496.405:

(a) ~~(1)~~ A person who is soliciting for a named individual, provided that all the contributions collected without any deductions whatsoever are turned over to the beneficiary for her or his use and provided that the person has complied with the requirements of s. 496.413.

(b) ~~(2)~~ A charitable organization or sponsor that ~~which~~ limits solicitation of contributions to the membership of the charitable organization or sponsor. For the purposes of this paragraph, the term "membership" does not include those persons who are granted a membership upon making a contribution as a

result of a solicitation.

(c) ~~(3)~~ Any division, department, post, or chapter of a veterans' service organization granted a federal charter under Title 36, United States Code.

(d) A charitable organization or sponsor that has less than $25,000 in total revenue during a fiscal year if the fundraising activities of such organization or sponsor are carried on by volunteers, members, or officers who are not compensated and no part of the assets or income of such organization or sponsor inures to the benefit of or is paid to any officer or member of such organization or sponsor or to any professional fundraising consultant, professional solicitor, or commercial co-venturer. If a charitable organization or sponsor that has less than $25,000 in total revenue during a fiscal year actually acquires total revenue equal to or in excess of $25,000, the charitable organization or sponsor must register with the department as required by s. 496.405 within 30 days after the date the revenue reaches $25,000.

(2) Before soliciting contributions, a charitable organization or sponsor claiming to be exempt from the registration requirements of s. 496.405 under paragraph (1)(d) must submit annually to the department, on forms prescribed by the department:

(a) The name, address, and telephone number of the charitable organization or sponsor, the name under which it intends to solicit contributions, the purpose for which it is organized, and the purpose or purposes for which the contributions to be solicited will be used.

(b) The tax exempt status of the organization.

(c) The date on which the organization's fiscal year ends.

(d) The names, street addresses, and telephone numbers of the individuals or officers who have final responsibility for the custody of the contributions and who will be responsible for the final distribution of the contributions.

(e) A financial statement of support, revenue, and expenses and a statement of functional expenses that must include, but not be limited to, expenses in the following categories: program, management and general, and fundraising. In lieu of the financial statement, a charitable organization or sponsor may submit a copy of its Internal Revenue Service Form 990 and all attached schedules or Internal Revenue Service Form 990-EZ and Schedule O.

(3) A charitable organization or sponsor claiming to be exempt from the registration requirements of this chapter shall submit any information that the department may request to substantiate an exemption under this section. A charitable organization or sponsor that fails to submit information satisfactory to the department is not exempt from the requirements of this chapter. In any proceeding, the burden of proving an exemption is upon the charitable organization or sponsor claiming it.

(4) Exemption from the registration requirements of s. 496.405 does not limit the applicability of other provisions of this section to a charitable organization or sponsor.

Section 9. Subsection (2) of section 496.407, Florida Statutes, is amended to read:

496.407 Financial report.—

(2) In lieu of the financial report described in subsection (1), a charitable organization or sponsor may submit a copy of its Internal Revenue Service Form 990 and all attached schedules ~~Schedule A~~ filed for the preceding fiscal year, or a copy of its Internal Revenue Service Form 990-EZ and Schedule O filed for the preceding fiscal year.

Section 10. Subsections (2), (3), and (6) of section 496.409, Florida Statutes, are amended to read:

496.409 Registration and duties of professional fundraising consultant.—

(2) Applications for registration or renewal of registration must be submitted on a form prescribed by the department, signed by an authorized official of the professional fundraising consultant who shall certify that the report is true and correct ~~under oath~~, and must include the following information:

(a) The street address and telephone number of the principal place of business of the applicant and any Florida street addresses if the principal place of business is located outside this state.

(b) The form of the applicant's business.

(c) The names and residence addresses of all principals of the applicant, including all officers, directors, and owners.

(d) Whether any of the owners, directors, officers, or employees of the applicant are related as parent, child, spouse, or sibling to any other directors, officers, owners, or employees of the applicant; to any officer, director, trustee,

or employee of any charitable organization or sponsor under contract to the applicant; or to any supplier or vendor providing goods or services to any charitable organization or sponsor under contract to the applicant.

(e) Whether the applicant or any of its officers, directors, trustees, or employees have, within the last 10 years, regardless of adjudication, been convicted, or found guilty of, or pled guilty or nolo contendere to, or have been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, any felony and, if so, the name of such person, the nature of the offense, the date of the offense, the court having jurisdiction in the case, the date of conviction or other disposition, and the disposition of the offense.

(f) Whether the applicant or any of its officers, directors, trustees, or employees have, regardless of adjudication, been convicted of, or found guilty of, or pled guilty or nolo contendere to, or have been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, a crime within the last 10 years involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property, or any crime arising from the conduct of a solicitation for a charitable organization or sponsor and, if so, the name of such person, the nature of the offense, the date of the offense, the court having jurisdiction in the case, the date of conviction or other disposition, and the disposition of the offense.

(g) Whether the applicant or any of its officers, directors, trustees, or employees have been enjoined from violating any law relating to a charitable solicitation and, if so, the name of such person, the date of the injunction, and the court issuing the injunction.

(3) The application for registration must be accompanied by a fee of $300. A professional fundraising consultant which is a partnership or corporation may register for and pay a single fee on behalf of all of its partners, members, officers, directors, agents, and employees. In that case, the names and street addresses of all the officers, employees, and agents of the fundraising consultant and all other persons with whom the fundraising consultant has contracted to work under its direction must be listed in the application. Each registration is valid for 1 year ~~or a part of 1 year and expires on March 31 of each year~~. The registration may be renewed ~~on or before March 31 of each year~~ for additional 1-year periods upon application to the department and payment of the registration fee.

(6) The department shall examine each registration statement and supporting documents filed by a professional fundraising consultant and determine whether the registration requirements are satisfied. If the department determines that the registration requirements are not satisfied, the department must notify the professional fundraising consultant within 15 ~~10~~ working days after its receipt of the registration statement; otherwise the registration statement is approved. Within 7 working days after receipt of a notification that the registration requirements are not satisfied, the applicant may

request a hearing. The hearing must be held within 7 working days after receipt of the request, and any recommended order, if one is issued, must be rendered within 3 working days after the hearing. The final order must then be issued within 2 working days after the recommended order. If there is no recommended order, the final order must be issued within 5 working days after the hearing. The proceedings must be conducted in accordance with chapter 120, except that the time limits and provisions set forth in this subsection prevail to the extent of any conflict.

Section 11. Subsections (2), (3), (5), and (8) of section 496.410, Florida Statutes, are amended to read:

496.410 Registration and duties of professional solicitors.—

(2) Applications for registration or renewal of registration must be submitted on a form prescribed by rule of the department, signed by an authorized official of the professional solicitor who shall certify that the report is true and correct ~~under oath~~, and must include the following information:

(a) The street address and telephone number of the principal place of business of the applicant and any Florida street addresses if the principal place of business is located outside this state.

(b) The form of the applicant's business.

(c) The place and date when the applicant, if other than an individual, was legally established.

(d) The names and residence addresses of all principals of

the applicant, including all officers, directors, and owners.

(e) A statement as to whether any of the owners, directors, officers, or employees of the applicant are related as parent, spouse, child, or sibling to any other directors, officers, owners, or employees of the applicant; to any officer, director, trustee, or employee of any charitable organization or sponsor under contract to the applicant; or to any supplier or vendor providing goods or services to any charitable organization or sponsor under contract to the applicant.

(f) A statement as to whether the applicant or any of its directors, officers, trustees, persons with a controlling interest in the applicant, or employees or agents involved in solicitation have, within the last 10 years, regardless of adjudication, been convicted of, or found guilty of, or pled guilty or nolo contendere to, or have been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, any felony and, if so, the name of such person, the nature of the offense, the date of the offense, the court having jurisdiction in the case, the date of conviction or other disposition, and the disposition of the offense.

(g) A statement as to whether the applicant or any of its directors, officers, trustees, persons with a controlling interest in the applicant, or employees or agents involved in solicitation have, regardless of adjudication, been convicted of, or found guilty of, or pled guilty or nolo contendere to, or have been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled

guilty or nolo contendere to, a crime within the last 10 years involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property, or any crime arising from the conduct of a solicitation for a charitable organization or sponsor and, if so, the name of such person, the nature of the offense, the date of the offense, the court having jurisdiction in the case, the date of conviction or other disposition, and the disposition of the offense.

(h) A statement as to whether the applicant or any of its directors, officers, trustees, persons with a controlling interest in the applicant, or employees or agents involved in solicitation have been enjoined from violating any law relating to a charitable solicitation and, if so, the name of such person, the date of the injunction, and the court issuing the injunction.

(i) The names of all persons in charge of any solicitation activity.

(3) The application for registration must be accompanied by a fee of $300. A professional solicitor that is a partnership or corporation may register for and pay a single fee on behalf of all of its partners, members, officers, directors, agents, and employees. In that case, the names and street addresses of all the officers, employees, and agents of the professional solicitor and all other persons with whom the professional solicitor has contracted to work under its direction, including solicitors, must be listed in the application or furnished to the department within 5 days after the date of employment or contractual arrangement. Each registration is valid for 1 year

~~or a part of 1 year and expires on March 31 of each year~~. The registration may be renewed ~~on or before March 31 of each year~~ for an additional 1-year period upon application to the department and payment of the registration fee.

(5) The department must examine each registration statement and supporting documents filed by a professional solicitor. If the department determines that the registration requirements are not satisfied, the department must notify the professional solicitor within 15 ~~10~~ working days after its receipt of the registration statement; otherwise the registration statement is approved. Within 7 working days after receipt of a notification that the registration requirements are not satisfied, the applicant may request a hearing. The hearing must be held within 7 working days after receipt of the request, and any recommended order, if one is issued, must be rendered within 3 working days after the hearing. The final order must then be issued within 2 working days after the recommended order. If there is no recommended order, the final order must be issued within 5 working days after the hearing. The proceedings must be conducted in accordance with chapter 120, except that the time limits and provisions set forth in this subsection prevail to the extent of any conflict.

(8) Within 45 ~~90~~ days after a solicitation campaign has been completed and within 45 days after ~~on~~ the anniversary of the commencement of a solicitation campaign lasting more than 1 year, the professional solicitor must provide to the charitable organization or sponsor and file with the department a financial report of the campaign, including the gross revenue received and

an itemization of all expenses incurred. The report must be completed on a form prescribed by the department and signed by an authorized official of the professional solicitor who shall certify ~~under oath~~ that the report is true and correct.

Section 12. Subsection (6) of section 496.411, Florida Statutes, is amended to read:

496.411 Disclosure requirements and duties of charitable organizations and sponsors.—

(6) Each charitable organization or sponsor that is required to register under s. 496.405 shall conspicuously display the organization's or sponsor's registration number issued by the department under this chapter ~~following information~~ on every printed solicitation, written confirmation, receipt, or reminder of a contribution~~:~~

~~(a) The organization's or sponsor's registration number issued by the department under this chapter.~~

~~(b) The percentage, if any, of each contribution that is retained by any professional solicitor that has contracted with the organization or sponsor.~~

~~(c) The percentage of each contribution that is received by the organization or sponsor~~.

If the solicitation consists of more than a single item, the statement shall be displayed prominently in the solicitation materials.

Section 13. Subsection (2) of section 496.415, Florida Statutes, is amended to read:

496.415 Prohibited acts.—It is unlawful for any person in

connection with the planning, conduct, or execution of any solicitation or charitable or sponsor sales promotion to:

(2) Knowingly submit ~~file~~ false, ~~or~~ misleading, or inaccurate information in a ~~any~~ document that is ~~required to be~~ filed with the department, provided to the public, or offered in response to a ~~any~~ request or investigation by the department, the Department of Legal Affairs, or the state attorney.

Section 14. Subsection (8) of section 496.419, Florida Statutes, is amended, and subsection (10) is added to that section, to read:

496.419 Powers of the department.—

(8) The department shall report any substantiated criminal violation of ss. 496.401-496.424 or s. 496.426 to the proper prosecuting authority for prompt prosecution.

(10) A finding of a violation of s. 496.415(3), (5), (6), (10), (12), (13), or (14) constitutes an immediate threat to the public health, safety, and welfare and is sufficient grounds for the department to issue an immediate order to cease and desist all solicitation activities. The order shall act as an immediate final order under s. 120.569(2)(n) and shall remain in effect until the violation has been remedied pursuant to this chapter.

Section 15. Subsections (1), (2), and (4) of section 501.016, Florida Statutes, are amended to read:

501.016 Health studios; security requirements.—Each health studio that sells contracts for health studio services shall meet the following requirements:

(1) Each health studio shall maintain for each separate business location a bond issued by a surety company admitted to

do business in this state. The principal sum of the bond shall be $25,000 ~~$50,000~~, and the bond, when required, shall be obtained before a business tax receipt may be issued under chapter 205. Upon issuance of a business tax receipt, the licensing authority shall immediately notify the department of such issuance in a manner established by the department by rule. The bond shall be in favor of the state for the benefit of any person injured as a result of a violation of ss. 501.012-501.019. The aggregate liability of the surety to all persons for all breaches of the conditions of the bonds provided herein shall in no event exceed the amount of the bond. The original surety bond required by this section shall be filed with the department.

(2) In lieu of maintaining the bond required in subsection (1), the health studio may furnish to the department:

(a) An irrevocable letter of credit from any foreign or domestic bank in the amount of $25,000 ~~$50,000~~; or

(b) A guaranty agreement that ~~which~~ is secured by a certificate of deposit in the amount of $25,000 ~~$50,000~~.

The original letter of credit or certificate of deposit submitted in lieu of the bond shall be filed with the department. The department shall decide whether the security furnished in lieu of bond by the health studio is in compliance with the requirements of this section.

(4) If the health studio furnishes the department with evidence satisfactory to the department that the aggregate dollar amount of all current outstanding contracts of the health

studio is less than $5,000, the department may, at its discretion, reduce the principal amount of the surety bond or other sufficient financial responsibility required in subsections (1) and (2) to a sum of not less than $10,000. However, at any time the aggregate dollar amount of such contracts exceeds $5,000, the health studio shall so notify the department and shall thereupon provide the bond or other documentation as required in subsections (1) and (2). Health studios whose bonds have been reduced must provide the department with an annually updated list of members. Failure to file an annual report will result in the department raising the security requirement to $25,000 ~~$50,000~~.

Section 16. Subsections (5) through (10) of section 501.059, Florida Statutes, are renumbered as subsections (6) through (11), respectively, and a new subsection (5) is added to that section to read:

501.059 Telephone solicitation.—

(5) A telephone solicitor may not initiate an outbound telephone call to a consumer who has previously communicated to the telephone solicitor that he or she does not wish to receive an outbound telephone call:

(a) Made by or on behalf of the seller whose goods or services are being offered; or

(b) Made on behalf of a charitable organization for which a charitable contribution is being solicited.

Section 17. Subsections (1) and (2) of section 501.603, Florida Statutes, are amended to read:

501.603 Definitions.—As used in this part, unless the

context otherwise requires, the term:

(1) "Commercial telephone solicitation" means:

(a) An unsolicited telephone call to a person initiated by a commercial telephone seller or salesperson, or an automated dialing machine used in accordance with the provisions of s. 501.059(8) ~~501.059(7)~~ for the purpose of inducing the person to purchase or invest in consumer goods or services;

(b) Other communication with a person where:

1. A gift, award, or prize is offered; or

2. A telephone call response is invited; and

3. The salesperson intends to complete a sale or enter into an agreement to purchase or invest in consumer goods or services during the course of the telephone call; or

(c) Other communication with a person which represents a price, quality, or availability of consumer goods or services and which invites a response by telephone or which is followed by a call to the person by a salesperson.

For purposes of this section, "other communication" means a written or oral notification or advertisement transmitted through any means. Also, for purposes of this section, "invites a response by telephone" does not mean the mere listing or including of a telephone number in a notification or advertisement.

(2) "Commercial telephone seller" means a ~~any~~ person who engages in commercial telephone solicitation on his or her own behalf or through salespersons, except that a commercial telephone seller does not include a person or entity operating

under a valid affidavit of exemption filed with the department according to s. 501.608(1)(b) or ~~any of the persons or entities~~ exempted from this part by s. 501.604. A commercial telephone seller does not include a salesperson as defined in subsection (10). A commercial telephone seller includes, but is not limited to, owners, operators, officers, directors, partners, or other individuals engaged in the management activities of a business entity pursuant to this part.

Section 18. Subsections (4), (7), (10), (14), and (24) of section 501.604, Florida Statutes, are amended to read:

501.604 Exemptions.—The provisions of this part, except ss. 501.608 and 501.616(6) and (7), do not apply to:

(4) A ~~Any~~ licensed securities, commodities, or investment broker, dealer, or investment adviser, when soliciting within the scope of his or her license, or a ~~any~~ licensed associated person of a securities, commodities, or investment broker, dealer, or investment adviser, when soliciting within the scope of his or her license. As used in this section, "licensed securities, commodities, or investment broker, dealer, or investment adviser" means a person subject to license or registration as such by the Securities and Exchange Commission, by the Financial Industry Regulatory Authority ~~National Association of Securities Dealers~~ or other self-regulatory organization as defined by the Securities Exchange Act of 1934, 15 U.S.C. s. 78l, or by an official or agency of this state or of any state of the United States. As used in this section, "licensed associated person of a securities, commodities, or investment broker, dealer, or investment adviser" means an ~~any~~

associated person registered or licensed by the Financial Industry Regulatory Authority ~~National Association of Securities Dealers~~ or other self-regulatory organization as defined by the Securities Exchange Act of 1934, 15 U.S.C. s. 78l, or by an official or agency of this state or of any state of the United States.

(7) A ~~Any~~ supervised financial institution or parent, subsidiary, or affiliate thereof operating within the scope of supervised activity. As used in this section, "supervised financial institution" means a ~~any~~ commercial bank, trust company, savings and loan association, mutual savings bank, credit union, industrial loan company, consumer finance lender, commercial finance lender, or insurer, provided that the institution is subject to supervision by an official or agency of this state, of any state, or of the United States. For the purposes of this exemption, "affiliate" means a person who directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a supervised financial institution.

(10) A business-to-business sale where:

(a) The commercial telephone seller has been lawfully operating continuously for at least 3 years under the same business name and has at least 50 percent of its dollar volume consisting of repeat sales to existing businesses;

(b) The purchaser business intends to resell or offer for purposes of advertisement or as a promotional item the property or goods purchased; or

(c) The purchaser business intends to use the property or

goods purchased in a recycling, reuse, remanufacturing, or manufacturing process.

(14) A telephone company subject to ~~the provisions of~~ chapter 364, or affiliate thereof or its agents, or a telecommunications business that ~~which~~ is regulated by the Florida Public Service Commission, or a Federal Communications Commission licensed cellular telephone company or other bona fide radio telecommunication services provider. For the purposes of this exemption, "affiliate" means a person who directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a telephone company subject to ~~the provisions of~~ chapter 364.

(24) Any person who ~~which~~ has been lawfully providing telemarketing sales services continuously for at least 5 years under the same ownership and control and who ~~which~~ derives 75 percent of its gross telemarketing sales revenues from contracts with persons exempted in this section.

Section 19. Subsection (1) of section 501.607, Florida Statutes, is amended to read:

501.607 Licensure of salespersons.—

(1) An applicant for a license as a salesperson must submit to the department, in such form as it prescribes, a written application for a license. The application must set forth the following information:

(a) The true name, date of birth, driver license number or other valid form of identification, and home address of the applicant.

~~(b) Each business or occupation engaged in by the~~

~~applicant during the 3 years immediately preceding the date of the application, and the location thereof.~~

(b) ~~(c)~~ The previous experience of the applicant as a commercial telephone seller or salesperson.

(c) ~~(d)~~ Whether the applicant, regardless of adjudication, has previously been arrested for, convicted or found guilty of, has entered a plea of guilty or a plea of nolo contendere to, or is under indictment or information for, a felony and, if so, the nature of the felony.

(d) ~~(e)~~ Whether the applicant, regardless of adjudication, has previously been convicted or found guilty of, has entered a plea of guilty or a plea of nolo contendere to, or is under indictment or information for, racketeering or any offense involving fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property.

(e) ~~(f)~~ Whether there has ever been a judicial or administrative finding that the applicant has previously been convicted of acting as a salesperson without a license, or whether such a license has previously been refused, revoked, or suspended in any jurisdiction.

(f) ~~(g)~~ Whether the applicant has worked for, or been affiliated with, a company that is involved in pending litigation or has had entered against it an injunction, a temporary restraining order, or a final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, or any similar document, in any civil or administrative action involving racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of

property or the use of any untrue, deceptive, or misleading representation or the use of any unfair, unlawful, or deceptive trade practice.

(g) ~~(h)~~ Whether the applicant is involved in pending litigation or has had entered against her or him an injunction, a temporary restraining order, or a final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, or any similar document, in any civil or administrative action involving racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property or the use of any untrue, deceptive, or misleading representation or the use of any unfair, unlawful, or deceptive trade practice.

Section 20. Paragraph (b) of subsection (1) and subsections (2) and (3) of section 501.608, Florida Statutes, are amended to read:

501.608 License or affidavit of exemption; occupational license.—

(1)

(b) Any commercial telephone seller claiming to be exempt from the act under s. 501.604(2), (3), (5), (6), (9), (10), (11), (12), (17), (21), (22), (24), or (26) must file with the department a notarized affidavit of exemption. The affidavit of exemption must be on forms prescribed by the department and must require the name of the commercial telephone seller, the name of the business, and the business address. At the request of the department, the commercial telephone seller shall provide sales scripts, contracts, and other documentation as needed to verify

the validity of the exemption before the affidavit of exemption is accepted for filing. A ~~Any~~ commercial telephone seller maintaining more than one business may file a single notarized affidavit of exemption that clearly indicates the location of each place of business. If a change of ownership occurs, the commercial telephone seller must notify the department.

(2) Each licensee or person operating under a valid and properly filed ~~claiming an~~ exemption shall prominently display his or her license or a copy of his or her receipt of filing of the affidavit of exemption at each location where he or she does business and~~. Each licensee or person claiming an exemption~~ shall make the license or the receipt of filing ~~copy~~ of the affidavit of exemption available for inspection by any governmental agency upon request.

(3) Failure to obtain or display a license or a receipt of filing of an ~~copy of the~~ affidavit of exemption is sufficient grounds for the department to issue an immediate cease and desist order, which shall act as an immediate final order under s. 120.569(2)(n). The order shall ~~may~~ remain in effect until the commercial telephone seller or a person claiming to be exempt shows the authorities that he or she is properly licensed or exempt. The department may order the business to cease operations and shall order the phones to be shut off. Failure of a salesperson to display a license or a receipt of filing of an affidavit of exemption may result in the salesperson being summarily ordered by the department to leave the office until he or she can produce a license or a receipt of filing of an affidavit of exemption for the department.

Section 21. Subsection (3) of section 501.611, Florida Statutes, is amended to read:

501.611 Security.—

(3) The bond shall be posted with the department and shall remain in force throughout the period of licensure with the department.

Section 22. Subsection (12) of section 501.615, Florida Statutes, is amended to read:

501.615 Written contract; cancellation; refund.—

(12) Exempt from the requirements of subsections (1)-(5) is any sale in which the consumer is given a right to a full refund for the return of undamaged and unused goods or a cancellation of services notice is given to the seller, within 7 days after receipt of the goods or services by the consumer, and the seller shall process the refund within 30 days after receipt of the returned merchandise by the consumer. A commercial telephone seller or salesperson engaged in activity regulated by chapter 721 must comply with s. 721.205.

Section 23. Subsection (1) of section 501.617, Florida Statutes, is amended to read:

501.617 Investigative powers of enforcing authority.—

(1) If, by her or his own inquiries or as a result of complaints, the enforcing authority has reason to believe that a person has engaged in, or is engaging in, an act or practice that violates ~~the provisions of~~ this part, she or he may administer oaths and affirmations, subpoena witnesses or matter, conduct regulatory inspections, and collect evidence. Within 10 days after the service of a subpoena or at any time before the

return date specified therein, whichever is longer, the party served may file in the circuit court in the county in which she or he resides or in which she or he transacts business and serve upon the enforcing authority a petition for an order modifying or setting aside the subpoena. The petitioner may raise any objection or privilege that ~~which~~ would be available under this part or upon service of such subpoena in a civil action. The subpoena shall inform the party served of her or his rights under this subsection.

Section 24. Subsection (9) of section 507.03, Florida Statutes, is amended, and subsection (10) is added to that section, to read:

507.03 Registration.—

(9) Each mover ~~and moving broker~~ shall provide evidence of the current and valid insurance or alternative coverages required under s. 507.04.

(10) At the request of the department, each moving broker shall provide a complete list of the movers that the moving broker has contracted or is affiliated with, advertises on behalf of, arranges moves for, or refers shippers to, including each mover's complete name, address, telephone number, and e-mail address and the name of each mover's owner or other principal.

Section 25. Paragraph (b) of subsection (1) of section 507.04, Florida Statutes, is amended to read:

507.04 Required insurance coverages; liability limitations; valuation coverage.—

(1) LIABILITY INSURANCE.—

(b) A mover that operates two or fewer vehicles, in lieu of maintaining the liability insurance coverage required under paragraph (a), may~~, and each moving broker must,~~ maintain one of the following alternative coverages:

1. A performance bond in the amount of $25,000, for which the surety of the bond must be a surety company authorized to conduct business in this state; or

2. A certificate of deposit in a Florida banking institution in the amount of $25,000.

The original bond or certificate of deposit must be filed with the department and must designate the department as the sole beneficiary. The department must use the bond or certificate of deposit exclusively for the payment of claims to consumers who are injured by the fraud, misrepresentation, breach of contract, misfeasance, malfeasance, or financial failure of the mover ~~or moving broker~~ or by a violation of this chapter by the mover ~~or broker~~. Liability for these injuries may be determined in an administrative proceeding of the department or through a civil action in a court of competent jurisdiction. However, claims against the bond or certificate of deposit must only be paid, in amounts not to exceed the determined liability for these injuries, by order of the department in an administrative proceeding. The bond or certificate of deposit is subject to successive claims, but the aggregate amount of these claims may not exceed the amount of the bond or certificate of deposit.

Section 26. Section 507.07, Florida Statutes, is amended to read:

507.07 Violations.—It is a violation of this chapter ~~to~~:

(1) To conduct business as a mover or moving broker, or advertise to engage in the business of moving or offering to move, without being registered with the department.

(2) To knowingly make any false statement, representation, or certification in any application, document, or record required to be submitted or retained under this chapter.

(3) To misrepresent or deceptively represent:

(a) The contract for services, bill of lading, or inventory of household goods for the move estimated.

(b) The timeframe or schedule for delivery or storage of household goods estimated.

(c) The price, size, nature, extent, qualities, or characteristics of accessorial or moving services offered.

(d) The nature or extent of other goods, services, or amenities offered.

(e) A shipper's rights, privileges, or benefits.

(4) To fail to honor and comply with all provisions of the contract for services or bill of lading regarding the purchaser's rights, benefits, and privileges thereunder.

(5) To withhold delivery of household goods or in any way hold goods in storage against the expressed wishes of the shipper if payment has been made as delineated in the estimate or contract for services.

(6)(a) To include in any contract any provision purporting to waive or limit any right or benefit provided to shippers under this chapter.

(b) To seek or solicit a waiver or acceptance of

limitation from a shipper concerning rights or benefits provided under this chapter.

(c) To use a local mailing address, registration facility, drop box, or answering service in the promotion, advertising, solicitation, or sale of contracts, unless the mover's, and, if applicable, the moving broker's, fixed business address is clearly disclosed during any telephone solicitation and is prominently and conspicuously disclosed on all solicitation materials and on the contract.

(d) To commit any other act of fraud, misrepresentation, or failure to disclose a material fact.

(e) To refuse or fail, or for any of the mover's or broker's principal officers to refuse or fail, after notice, to produce any document or record or disclose any information required to be produced or disclosed.

(f) To knowingly make a false statement in response to any request or investigation by the department, the Department of Legal Affairs, or the state attorney.

(7) For a moving broker to enter into a contract or agreement for moving, loading, shipping, transporting, or unloading services with a mover who is not registered with the department pursuant to this chapter.

(8) For a mover to enter into a contract or agreement for moving, loading, shipping, transporting, or unloading services with a moving broker who is not registered with the department pursuant to this chapter.

Section 27. Paragraph (c) of subsection (1) of section 525.01, Florida Statutes, is amended to read:

525.01 Gasoline and oil to be inspected.—

(1) For the purpose of this chapter:

(c) "Alternative fuel" means:

1. Methanol, denatured ethanol, or other alcohols;

2. Mixtures of gasoline or other fuels with methanol, denatured ethanol, or other alcohols ~~containing 85 percent or more by volume of methanol, denatured ethanol, or other alcohols with gasoline or other fuels, or such other percentage, but not less than 70 percent, as determined by the department by rule, to provide for requirements relating to cold start, safety, or vehicle functions~~;

3. Hydrogen;

4. Coal-derived liquid fuels; and

5. Fuels, other than alcohol, derived from biological materials.

Section 28. Subsections (2), (3), and (4) of section 525.09, Florida Statutes, are repealed.

Section 29. Section 525.10, Florida Statutes, is amended to read:

525.10 ~~Moneys to be paid into State Treasury;~~ Payment of expenses.—~~All moneys payable under this chapter shall be payable to the department and shall be paid by it into the State Treasury monthly to be deposited into the General Inspection Trust Fund.~~ All expenses incurred in the enforcement of this chapter and other inspection laws of this state for which fees are collected, including acquiring equipment and other property, shall be paid from the General Inspection Trust Fund. No money shall be paid to any inspector or employee created under this

chapter except from the funds collected from the administration of this chapter.

Section 30. Subsection (20) is added to section 527.01, Florida Statutes, to read:

527.01 Definitions.—As used in this chapter:

(20) "License year" means the period from September 1 through the following August 31, or April 1 through the following March 31, depending upon the type of license.

Section 31. Subsections (1) and (3) and paragraphs (a) and (c) of subsection (5) of section 527.0201, Florida Statutes, are amended to read:

527.0201 Qualifiers; master qualifiers; examinations.—

(1) In addition to the requirements of s. 527.02, any person applying for a license to engage in the activities of a pipeline system operator, category I liquefied petroleum gas dealer, category II liquefied petroleum gas dispenser, category IV liquefied petroleum gas dispenser and recreational vehicle servicer, category V liquefied petroleum gases dealer for industrial uses only, LP gas installer, specialty installer, requalifier ~~requalification~~ of cylinders, or fabricator, repairer, and tester of vehicles and cargo tanks must prove competency by passing a written examination administered by the department or its agent with a grade of 75 percent or above in each area tested. Each applicant for examination shall submit a $20 nonrefundable fee. The department shall by rule specify the general areas of competency to be covered by each examination and the relative weight to be assigned in grading each area tested.

(3) Qualifier cards issued to category I liquefied petroleum gas dealers and liquefied petroleum gas installers shall expire 3 years after the date of issuance. All category I liquefied petroleum gas dealer qualifiers and liquefied petroleum gas installer qualifiers holding a valid qualifier card upon the effective date of this act shall retain their qualifier status until July 1, 2003, and may sit for the master qualifier examination at any time during that time period. All such category I liquefied petroleum gas dealer qualifiers and liquefied petroleum gas installer qualifiers may renew their qualification on or before July 1, 2003, upon application to the department, payment of a $20 renewal fee, and documentation of the completion of a minimum of 16 ~~12~~ hours approved continuing education courses, as defined by department rule, during the previous 3-year period. Applications for renewal must be made 30 calendar days before ~~prior to~~ expiration. Persons failing to renew before ~~prior to~~ the expiration date must reapply and take a qualifier competency examination in order to reestablish category I liquefied petroleum gas dealer qualifier and liquefied petroleum gas installer qualifier status. If a category I liquefied petroleum gas qualifier or liquefied petroleum gas installer qualifier becomes a master qualifier at any time during the effective date of the qualifier card, the card shall remain in effect until expiration of the master qualifier certification.

(5) In addition to all other licensing requirements, each category I liquefied petroleum gas dealer and liquefied petroleum gas installer must, at the time of application for

licensure, identify to the department one master qualifier who is a full-time employee at the licensed location. This person shall be a manager, owner, or otherwise primarily responsible for overseeing the operations of the licensed location and must provide documentation to the department as provided by rule. The master qualifier requirement shall be in addition to the requirements of subsection (1).

(a) In order to apply for certification as a master qualifier, each applicant must be a category I liquefied petroleum gas dealer qualifier or liquefied petroleum gas installer qualifier, must be employed by a licensed category I liquefied petroleum gas dealer, liquefied petroleum gas installer, or applicant for such license, must provide documentation of a minimum of 1 year's work experience in the gas industry, and must pass a master qualifier competency examination. Master qualifier examinations shall be based on Florida's laws, rules, and adopted codes governing liquefied petroleum gas safety, general industry safety standards, and administrative procedures. The applicant ~~examination~~ must ~~be~~ successfully pass the examination ~~completed by the applicant~~ with a grade of 75 percent or above ~~more~~. Each applicant for master qualifier status must ~~shall~~ submit to the department a nonrefundable $30 examination fee before ~~prior to~~ the examination.

(c) Master qualifier status shall expire 3 years after the date of issuance of the certificate and may be renewed by submission to the department of documentation of completion of at least 16 ~~12~~ hours of approved continuing education courses

during the 3-year period; proof of employment with a licensed category I liquefied petroleum gas dealer, liquefied petroleum gas installer, or applicant; and a $30 certificate renewal fee. The department shall define, by rule, approved courses of continuing education.

Section 32. Section 527.03, Florida Statutes, is amended to read:

527.03 Annual renewal of license.—All licenses required under this chapter shall be renewed annually subject to the license fees prescribed in s. 527.02. All licenses, except Category III Liquefied Petroleum Gas Cylinder Exchange Unit Operator licenses and Dealer in Appliances and Equipment for Use of Liquefied Petroleum Gas licenses, shall be renewed for the period beginning September 1 and shall expire on the following August 31 unless sooner suspended, revoked, or otherwise terminated. Category III Liquefied Petroleum Gas Cylinder Exchange Unit Operator licenses and Dealer in Appliances and Equipment for Use of Liquefied Petroleum Gas licenses shall be renewed for the period beginning April 1 and shall expire on the following March 31 unless sooner suspended, revoked, or otherwise terminated. Any license allowed to expire ~~on August 31~~ shall become inoperative because of failure to renew. The fee for restoration of a license is equal to the original license fee and must be paid before the licensee may resume operations.

Section 33. Subsection (3) of section 531.415, Florida Statutes, is amended to read:

531.415 Fees.—

(3) Any ~~petroleum product taxed under s. 525.09 and any~~

petroleum equipment used to measure petroleum fuel, as defined in s. 525.01, owned by a person licensed pursuant to chapter 206 is exempt from the fees established in this section.

Section 34. Subsection (3) of section 531.61, Florida Statutes, is amended to read:

531.61 Exemptions from permit requirement.—Commercial weights or measures instruments or devices are exempt from the permit requirements of ss. 531.60-531.66 if:

(3) The device is used exclusively for measuring aviation fuel or petroleum products inspected ~~taxed~~ under chapter 525 ~~s. 525.09~~.

Section 35. Section 531.67, Florida Statutes, is created to read:

531.67 Expiration of sections.—Sections 531.60, 531.61, 531.62, 531.63, 531.64, 531.65, and 531.66 shall expire July 1, 2020.

Section 36. Section 40 of chapter 2009-66, Laws of Florida, is repealed.

Section 37. Paragraph (c) of subsection (5) of section 539.001, Florida Statutes, is amended to read:

539.001 The Florida Pawnbroking Act.—

(5) APPLICATION FOR LICENSE.—

(c) Each initial application for a license must be accompanied by a complete set of fingerprints taken by an authorized law enforcement officer or a fingerprinting service provider approved by the Department of Law Enforcement, $300 for the first year's license fee, and the actual cost to the agency for fingerprint analysis for each person subject to the

eligibility requirements. The agency shall submit the fingerprints to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history check. These fees and costs are not refundable.

Section 38. Paragraph (b) of subsection (1) of section 559.802, Florida Statutes, is amended to read:

559.802 Franchises; exemption.—

(1) The sale of a franchise is exempt from this part if:

(b) Before offering for sale or selling a franchise to be located in this state or to a resident of this state, the franchisor files a notice with the department, on a form adopted by the department, stating that the franchisor is in substantial compliance with the requirements of the Federal Trade Commission rule~~,~~ and pays a fee in an amount set by the department~~,~~ not exceeding $100.

Section 39. Section 559.803, Florida Statutes, is amended to read:

559.803 Disclosure statement.—At least 3 working days before ~~prior to~~ the time the purchaser signs a business opportunity contract, or at least 3 working days before ~~prior to~~ the receipt of any consideration by the seller, whichever occurs first, the seller must provide the prospective purchaser a written document, the cover sheet of which is entitled in at least 12-point boldfaced capital letters "DISCLOSURES REQUIRED BY FLORIDA LAW." Under this title shall appear the following statement in at least 10-point type: "The State of Florida has

not reviewed and does not approve, recommend, endorse, or sponsor any business opportunity. The information contained in this disclosure has not been verified by the state. If you have any questions about this investment, see an attorney before you sign a contract or agreement." Nothing except the title and required statement shall appear on the cover sheet. Immediately following the cover sheet, the seller must provide an index page that briefly lists the contents of the disclosure document as required in this section and any pages on which the prospective purchaser can find each required disclosure. At the top of the index page, the following statement must appear in at least 10-point type: "The State of Florida requires sellers of business opportunities to disclose certain information to prospective purchasers. This index is provided to help you locate this information." If the index contains other information not required by this section, the seller shall place a designation beside each of the disclosures required by this section and provide an explanation of the designation at the end of the statement at the top of the index page. The disclosure document shall contain the following information:

(1) The name of the seller; whether the seller is doing business as an individual, partnership, corporation, or other business entity; the names under which the seller has done business; and the name of any parent or affiliated company that will engage in business transactions with the purchasers or who takes responsibility for statements made by the seller.

(2) The names, addresses, and titles of the seller's officers, directors, trustees, general partners, general

managers, and principal executives and of any other persons charged with the responsibility for the seller's business activities relating to the sale of business opportunities.

(3) The length of time the seller has:

(a) Sold business opportunities; or

(b) Sold business opportunities involving the products, equipment, supplies, or services currently being offered to the purchaser.

(4) A full and detailed description of the actual services that the business opportunity seller undertakes to perform for the purchaser.

(5) A copy of a current ~~(not older than 13 months)~~ financial statement of the seller that is no older than 13 months, updated to reflect material changes in the seller's financial condition.

(6) If training is promised by the seller, a complete description of the training, the length of the training, and the cost or incidental expenses of that training, including the ~~which~~ cost or expense the purchaser will be required to incur.

(7) If the seller promises services to be performed in connection with the placement of the equipment, product, or supplies at a location, the full nature of those services as well as the nature of the agreements to be made with the owners or managers of the location where the purchaser's equipment, product, or supplies will be placed.

(8) If the business opportunity seller is required to secure a bond, guaranteed letter of credit, or certificate of deposit pursuant to s. 559.807, either of the following

statements:

(a) "As required by Florida law, the seller has secured a bond issued by ...., a surety company authorized to do business in this state. Before signing a contract to purchase this business opportunity, you should confirm the bond's status with the surety company."; or

(b) "As required by Florida law, the seller has established a guaranteed letter of credit or certificate of deposit ...(number of account)... with ...(name and address of bank or savings institution).... Before signing a contract to purchase this business opportunity, you should confirm with the bank or savings institution the current status of the guaranteed letter of credit or certificate of deposit."

(9) The following statement: "If the seller fails to deliver the product, equipment, or supplies necessary to begin substantial operation of the business within 45 days of the delivery date stated in your contract, you may notify the seller in writing and cancel your contract."

(10) If the seller makes any statement concerning sales or earnings or a range of sales or earnings that may be made through this business opportunity, a statement disclosing:

(a) The total number of purchasers of business opportunities involving the product, equipment, supplies, or services being offered who have actually achieved sales of or received earnings in the amount or range specified within 3 years prior to the date of the disclosure statement.

(b) The total number of purchasers of business opportunities involving the product, equipment, supplies, or

services being offered within 3 years before ~~prior to~~ the date of the disclosure statement.

(11)(a) The total number of persons who purchased the business opportunity being offered by the seller within the past 3 years.

(b) The names, addresses, and telephone numbers of the 10 persons who previously purchased the business opportunity from the seller and who are geographically closest to the potential purchaser.

(12) A statement disclosing who, if any, of the persons listed in subsections (1) and (2):

(a) Has, at any time during the previous 10 fiscal years, regardless of adjudication, been convicted of, or found guilty of, or pled guilty or nolo contendere to, or has been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, a felony or a crime involving fraud, theft, larceny, violation of any franchise or business opportunity law or unfair or deceptive practices law, embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade.

(b) Has, at any time during the previous 7 fiscal years, been held liable in a civil action resulting in a final judgment or has settled out of court any civil action or is a party to any civil action involving allegations of fraud (including violation of any franchise or business opportunity law or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade

or any civil action which was brought by a present or former franchisee or franchisees and which involves or involved the franchise relationship. However, only material individual civil actions need be so listed pursuant to this paragraph, including any group of civil actions which, irrespective of the materiality of any single such action, in the aggregate is material.

(c) Is subject to any currently effective state or federal agency or court injunctive or restrictive order, or has been subject to any administrative action in which an order by a governmental agency was rendered, or is a party to a proceeding currently pending in which such order is sought, relating to or affecting business opportunities activities or the business opportunity seller-purchaser relationship or involving fraud, ~~(~~including violation of any franchise or business opportunity law or unfair or deceptive practices law~~)~~, embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade.

Such statement shall set forth the identity and location of the court or agency; the date of conviction, judgment, or decision; the penalty imposed; the damages assessed; the terms of settlement or the terms of the order; and the date, nature, and issuer of each such order or ruling. A business opportunity seller may include a summary opinion of counsel as to any pending litigation, but only if counsel's consent to the use of such opinion is included in the disclosure statement.

(13) A statement disclosing who, if any, of the persons

listed in subsections (1) and (2) at any time during the previous 7 fiscal years has:

(a) Filed in bankruptcy.

(b) Been adjudged bankrupt.

(c) Been reorganized due to insolvency.

(d) Been a principal, director, executive officer, or partner of any other person that has so filed or was so adjudged or reorganized during or within 1 year after the period that such person held such position in relation to such other person. If so, the name and location of the person having so filed or having been so adjudged or reorganized, the date thereof, and any other material facts relating thereto shall be set forth.

(14) A copy of the business opportunity contract which the seller uses as a matter of course and which is to be presented to the purchaser at closing.

~~Should any seller of business opportunities prepare a disclosure statement pursuant to 16 C.F.R. ss. 436.1 et seq., a Trade Regulation Rule of the Federal Trade Commission regarding Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, the seller may file that disclosure statement in lieu of the document required pursuant to this section. Should the seller be required pursuant to 16 C.F.R. to prepare any other documents to be presented to the prospective purchaser, those documents shall also be filed with the department.~~

Section 40. Section 559.805, Florida Statutes, is repealed.

Section 41. Section 559.807, Florida Statutes, is amended to read:

559.807 Bond or other security required.—

~~(1)~~ If the business opportunity seller makes any representations set forth in s. 559.801(1)(a)3., the seller must either have obtained a surety bond issued by a surety company authorized to do business in this state or have established a certificate of deposit or a guaranteed letter of credit with a licensed and insured bank or savings institution located in the state. The amount of the bond, certificate of deposit, or guaranteed letter of credit shall be an amount not less than $50,000.

~~(2) The bond, certificate of deposit, or guaranteed letter of credit shall be in the favor of the department for the use and benefit of any person who is injured by the fraud, misrepresentation, breach of contract, financial failure, or violation of any provision of this part by the seller. Such liability may be enforced by filing an action at law in a court of competent jurisdiction without precluding enforcement in an administrative action pursuant to chapter 120. However, the bond, certificate of deposit, or guaranteed letter of credit shall be amenable and enforceable only by and through administrative proceedings before the department. A money judgment resulting from an action at law, less any award for costs and attorney's fees, shall be prima facie evidence sufficient to establish the value of the claim in an administrative action. It is the intent of the Legislature that such bond, certificate of deposit, or guaranteed letter of~~

~~credit shall be applicable and liable only for payment of claims duly adjudicated by order of the department. The bond, certificate of deposit, or guaranteed letter of credit shall be open to successive claims but the aggregate amount may not exceed the amount of the bond, certificate of deposit, or guaranteed letter of credit.~~

Section 42. Section 559.813, Florida Statutes, is amended to read:

559.813 Remedies; enforcement.—

(1) If a business opportunity seller uses untrue or misleading statements in the sale of a business opportunity, fails to give the proper disclosures in the manner required by this part, or fails to deliver the equipment, supplies, or products necessary to begin substantial operation of the business within 45 days after ~~of~~ the delivery date stated in the business opportunity contract, or if the contract does not comply with the requirements of this part, the purchaser may, within 1 year after ~~of~~ the date of execution of the contract and upon written notice to the seller, rescind the contract and shall be entitled to receive from the business opportunity seller all sums paid to the business opportunity seller. Upon receipt of such sums, the purchaser shall make available to the seller at the purchaser's address, or at the places at which they are located at the time notice is given, all products, equipment, or supplies received by the purchaser. The purchaser shall not be entitled to unjust enrichment by exercising the remedies provided in this subsection.

~~(2)(a) The department may enter an order imposing one or~~

~~more of the penalties set forth in paragraph (b) if the department finds that a seller or any of the seller's principal officers or agents:~~

~~1. Violated or is operating in violation of any of the provisions of this part or of the rules adopted or orders issued thereunder;~~

~~2. Made a material false statement in any application, document, or record required to be submitted or retained under this part;~~

~~3. Refused or failed, after notice, to produce any document or record or disclose any information required to be produced or disclosed under this part or the rules of the department;~~

~~4. Made a material false statement in response to any request or investigation by the department, the Department of Legal Affairs, or the state attorney; or~~

~~5. Has intentionally defrauded the public through dishonest or deceptive means.~~

~~(b) Upon a finding as set forth in paragraph (a), the department may enter an order doing one or more of the following:~~

~~1. Issuing a notice of noncompliance pursuant to s. 120.695.~~

~~2. Imposing an administrative fine not to exceed $5,000 per violation for each act which constitutes a violation of this part or a rule or order.~~

~~3. Directing that the seller or its principal officers or agents cease and desist specified activities.~~

~~4. Refusing to issue or revoking or suspending an advertisement identification number.~~

~~5. Placing the registrant on probation for a period of time, subject to such conditions as the department may specify.~~

~~(c) The administrative proceedings which could result in the entry of an order imposing any of the penalties specified in paragraph (b) shall be conducted in accordance with chapter 120.~~

(2) ~~(3)~~ Any purchaser injured by a violation of this part, or by the business opportunity seller's breach of a contract subject to this part or any obligation arising therefrom, may bring an action for recovery of damages, including reasonable attorney ~~attorney's~~ fees.

(3) ~~(4)~~ Upon complaint of any person that a business opportunity seller has violated ~~the provisions of~~ this part, the circuit court shall have jurisdiction to enjoin the defendant from further such violations.

(4) ~~(5)~~ The Department of Legal Affairs, ~~the Department of Agriculture and Consumer Services,~~ or the state attorney~~,~~ if a violation of this part occurs in her or his judicial circuit, is ~~are~~ the enforcing authority ~~authorities~~ for purposes of this part~~,~~ and ~~they~~ may bring civil actions in circuit court for temporary or permanent injunctive relief and may seek other appropriate civil relief, including, but not limited to, a civil penalty not to exceed $5,000 for each violation, restitution and damages for injured purchasers of business opportunities, and court costs and reasonable attorney ~~attorney's~~ fees.

(5) ~~(6)~~ Any remedy provided in this section may be recovered in an appropriate action, or the enforcing authority

may terminate any investigation or action upon agreement by the offender to pay a ~~as~~ stipulated civil penalty, to make restitution or pay damages to purchasers, or to satisfy any other relief authorized in this section and requested by the enforcing authority.

(6)~~(7)~~ The remedies provided in this section ~~herein~~ shall be in addition to any other remedies provided by law or in equity.

~~(8) The department has the authority to adopt rules pursuant to chapter 120 to implement this part.~~

Section 43. Section 559.815, Florida Statutes, is amended to read:

559.815 Penalties.—Any person who ~~fails to file with the department as required by s. 559.805 or who~~ commits an act described in s. 559.809 is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 44. Paragraph (a) of subsection (1) of section 559.9221, Florida Statutes, is amended to read:

559.9221 Motor Vehicle Repair Advisory Council.—The Motor Vehicle Repair Advisory Council is created to advise and assist the department in carrying out this part.

(1) The membership of the council may not exceed nine ~~11~~ members appointed by the Commissioner of Agriculture.

(a) Six ~~Eight~~ industry members of the council must be chosen from individuals already engaged in the motor vehicle repair business who are eligible to be registered under this part. The professional members of this council must be licensed

under this part. The commissioner shall select one industry member from each of the following categories:

1. Independent automotive mechanics shops.

2. Franchise or company-owned automotive mechanics shops.

3. ~~Independent~~ Automotive collision shops.

~~4. Franchise or company-owned automotive collision shops.~~

4.~~5. Independent~~ Tire dealer.

~~6. Franchise or company-owned tire dealer.~~

5.~~7.~~ Independent motor vehicle dealer licensed under s. 320.27.

6.~~8.~~ Franchise motor vehicle dealer licensed under s. 320.27.

Section 45. Paragraphs (a) and (b) of subsection (9) of section 616.242, Florida Statutes, are amended to read:

616.242 Safety standards for amusement rides.—

(9) INSURANCE REQUIREMENTS.—

(a) An owner may not operate an amusement ride unless the owner has in effect at all times of operation ~~insurance meeting the following requirements:~~

~~1.~~ an insurance policy in an amount of at least ~~not less than~~ $1 million per occurrence, $1 million in the aggregate, which insures the owner of the amusement ride against liability for injury to persons arising out of the use of the amusement ride~~; or~~

~~2. A bond in a like amount; however, the aggregate liability of the surety under the bond may not exceed the face amount thereof~~.

(b) The policy ~~or bond~~ must be procured from an insurer ~~or~~

~~surety~~ that is licensed to transact business in this state or that is approved as a surplus lines insurer.

Section 46. Subsection (9) is added to section 721.20, Florida Statutes, to read:

721.20 Licensing requirements; suspension or revocation of license; exceptions to applicability; collection of advance fees for listings unlawful.—

(9) A person who meets the definition of a commercial telephone seller or salesperson as defined in s. 501.603 must be licensed under part IV of chapter 501 before doing business in this state under this chapter.

Section 47. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7025 PCB BPRS 13-02 Timeshares
SPONSOR(S): Business & Professional Regulation Subcommittee; Eagle
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 696

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Business & Professional Regulation Subcommittee	11 Y, 0 N	Collins	Luczynski
1) Civil Justice Subcommittee	12 Y, 0 N	Cary	Bond
2) Regulatory Affairs Committee		Collins	Hamon

SUMMARY ANALYSIS

The bill amends the Florida Vacation Plan and Timesharing Act to:

- Exempt timeshare condominiums from the requirements related to condominium board member elections;
- Provide that a "timeshare estate" includes both a direct and an indirect interest in a trust; and
- Allow timeshare plan reserves to be calculated using the pooling accounting method.

The bill amends the process for timeshare foreclosures to:

- Allow the foreclosure trustee to use another country's equivalent of certified, registered mail;
- Eliminate the requirement that a title search be conducted in order to initiate a foreclosure proceeding and makes a title search a condition to the trustee's exercise of a power of sale;
- Provide that no lis pendens is recorded or pending against a timeshare interest unless properly recorded and noticed;
- Provide a good faith standard in determining whether the obligor is the person who signed the receipt of notice;
- Delineate what information is to be included in the publication notice;
- Provide that attestation in a notice affidavit that a diligent search and inquiry was made is only required if a diligent search and inquiry was specifically required to be conducted by the provisions in the timeshare law;
- Allow for notice to be perfected as to all obligors at the same address, so long as notice is perfected as to at least one obligor at that address;
- Provide a procedure for filing a lis pendens in relation to the initiation of a foreclosure proceeding;
- Allow the trustee to use a third party to conduct the foreclosure sale on behalf of the trustee; and
- Provide that it is not a violation of the law if the trustee, in good faith, makes an incorrect determination as to the identity of the signature on the receipt of notice.

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

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Condominium Board Election Provisions

Current Situation

Current law provides procedures and rules related to condominium unit owner meetings, specifically the procedure for the election of members to the Board of Administration (the board).[1] Timeshare condominiums were previously exempt from these requirements under prior versions of the Condominium Act because they are not applicable to the procedures in common use by timeshare owners' associations. However, prior amendments to the Condominium Act inadvertently removed the exemption.[2]

Effect of Proposed Changes

The bill amends s. 718.112(2)(d)4., F.S, to specifically exempt timeshare condominiums from the requirements related to condominium board member elections. The section now conforms to prior versions of the Condominium Act.[3]

Definition of "Timeshare Estate"

Current Situation

Current law defines a "timeshare estate" as "an interest in a cooperative unit pursuant to s. 719.103, or an interest in a trust that complies in all respects with the provisions of s. 721.08(2)(c)4., provided that the trust does not contain any personal property timeshare interests."[4]

The statute does not specify whether this definition includes both direct and indirect interests in trusts. An example of an indirect interest in a trust is a trust beneficiary's spouse or other dependent.

Effect of Proposed Changes

The bill amends s. 721.05(34), F.S., to clarify that a "timeshare estate" includes an interest in a trust that complies in all respects with s. 721.08(2)(c)4., F.S., regardless of whether that interest is direct or indirect.

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[1] Section 718.112(2)(d)4., F.S.

[2] Prior to 2011, the board election provisions located in s. 718.112(2)(d)4., F.S., were located in s. 718.112(2)(d)3., F.S. In 2010, the provisions of SB 1196 split subparagraph 3. of s. 718.112(2)(d), F.S., into an introduction and two separate sub-subparagraphs. The language that stipulates that subparagraph 3. does not apply to timeshare condominium associations was relocated to sub-subparagraph 3.a., which references proxy procedures. No similar exemption language was included in the introductory subparagraph that references board election procedures. In 2011, in response to concerns as to whether the proxy provisions apply to timeshare condominiums, the provisions of HB 1195 added subsection 10. to s. 718.112(2)(d), F.S., to clarify that the procedures regarding proxies do not apply to timeshare condominium associations. In order to reduce redundancy, this legislation also dropped the sub-subparagraph 3.a. exemption for timeshare condominiums. As such, there is currently no 'exemption' language remaining in s. 718.112(2)(d)4., F.S., as it relates to timeshare condominiums. This change has created uncertainty in the industry.

[3] For procedures and rules related to timeshare condominium unit owner meetings, see generally, s. 721.13, F.S.

[4] Section 721.05(34), F.S.

Reserves

Current Situation

Prior to offering any timeshare plan, the developer must submit a filed public offering statement to the Division of Condominiums, Timeshares and Mobile Homes for approval, which must include certain information and disclosures.[5] Specifically, the filed public offering statement must include an estimated operating budget for the timeshare plan and a schedule of the purchaser's expenses to be paid to the timeshare plan and the managing entity.[6] A common expense to be paid to the managing entity is a reserve for deferred maintenance and capital expenditures.

Current law provides that reserves for timeshare plans must be calculated by a formula based upon the estimated life and replacement cost of each reserve item.[7] This is also known as the 'straight-line accounting method.' Conversely, a second type of calculation formula, the 'pooling method,' is based upon the pooling of two or more assets. The pooling method is authorized to be used when calculating reserves for condominiums.[8]

Effect of Proposed Changes

The bill amends s. 721.07(5)(t)3.a.(XI)(A), F.S., to allow timeshare plan reserves to be calculated using the pooling accounting method. Reserves may still be calculated based on the straight-line accounting method, if desired.

Definition of "Notice Address"

Current Situation

In order to institute trustee foreclosure proceedings, adequate notice must be provided to the mortgagor, the owner of the timeshare interest if different than the mortgagor, and any junior interestholder.[9]

Current law defines "notice address" as the address that is used in the books and records of the timeshare plan.[10] However, a mortgagor, owner, or junior interestholder's current address may be different than the address used in the timeshare plan's books and records.

Effect of Proposed Changes

The bill creates s. 721.82(9)(d), F.S., to include as a "notice address," any address that is known to be the current address of a timeshare mortgagor, owner, or junior interestholder.

Definition of "Permitted Delivery Service"

Current Situation

[5] See, generally: ss. 721.07 and 721.07(5), F.S.
[6] Section 721.07(5)(t)3., F.S.
[7] Section 721.07(5)(t)3.a.(XI)(A), F.S.
[8] See: Fla. Admin. Code 61B-22.005(3).
[9] See, generally: ss. 721.855(5)(a) and 721.856(5)(a), F.S.
[10] Section 721.82(9), F.S.

A "permitted delivery service" is "any nationally recognized common carrier delivery service or international airmail service that allows for return receipt service."[11] The current statutory language does not permit the trustee to use a foreign country's equivalent of certified, registered mail.

Effect of Proposed Changes

The bill amends s. 721.82(11), F.S., to also allow the trustee to use a foreign country's equivalent of certified, registered mail.

Title Searches

Current Situation

Currently, in order to initiate a trustee foreclosure proceeding against a timeshare interest, the lienholder must deliver an affidavit and a title search of the timeshare interest identifying junior lienholders.[12] The title search must have been conducted within 60 days of the date of the affidavit.[13]

Effect of Proposed Changes

The bill amends ss. 721.855(2)(c)1. and 721.856(2)(b)1., F.S., to eliminate the requirement that the title search be conducted within 60 days of the date of the affidavit.

The bill creates ss. 721.855(4)(f) and 721.856(4)(g), F.S., to instead require that a title search be conducted and delivered to the trustee prior to the sale of the timeshare interest. The trustee may not exercise his or her power of sale of the timeshare interest until a title search has been conducted and delivered. Moreover, the title search must have been conducted within 60 days of the date that it is delivered to the trustee.

If incorrect obligors or junior interestholders were served or additional obligors or junior interestholders have not been served, the foreclosure action may not continue until the correct or additional notices have been served.

Recording of a Lis Pendens

Current Situation

A lis pendens has the effect of notifying potential claimants and interested parties of the action, and establishes a priority right against future claims. Current statutory language is unclear as to whether the initiation of a trustee foreclosure action operates as a lis pendens on the timeshare interest. This has caused confusion in the industry, as a trustee may not proceed with a sale if a lis pendens has been filed.[14]

Effect of Proposed Changes

The bill amends ss. 721.855(4)(c) and 721.856(4)(c), F.S., to clarify that the initiation of a foreclosure proceeding against a timeshare interest does not automatically act as a lis pendens.

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[11] Section 721.82(11), F.S.
[12] Sections 721.855(2)(c)1. and 721.856(2)(b)1., F.S.
[13] *Id.*
[14] Sections 721.855(4)(c) and 721.856(4)(c), F.S.

The bill also creates ss. 721.855(5)(h) and 721.856(5)(h), F.S., to provide that the initiation of a trustee foreclosure action operates as a lis pendens on the timeshare interest if a notice of lis pendens is recorded in the county in which the deed conveying the timeshare interest to the obligor was recorded.

The notice of lis pendens must include:

- The name of the obligor;
- The date of the initiation of the trustee foreclosure action;
- The name and contact information of the trustee;
- The legal description of the timeshare interest; and
- A statement that a trustee foreclosure action has been initiated against the timeshare interest.

Permitted Delivery Service Typographical Error

Current Situation

Current law provides that giving notice by use of any "permitted delivery service" is an alternative to providing notice by the use of any "permitted delivery service."[15] The second use of "permitted delivery service" is redundant.

Effect of Proposed Changes

The bill amends ss. 721.855(5)(a), 721.855(5)(a)4., 721.855(5)(b)1., 721.856(5)(a), 721.856(5)(a)4., and 721.856(5)(b)1., F.S., to correct the redundancy.

Standard for Trustee Ascertaining Signature

Current Situation

In foreclosure proceedings, the trustee is required to notify the obligor of the proceeding by sending a written notice of default and intent to foreclose to the obligor's notice address.[16] Notice is not perfected if the trustee cannot ascertain whether the obligor is the person who signed the receipt of notice.[17]

A trustee who determines that the obligor signed the receipt, when he or she knows or should know that this determination is not correct, commits a third-degree felony.[18]

Effect of Proposed Changes

The bill amends ss. 721.855(5)(a)5., 721.855(5)(b)1., 721.856(5)(a)5., and 721.856(5)(b)1., F.S., to provide a good faith standard in determining whether the obligor is the person who signed the receipt of notice. The bill also provides reasons for why the trustee may be unable to ascertain whether the obligor signed the receipt, including if all or a portion of the obligor's name is not on the signed receipt, or if the trustee cannot otherwise determine that the obligor signed the receipt.

Moreover, the bill amends ss. 721.855(14)(b) and 721.856(13)(b), F.S., to provide that if the trustee, in good faith, makes an incorrect determination as to the identity of the signature on the notice receipt, it will not be a violation of law.

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[15] See: ss. 721.855(5)(a), 721.855(5)(a)4., 721.855(5)(b)1., 721.856(5)(a), 721.856(5)(a)4., and 721.856(5)(b)1., F.S.
[16] Sections 721.855(5)(a) and 721.856(5)(a), F.S.
[17] Sections 721.855(5)(a)5. and 721.856(5)(a)5., F.S.
[18] Sections 721.855(14)(b) and 721.856(13)(b), F.S.

Published Notice of Default

Current Situation

As previously discussed, the trustee is required to notify the obligor of the foreclosure proceeding by sending a written notice of default and intent to foreclose to the obligor's notice address.[19]

Current law sets forth the information that is required to be included in the notice of default and intent to foreclose, including:

- The identity of the obligor;
- The notice address of the obligor;
- The legal description of the timeshare interest;
- The nature of the default;
- The amounts secured by the lien;
- A per diem amount to account for further accrual of the amounts secured by the lien; and
- The method by which the obligor may cure the default, including the period of time within which the obligor may cure the default.[20]

Notice is perfected when the trustee receives the return receipt of notice bearing the signature of the obligor or junior interestholder within thirty calendar days after the notice was sent.[21] In some instances, notice by permitted delivery service is not perfected and notice by publication is appropriate.[22] Unlike with the "standard" notice of default procedure, the current statutory language does not delineate what information must be included in the publication notice. As a result, there is confusion in the industry as to how much and what information is to be included in the publication notice.

Effect of Proposed Changes

The bill amends ss. 721.855(5)(c) and 721.856(5)(c), F.S., to delineate what information is to be included in the publication notice. Specifically, the notice of default and intent to foreclose by publication must identify:

- The obligor;
- The notice address of the obligor;
- The legal description of the timeshare interest;
- The nature of the action in short and simple terms;
- The name and contact information of the trustee; and
- The period of time within which the obligor may cure the default.

Affidavit of Publication Notice Typographical Error

Current Situation

Sections 721.855(5)(e) and 721.856(5)(e), F.S., list which information is to be included in the affidavit certifying perfected notice.

Specifically, the information to be included is:

- The nature of the notice;

[19] Sections 721.855(5)(a) and 721.856(5)(a), F.S..
[20] Sections 721.855(5)(a)1. and 721.856(5)(a)1., F.S.,
[21] Sections 721.855(5)(a)5. and 721.856(5)(a)5., F.S.
[22] See, generally: ss. 721.855(5)(c) and 721.856(5)(c), F.S.

- The dates on which the notice was mailed;
- The name and address on the envelopes containing the notice;
- The manner in which the notices were mailed;
- The fact that a signed receipt from the certified mail, registered mail, or permitted delivery service was timely received; and
- The name and address on the envelopes containing the notice.

The second use of "the name and address on the envelopes containing the notice" is redundant.

Effect of Proposed Changes

The bill amends ss. 721.855(5)(e) and 721.856(5)(e), F.S., to eliminate the redundancy.

Affidavit of Publication Notice

Current Situation

As previously discussed, in a timeshare interest foreclosure proceeding, the trustee is required to notify the obligor of the proceeding by sending a written notice of default and intent to foreclose to the obligor's notice address.[23] Notice is perfected when the trustee receives the return receipt of notice bearing the signature of the obligor or junior interestholder within 30 calendar days after the notice was sent.[24]

Notice is not perfected, and notice by publication is appropriate, when:

- Notice is returned as undeliverable within 30 calendar days after the trustee sent the notice;
- The trustee cannot ascertain who signed the receipt of notice; or
- The receipt of notice is returned or refused within 30 calendar days after the trustee sent the notice.[25]

If the notice is returned as undeliverable within 30 calendar days after the trustee sent the notice, the trustee is obligated to conduct a diligent search and inquiry to determine a different address for the obligor or junior interestholder.[26] If the trustee's diligent search and inquiry produces an address different from the notice address, the trustee must attempt to perfect notice at the new address before attempting to perfect notice by publication.[27] However, the diligent search and inquiry is only required to be conducted the first time that the notice is returned as undeliverable; any subsequent time that the notice is returned as undeliverable, the trustee may proceed with notice by publication.

As with other forms of notice perfection, a trustee who perfects notice by publication is required to prepare an affidavit setting forth the manner in which notice was perfected.[28] Among other things, the affidavit must include a statement that a diligent search and inquiry was made for the current address for the person. This is potentially confusing, as a diligent search and inquiry may not always be required for notices perfected by publication.

Effect of Proposed Changes

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[23] Sections 721.855(5)(a) and 721.856(5)(a), F.S.
[24] Sections 721.855(5)(a)5. and 721.856(5)(a)5., F.S.
[25] *Id.*
[26] Sections 721.855(5)(b) and 721.856(5)(b), F.S.
[27] Sections 721.855(5)(b)1. and 721.856(5)(b)1., F.S.
[28] See, generally: ss. 721.855(5)(f) and 721.856(5)(f), F.S.

The bill amends ss. 721.855(5)(f) and 721.856(5)(f), F.S., to provide that attestation that a diligent search and inquiry was done is only required if a diligent search and inquiry was specifically required to be conducted by the provisions in ch. 721, F.S.

The bill does not affect any requirements set forth by ss. 49.041 or 49.051, F.S., as applicable.

Perfection of Service at Same Address

Current Situation

Current statutory language does not provide trustees with the ability to perfect notice as to multiple obligors residing at the same address, with the same service of notice.[29] Instead, notice must be perfected as to each obligor separately, regardless of whether multiple obligors reside at the same address.

Effect of Proposed Changes

The bill creates ss. 721.855(5)(g) and 721.856(5)(g), F.S., to allow for notice to be perfected as to all obligors at the same address, so long as notice is perfected as to at least one obligor at that address.

Manner of Sale

Current Situation

Currently, the trustee must conduct the foreclosure sale of the timeshare interest, and must act as the auctioneer.[30] The current statutory language does not allow anyone other than the trustee to conduct the sale or act as the auctioneer.

Effect of Proposed Changes

The bill amends ss. 721.855(7)(b) and 721.856(7)(b), F.S., to allow the trustee to use a third party to conduct the sale on behalf of the trustee. However, the trustee remains liable for the conduct of the sale, including the actions of any third-party auctioneer.

B. SECTION DIRECTORY:

Section 1: amends s. 718.112(2)(d)4., F.S, relating to bylaws.

Section 2: amends s. 721.05(34), F.S., relating to definitions.

Section 3: amends s. 721.07(5)(t)3.a.(XI)(A), F.S., relating to public offering statement.

Section 4: amends s. 721.82(9)(d), F.S., relating to definitions.

Section 5: amends s. 721.84(6), F.S., relating to appointment of a registered agent and duties.

Section 6: amends s. 721.855(2)(c)1., F.S., relating to procedure for the trustee foreclosure of assessment liens.

[29] See, generally: ss. 721.855(5) and 721.856(5), F.S.
[30] Sections 721.855(7)(b) and 721.856(7)(b), F.S

Section 7: amends s. 721.856(2)(b)1., F.S., relating to procedure for the trustee foreclosure of mortgage liens.

Section 8: provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any impact on local government revenues.

2. Expenditures:

   The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

It appears that rule 61B-40.006, F.A.C., may need to be amended in order to address the changes to s. 721.07, F.S., relating to reserve calculations using the pooling accounting method.

Current law appears to provide sufficient rulemaking authority to the Department of Business and Professional Regulation.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to timeshares; amending s. 718.112, F.S.; specifying that certain provisions relating to condominium board elections do not apply to timeshare condominiums; amending s. 721.05, F.S.; revising the definition of "timeshare estate"; amending s. 721.07, F.S.; revising formula requirements for calculating reserves for accommodations and facilities of real property timeshare plans; amending s. 721.82, F.S.; revising definitions applicable to the Timeshare Lien Foreclosure Act; amending s. 721.84, F.S.; making an editorial change; amending s. 721.855, F.S.; revising procedure for the trustee foreclosure of assessment liens; revising conditions under which a trustee may sell a foreclosed encumbered timeshare interest; revising and providing notice requirements; providing for perfection of notice; providing requirements for a notice of lis pendens; providing sale requirements; providing exceptions for actions for failure to follow the trustee foreclosure procedure; amending s. 721.856, F.S.; revising procedure for the trustee foreclosure of mortgage liens; revising conditions under which a trustee may sell a foreclosed encumbered timeshare interest; revising and providing notice requirements; providing for perfection of notice; providing requirements for a notice of lis pendens; providing sale requirements; providing exceptions for actions for failure to follow the trustee foreclosure

procedure; providing an effective date.

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

Section 1. Paragraph (d) of subsection (2) of section 718.112, Florida Statutes, is amended to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(d) Unit owner meetings.—

1. An annual meeting of the unit owners shall be held at the location provided in the association bylaws and, if the bylaws are silent as to the location, the meeting shall be held within 45 miles of the condominium property. However, such distance requirement does not apply to an association governing a timeshare condominium.

2. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term shall be filled by electing a new board member, and the election must be by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. For purposes of this paragraph, the term "candidate" means an eligible person who has timely submitted the written notice, as described in sub-subparagraph 4.a., of his or her intention to become a candidate. Except in a timeshare condominium, or if the staggered term of a board member does not expire until a later annual meeting, or if all members' terms would otherwise expire

but there are no candidates, the terms of all board members expire at the annual meeting, and such members may stand for reelection unless prohibited by the bylaws. If the bylaws permit staggered terms of no more than 2 years and upon approval of a majority of the total voting interests, the association board members may serve 2-year staggered terms. If the number of board members whose terms expire at the annual meeting equals or exceeds the number of candidates, the candidates become members of the board effective upon the adjournment of the annual meeting. Unless the bylaws provide otherwise, any remaining vacancies shall be filled by the affirmative vote of the majority of the directors making up the newly constituted board even if the directors constitute less than a quorum or there is only one director. In a condominium association of more than 10 units or in a condominium association that does not include timeshare units or timeshare interests, coowners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. Any unit owner desiring to be a candidate for board membership must comply with sub-subparagraph 4.a. and must be eligible to serve on the board of directors at the time of the deadline for submitting a notice of intent to run in order to have his or her name listed as a proper candidate on the ballot or to serve on the board. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any fee, fine, or special or regular assessment as provided in paragraph (n),

is not eligible for board membership. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony.

3. The bylaws must provide the method of calling meetings of unit owners, including annual meetings. Written notice must include an agenda, must be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting, and must be posted in a conspicuous place on the condominium property at least 14 continuous days before the annual meeting. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium property or association property where all notices of unit owner meetings shall be posted. This requirement does not apply if there is no condominium property or association property for posting notices. In lieu of, or in addition to, the physical posting of meeting notices, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is

used, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. Unless a unit owner waives in writing the right to receive notice of the annual meeting, such notice must be hand delivered, mailed, or electronically transmitted to each unit owner. Notice for meetings and notice for all other purposes must be mailed to each unit owner at the address last furnished to the association by the unit owner, or hand delivered to each unit owner. However, if a unit is owned by more than one person, the association must provide notice to the address that the developer identifies for that purpose and thereafter as one or more of the owners of the unit advise the association in writing, or if no address is given or the owners of the unit do not agree, to the address provided on the deed of record. An officer of the association, or the manager or other person providing notice of the association meeting, must provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association affirming that the notice was mailed or hand delivered in accordance with this provision.

4. The members of the board shall be elected by written ballot or voting machine. Proxies may not be used in electing the board in general elections or elections to fill vacancies

caused by recall, resignation, or otherwise, unless otherwise provided in this chapter. This subparagraph does not apply to an association governing a timeshare condominium.

a. At least 60 days before a scheduled election, the association shall mail, deliver, or electronically transmit, by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each unit owner entitled to a vote, a first notice of the date of the election. Any unit owner or other eligible person desiring to be a candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in subparagraph 3., the association shall mail, deliver, or electronically transmit a second notice of the election to all unit owners entitled to vote, together with a ballot that lists all candidates. Upon request of a candidate, an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, must be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery, or electronic transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with this sub-subparagraph, including rules establishing procedures for giving notice by

electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of ballots cast. There is no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A unit owner may not permit any other person to vote his or her ballot, and any ballots improperly cast are invalid. A unit owner who violates this provision may be fined by the association in accordance with s. 718.303. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain such assistance. The regular election must occur on the date of the annual meeting. Notwithstanding this sub-subparagraph, an election is not required unless more candidates file notices of intent to run or are nominated than board vacancies exist.

b. Within 90 days after being elected or appointed to the board, each newly elected or appointed director shall certify in writing to the secretary of the association that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. In lieu of this written certification, within 90 days after being elected or appointed to the board, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved condominium education provider within 1 year before or 90 days after the date of

election or appointment. The written certification or educational certificate is valid and does not have to be resubmitted as long as the director serves on the board without interruption. A director who fails to timely file the written certification or educational certificate is suspended from service on the board until he or she complies with this sub-subparagraph. The board may temporarily fill the vacancy during the period of suspension. The secretary shall cause the association to retain a director's written certification or educational certificate for inspection by the members for 5 years after a director's election. Failure to have such written certification or educational certificate on file does not affect the validity of any board action.

5. Any approval by unit owners called for by this chapter or the applicable declaration or bylaws, including, but not limited to, the approval requirement in s. 718.111(8), must be made at a duly noticed meeting of unit owners and is subject to all requirements of this chapter or the applicable condominium documents relating to unit owner decisionmaking, except that unit owners may take action by written agreement, without meetings, on matters for which action by written agreement without meetings is expressly allowed by the applicable bylaws or declaration or any law that provides for such action.

6. Unit owners may waive notice of specific meetings if allowed by the applicable bylaws or declaration or any law. If authorized by the bylaws, notice of meetings of the board of administration, unit owner meetings, except unit owner meetings called to recall board members under paragraph (j), and

committee meetings may be given by electronic transmission to unit owners who consent to receive notice by electronic transmission.

7. Unit owners have the right to participate in meetings of unit owners with reference to all designated agenda items. However, the association may adopt reasonable rules governing the frequency, duration, and manner of unit owner participation.

8. A unit owner may tape record or videotape a meeting of the unit owners subject to reasonable rules adopted by the division.

9. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to sub-subparagraph 4.a. unless the association governs 10 units or fewer and has opted out of the statutory election process, in which case the bylaws of the association control. Unless otherwise provided in the bylaws, a board member appointed or elected under this section shall fill the vacancy for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by paragraph (j) and rules adopted by the division.

10. This chapter does not limit the use of general or limited proxies, require the use of general or limited proxies, or require the use of a written ballot or voting machine for any agenda item or election at any meeting of a timeshare

condominium association.

Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an association of 10 or fewer units may, by affirmative vote of a majority of the total voting interests, provide for different voting and election procedures in its bylaws, which may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

Section 2. Subsection (34) of section 721.05, Florida Statutes, is amended to read:

721.05 Definitions.—As used in this chapter, the term:

(34) "Timeshare estate" means a right to occupy a timeshare unit, coupled with a freehold estate or an estate for years with a future interest in a timeshare property or a specified portion thereof. The term includes ~~shall also mean~~ an interest in a condominium unit pursuant to s. 718.103, an interest in a cooperative unit pursuant to s. 719.103, or a direct or indirect ~~an~~ interest in a trust that complies in all respects with the provisions of s. 721.08(2)(c)4., provided that the trust does not contain any personal property timeshare interests. A timeshare estate is a parcel of real property under the laws of this state.

Section 3. Paragraph (t) of subsection (5) of section 721.07, Florida Statutes, is amended to read:

721.07 Public offering statement.—Prior to offering any timeshare plan, the developer must submit a filed public

offering statement to the division for approval as prescribed by s. 721.03, s. 721.55, or this section. Until the division approves such filing, any contract regarding the sale of that timeshare plan is subject to cancellation by the purchaser pursuant to s. 721.10.

(5) Every filed public offering statement for a timeshare plan which is not a multisite timeshare plan shall contain the information required by this subsection. The division is authorized to provide by rule the method by which a developer must provide such information to the division.

(t) An estimated operating budget for the timeshare plan and a schedule of the purchaser's expenses shall be attached as an exhibit and shall contain the following information:

1. The estimated annual expenses of the timeshare plan collectible from purchasers by assessments. The estimated payments by the purchaser for assessments shall also be stated in the estimated amounts for the times when they will be due. Expenses shall also be shown for the shortest timeshare period offered for sale by the developer. If the timeshare plan provides for the offer and sale of units to be used on a nontimeshare basis, the estimated monthly and annual expenses of such units shall be set forth in a separate schedule.

2. The estimated weekly, monthly, and annual expenses of the purchaser of each timeshare interest, other than assessments payable to the managing entity. Expenses which are personal to purchasers that are not uniformly incurred by all purchasers or that are not provided for or contemplated by the timeshare plan documents may be excluded from this estimate.

3. The estimated items of expenses of the timeshare plan and the managing entity, except as excluded under subparagraph 2., including, but not limited to, if applicable, the following items, which shall be stated either as management expenses collectible by assessments or as expenses of the purchaser payable to persons other than the managing entity:

a. Expenses for the managing entity:

(I) Administration of the managing entity.

(II) Management fees.

(III) Maintenance.

(IV) Rent for facilities.

(V) Taxes upon timeshare property.

(VI) Taxes upon leased areas.

(VII) Insurance.

(VIII) Security provisions.

(IX) Other expenses.

(X) Operating capital.

(XI) Reserves for deferred maintenance and reserves for capital expenditures, including:

(A) Reserves for deferred maintenance or capital expenditures of accommodations and facilities of a real property timeshare plan, if any. All reserves for any accommodations and facilities of real property timeshare plans located in this state shall be calculated using ~~by~~ a formula ~~which is~~ based upon estimated life and replacement cost of each reserve item that will provide funds equal to the total estimated deferred maintenance expense or total estimated life and replacement cost for an asset or group of assets over the remaining useful life

of the asset or group of assets. Funding formulas for reserves shall be based on either a separate analysis of each of the required assets using the straight-line accounting method or a pooled analysis of two or more of the required assets using the pooling accounting method. Reserves for deferred maintenance for such accommodations and facilities shall include accounts for roof replacement, building painting, pavement resurfacing, replacement of timeshare unit furnishings and equipment, and any other component, the useful life of which is less than the useful life of the overall structure. For any accommodations and facilities of real property timeshare plans located outside of this state, the developer shall disclose the amount of reserves for deferred maintenance or capital expenditures required by the law of the situs state, if applicable, and maintained for such accommodations and facilities.

(B) Reserves for deferred maintenance or capital expenditures of accommodations and facilities of a personal property timeshare plan, if any. If such reserves are maintained, the estimated operating budget shall disclose the methodology of how the reserves are calculated. If a personal property timeshare plan does not require reserves, the following statement, in conspicuous type, shall appear in both the budget and the public offering statement:

The estimated operating budget for this personal property timeshare plan does not include reserves for deferred maintenance or capital expenditures; each timeshare interest may be subject to substantial special assessments from time to time because no such reserves exist.

(XII) Fees payable to the division.

b. Expenses for a purchaser:

(I) Rent for the timeshare unit, if subject to a lease.

(II) Rent payable by the purchaser directly to the lessor or agent under any lease for the use of facilities, which use and payment is a mandatory condition of ownership and is not included in the common expenses or assessments for common maintenance paid by the purchasers to the managing entity.

4. The estimated amounts shall be stated for a period of at least 12 months and may distinguish between the period before ~~prior to~~ the time that purchasers elect a majority of the board of administration and the period after that date.

5. If the developer intends to guarantee the level of assessments, such guarantee must be based upon a good faith estimate of the revenues and expenses of the timeshare plan. The guarantee must include a description of the following:

a. The specific time period measured in one or more calendar or fiscal years during which the guarantee will be in effect.

b. A statement that the developer will pay all common expenses incurred in excess of the total revenues of the timeshare plan pursuant to s. 721.15(2) if the developer has excused himself or herself from the payment of assessments during the guarantee period.

c. The level, expressed in total dollars, at which the developer guarantees the budget. If the developer has reserved the right to extend or increase the guarantee level pursuant to s. 721.15(2), a disclosure must be included to that effect.

6. If the developer intends to provide a trust fund to defer or reduce the payment of annual assessments, a copy of the trust instrument shall be attached as an exhibit and shall include a description of such arrangement, including, but not limited to:

a. The specific amount of such trust funds and the source of the funds.

b. The name and address of the trustee.

c. The investment methods permitted by the trust agreement.

d. A statement in conspicuous type that the funds from the trust account may not cover all assessments and that there is no guarantee that purchasers will not have to pay assessments in the future.

7. The budget of a phase timeshare plan may contain a note identifying the number of timeshare interests covered by the budget, indicating the number of timeshare interests, if any, estimated to be declared as part of the timeshare plan during that calendar year, and projecting the common expenses for the timeshare plan based upon the number of timeshare interests estimated to be declared as part of the timeshare plan during that calendar year.

Section 4. Subsections (9) and (11) of section 721.82, Florida Statutes, are amended to read:

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

(9) "Notice address" means:

(a) As to an assessment lien, the address of the owner of a timeshare interest as reflected by the books and records of

the timeshare plan under ss. 721.13(4) and 721.15(7).

(b) As to a mortgage lien:

1. The address of the mortgagor as set forth in the mortgage, the promissory note or a separate document executed by the mortgagor at the time the mortgage lien was created, or the most current address of the mortgagor according to the records of the mortgagee; and

2. If the owner of the timeshare interest is different from the mortgagor, the address of the owner of the timeshare interest as reflected by the books and records of the mortgagee.

(c) As to a junior interestholder, the address as set forth in the recorded instrument creating the junior lien or interest, or in any recorded amendment thereto changing the address, or in any written notification by the junior interestholder to the foreclosing lienholder changing the address.

(d) As to an owner of a timeshare interest, mortgagor, or junior interestholder whose current address is not the address as determined by paragraph (a), paragraph (b), or paragraph (c), such address as is known to be the current address.

(11) "Permitted delivery service" means any nationally recognized common carrier delivery service, ~~or~~ international airmail service that allows for return receipt service, or a service recognized by an international jurisdiction as the equivalent of certified, registered mail for that jurisdiction.

Section 5. Subsection (6) of section 721.84, Florida Statutes, is amended to read:

721.84 Appointment of a registered agent; duties.—

(6) Unless otherwise provided in this section, a registered agent in receipt of any notice or other document addressed from the lienholder to the obligor in care of the registered agent at the registered office must mail, by first-class ~~first class~~ mail if the obligor's address is within the United States, and by international air mail if the obligor's address is outside the United States, with postage fees prepaid, such notice or documents to the obligor at the obligor's last designated address within 5 days after receipt.

Section 6. Paragraph (c) of subsection (2), subsections (4) and (5), paragraph (c) of subsection (6), paragraph (b) of subsection (7), and paragraph (b) of subsection (14) of section 721.855, Florida Statutes, are amended to read:

721.855 Procedure for the trustee foreclosure of assessment liens.—The provisions of this section establish a trustee foreclosure procedure for assessment liens.

(2) INITIATING THE USE OF A TRUSTEE FORECLOSURE PROCEDURE.—

(c)1. In order to initiate a trustee foreclosure procedure against a timeshare interest, the lienholder shall deliver an affidavit to the trustee that identifies the obligor; the notice address of the obligor; the timeshare interest; the date that the notice of the intent to file a lien was given, if applicable; the official records book and page number where the claim of lien is recorded; and the name and notice address of any junior interestholder. ~~The affidavit shall be accompanied by a title search of the timeshare interest identifying any junior interestholders of record, and the effective date of the title~~

~~search must be a date that is within 60 calendar days before the date of the affidavit.~~

2. The affidavit shall also state the facts that establish that the obligor has defaulted in the obligation to make a payment under a specified provision of the timeshare instrument or applicable law.

3. The affidavit shall also specify the amounts secured by the lien as of the date of the affidavit and a per diem amount to account for further accrual of the amounts secured by the lien.

4. The affidavit shall also state that the assessment lien was properly created and authorized pursuant to the timeshare instrument and applicable law.

(4) CONDITIONS TO TRUSTEE'S EXERCISE OF POWER OF SALE.—A trustee may sell an encumbered timeshare interest foreclosed under this section if:

(a) The trustee has received the affidavit from the lienholder under paragraph (2)(c);

(b) The trustee has not received a written objection to the use of the trustee foreclosure procedure under paragraph (3)(a) and the timeshare interest was not redeemed under paragraph (3)(b);

(c) There is no lis pendens recorded and pending against the same timeshare interest <u>before the recording of the notice of lis pendens pursuant to paragraph (5)(h),</u> and the trustee has not been served notice of the filing of any action to enjoin the trustee foreclosure sale;

(d) The trustee has provided written notice of default and

intent to foreclose as required under subsection (5) and a period of at least 30 calendar days has elapsed after such notice is deemed perfected under subsection (5); ~~and~~

(e) The notice of sale required under subsection (6) has been recorded in the official records of the county or counties in which the timeshare interest is located; and

(f) The lienholder has provided the trustee with a title search of the timeshare interest identifying any junior interestholders of record, the effective date of which search must be within 60 calendar days before the date it is delivered to the trustee. If a title search reveals that incorrect obligors or junior interestholders have been served or additional obligors or junior interestholders have not been served, the foreclosure action may not proceed until the notices required pursuant to this section have been served on the correct or additional obligors or junior interestholders and all applicable time periods have expired.

(5) NOTICE OF DEFAULT AND INTENT TO FORECLOSE.—

(a) In any foreclosure proceeding under this section, the trustee is required to notify the obligor of the proceeding by sending the obligor a written notice of default and intent to foreclose to the notice address of the obligor by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail ~~or permitted delivery service~~, postage prepaid, as follows:

1. The notice of default and intent to foreclose shall identify the obligor, the notice address of the obligor, the legal description of the timeshare interest, the nature of the

default, the amounts secured by the lien, and a per diem amount to account for further accrual of the amounts secured by the lien and shall state the method by which the obligor may cure the default, including the period of time after the date of the notice of default and intent to foreclose within which the obligor may cure the default.

2. The notice of default and intent to foreclose shall include an objection form with which the obligor can object to the use of the trustee foreclosure procedure by signing and returning the objection form to the trustee. The objection form shall identify the obligor, the notice address of the obligor, the timeshare interest, and the return address of the trustee and shall state: "The undersigned obligor exercises the obligor's right to object to the use of the trustee foreclosure procedure contained in section 721.855, Florida Statutes."

3. The notice of default and intent to foreclose shall also contain a statement in substantially the following form: If you fail to cure the default as set forth in this notice or take other appropriate action with regard to this foreclosure matter, you risk losing ownership of your timeshare interest through the trustee foreclosure procedure established in section 721.855, Florida Statutes. You may choose to sign and send to the trustee the enclosed objection form, exercising your right to object to the use of the trustee foreclosure procedure. Upon the trustee's receipt of your signed objection form, the foreclosure of the lien with respect to the default specified in this notice shall be subject to the judicial foreclosure procedure only. You have the right to cure your default in the

manner set forth in this notice at any time before the trustee's sale of your timeshare interest. If you do not object to the use of the trustee foreclosure procedure, you will not be subject to a deficiency judgment even if the proceeds from the sale of your timeshare interest are insufficient to offset the amounts secured by the lien.

4. The trustee shall also mail a copy of the notice of default and intent to foreclose, without the objection form, to the notice address of any junior interestholder by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail ~~or permitted delivery service~~, postage prepaid.

5. Notice under this paragraph is considered perfected upon the trustee receiving the return receipt bearing the signature of the obligor or junior interestholder, as applicable, within 30 calendar days after the trustee sent the notice under this paragraph. Notice under this paragraph is not perfected if:

a. The notice is returned as undeliverable within 30 calendar days after the trustee sent the notice;~~, if~~

b. The trustee cannot, in good faith, ascertain ~~from the receipt~~ that the obligor or junior interestholder, as applicable, is the person who signed the receipt because all or a portion of the obligor's or junior interestholder's name is not on the signed receipt or because the trustee cannot otherwise determine that the obligor or junior interestholder signed the receipt;~~,~~ or

c. ~~if~~ The receipt from the obligor or junior

interestholder, as applicable, is returned or refused within 30 calendar days after the trustee sent the notice.

(b) If the notice required by paragraph (a) is returned as undeliverable within 30 calendar days after the trustee sent the notice, the trustee shall perform a diligent search and inquiry to obtain a different address for the obligor or junior interestholder. For purposes of this paragraph, any address known and used by the lienholder for sending regular mailings or other communications from the lienholder to the obligor or junior interestholder, as applicable, shall be included with other addresses produced from the diligent search and inquiry, if any.

1. If the trustee's diligent search and inquiry produces an address different from the notice address, the trustee shall mail a copy of the notice by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail ~~or permitted delivery service~~, postage prepaid, to the new address. Notice under this subparagraph is considered perfected upon the trustee receiving the return receipt bearing the signature of the obligor or junior interestholder, as applicable, within 30 calendar days after the trustee sent the notice under this subparagraph. Notice under this subparagraph is not perfected if the receipt from the obligor or junior interestholder, as applicable, is refused, returned, or the trustee cannot, in good faith, ascertain ~~from the receipt~~ that the obligor or junior interestholder, as applicable, is the person who signed the receipt because all or a portion of the obligor's or junior interestholder's name is not on the signed

receipt or because the trustee cannot otherwise determine that the obligor or junior interestholder signed the receipt ~~or the receipt from the obligor or junior interestholder, as applicable, is returned refused~~. If the trustee does not perfect notice under this subparagraph, the trustee shall perfect service in the manner set forth in paragraph (c).

2. If the trustee's diligent search and inquiry does not locate a different address for the obligor or junior interestholder, as applicable, the trustee may perfect notice against that person under paragraph (c).

(c) If the notice is not perfected under subparagraph (a)5., and such notice was not returned as undeliverable, or if the notice was not perfected under subparagraph (b)1., the trustee may perfect notice by publication in a newspaper of general circulation in the county or counties in which the timeshare interest is located. The notice shall appear at least once a week for 2 consecutive weeks. The notice of default and intent to foreclose perfected by publication shall identify the obligor, the notice address of the obligor, the legal description of the timeshare interest, the nature of the action in short and simple terms, the name and contact information of the trustee, and the period of time after the date of the notice of default and intent to foreclose within which the obligor may cure the default. The trustee may group an unlimited number of notices in the same publication, if all of the notices pertain to the same timeshare plan. Notice under this paragraph is considered perfected upon publication as required in this paragraph.

(d) If notice is perfected under subparagraph (a)5., the trustee shall execute an affidavit in recordable form setting forth the manner in which notice was perfected and attach the affidavit to the certificate of compliance set forth in subsection (9). The affidavit shall state the nature of the notice, the date on which the notice was mailed, the name and address on the envelope containing the notice, the manner in which the notice was mailed, and the basis for that knowledge.

(e) If notice is perfected under subparagraph (b)1., the trustee shall execute an affidavit in recordable form setting forth the manner in which notice was perfected and attach the affidavit to the certificate of compliance set forth in subsection (9). The affidavit shall state the nature of the notice, the dates on which the notice was mailed, the name and addresses on the envelopes containing the notice, the manner in which the notices were mailed, and the fact that a signed receipt from the certified mail, registered mail, or permitted delivery service was timely received~~, and the name and address on the envelopes containing the notice~~.

(f) If notice is perfected by publication under paragraph (c), the trustee shall execute an affidavit in recordable form setting forth the manner in which notice was perfected and attach the affidavit to the certificate of compliance set forth in subsection (9). The affidavit shall include all the information contained in either paragraph (d) or paragraph (e), as applicable, shall state that the notice was perfected by publication and shall state that ~~after~~ diligent search and inquiry was made for the current address for the person, if

paragraph (b) applies. The affidavit ~~and~~ shall also include ~~a statement that notice was perfected by publication, and shall set forth~~ the information required, as applicable, by s. 49.041 in the case of a natural person or s. 49.051 in the case of a corporation~~, whichever is applicable~~. No other action of the trustee is necessary to perfect notice.

(g) Notice under paragraph (a) or paragraph (b) is perfected as to all obligors who have the same address if notice is perfected as to at least one obligor at that address pursuant to the provisions of this subsection.

(h) The initiation of a trustee foreclosure action operates as a lis pendens on the timeshare interest pursuant to s. 48.23 if a notice of lis pendens is recorded in the official records of the county in which the deed conveying the timeshare interest to the obligor was recorded and such notice has not expired pursuant to s. 48.23(2) or been withdrawn or discharged. The notice of lis pendens must contain the following:

1. The name of the obligor.

2. The date of the initiation of the trustee foreclosure action, which date shall be the date of the sending of the notice of default and intent to foreclose to the obligor.

3. The name and contact information of the trustee.

4. The legal description of the timeshare interest.

5. A statement that a trustee foreclosure action has been initiated against the timeshare interest pursuant to this section.

(6) NOTICE OF SALE.—

(c) After the date of recording of the notice of sale,

notice is not required to be given to any person claiming an interest in the timeshare interest except as provided in this section. If a notice of lis pendens has not previously been recorded pursuant to paragraph (5)(h), the recording of the notice of sale has the same force and effect as the filing of a lis pendens in a judicial proceeding under s. 48.23.

(7) MANNER OF SALE.—

(b) The trustee shall conduct the sale and act as the auctioneer. The trustee may use a third party to conduct the sale on behalf of the trustee and the trustee is liable for the conduct of the sale and the actions of the third party with respect to the conduct of the sale.

(14) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE PROCEDURE.—

(b) Any trustee who intentionally violates the provisions of this section concerning the trustee foreclosure procedure commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A trustee who incorrectly ascertains that the obligor signed the return receipt as required in s. 721.855(5) does not violate this section if the trustee made a good faith effort to properly ascertain that the obligor signed the return receipt in accordance with subsection (5).

Section 7. Paragraph (b) of subsection (2), subsections (4) and (5), paragraphs (c) and (d) of subsection (6), paragraph (b) of subsection (7), and paragraph (b) of subsection (13) of section 721.856, Florida Statutes, are amended to read:

721.856 Procedure for the trustee foreclosure of mortgage

liens.—The provisions of this section establish a trustee foreclosure procedure for mortgage liens.

(2) INITIATING THE TRUSTEE FORECLOSURE OF MORTGAGE LIENS.—

(b)1. In order to initiate a trustee foreclosure procedure against a timeshare interest, the lienholder shall deliver an affidavit to the trustee that identifies the obligor, the notice address of the obligor, the timeshare interest, the official records book and page number where the mortgage is recorded, and the name and notice address of any junior interestholder. ~~The affidavit shall be accompanied by a title search of the timeshare interest identifying any junior interestholders of record, and the effective date of the title search must be a date that is within 60 calendar days before the date of the affidavit.~~

2. The affidavit shall also state the facts that establish that the obligor has defaulted in the obligation to make a payment under a specified provision of the mortgage or is otherwise deemed in uncured default under a specified provision of the mortgage.

3. The affidavit shall also specify the amounts secured by the lien as of the date of the affidavit and a per diem amount to account for further accrual of the amounts secured by the lien.

4. The affidavit shall also state that the appropriate amount of documentary stamp tax and intangible taxes has been paid upon recording of the mortgage, or otherwise paid to the state.

5. The affidavit shall also state that the lienholder is

the holder of the note and has complied with all preconditions in the note and mortgage to determine the amounts secured by the lien and to initiate the use of the trustee foreclosure procedure.

(4) CONDITIONS TO TRUSTEE'S EXERCISE OF POWER OF SALE.—A trustee may sell an encumbered timeshare interest foreclosed under this section if:

(a) The trustee has received the affidavit from the lienholder under paragraph (2)(b);

(b) The trustee has not received a written objection to the use of the trustee foreclosure procedure under paragraph (3)(a) and the timeshare interest was not redeemed under paragraph (3)(b);

(c) There is no lis pendens recorded and pending against the same timeshare interest <u>before the initiation of the trustee foreclosure action and provided a notice of lis pendens has been recorded pursuant to paragraph (5)(h)</u>, and the trustee has not been served notice of the filing of any action to enjoin the trustee foreclosure sale;

(d) The trustee is in possession of the original promissory note executed by the mortgagor and secured by the mortgage lien;

(e) The trustee has provided written notice of default and intent to foreclose as required under subsection (5) and a period of at least 30 calendar days has elapsed after such notice is deemed perfected under subsection (5); ~~and~~

(f) The notice of sale required under subsection (6) has been recorded in the official records of the county in which the

mortgage was recorded; and

(g) The lienholder has provided the trustee with a title search of the timeshare interest identifying any junior interestholders of record, the effective date of which search must be within 60 calendar days before the date it is delivered to the trustee. If a title search reveals that incorrect obligors or junior interestholders have been served or additional obligors or junior interestholders have not been served, the foreclosure action may not proceed until the notices required pursuant to this section have been served on the correct or additional obligors or junior interestholders and all applicable time periods have expired.

(5) NOTICE OF DEFAULT AND INTENT TO FORECLOSE.—

(a) In any foreclosure proceeding under this section, the trustee is required to notify the obligor of the proceeding by sending the obligor a written notice of default and intent to foreclose to the notice address of the obligor by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail ~~or permitted delivery service~~, postage prepaid, as follows:

1. The notice of default and intent to foreclose shall identify the obligor, the notice address of the obligor, the legal description of the timeshare interest, the nature of the default, the amounts secured by the lien, and a per diem amount to account for further accrual of the amounts secured by the lien and shall state the method by which the obligor may cure the default, including the period of time after the date of the notice of default and intent to foreclose within which the

obligor may cure the default.

2. The notice of default and intent to foreclose shall include an objection form with which the obligor can object to the use of the trustee foreclosure procedure by signing and returning the objection form to the trustee. The objection form shall identify the obligor, the notice address of the obligor, the timeshare interest, and the return address of the trustee and shall state: "The undersigned obligor exercises the obligor's right to object to the use of the trustee foreclosure procedure contained in section 721.856, Florida Statutes."

3. The notice of default and intent to foreclose shall also contain a statement in substantially the following form: If you fail to cure the default as set forth in this notice or take other appropriate action with regard to this foreclosure matter, you risk losing ownership of your timeshare interest through the trustee foreclosure procedure established in section 721.856, Florida Statutes. You may choose to sign and send to the trustee the enclosed objection form, exercising your right to object to the use of the trustee foreclosure procedure. Upon the trustee's receipt of your signed objection form, the foreclosure of the lien with respect to the default specified in this notice shall be subject to the judicial foreclosure procedure only. You have the right to cure your default in the manner set forth in this notice at any time before the trustee's sale of your timeshare interest. If you do not object to the use of the trustee foreclosure procedure, you will not be subject to a deficiency judgment even if the proceeds from the sale of your timeshare interest are insufficient to offset the amounts

secured by the lien.

4. The trustee shall also mail a copy of the notice of default and intent to foreclose, without the objection form, to the notice address of any junior interestholder by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail ~~or permitted delivery service~~, postage prepaid.

5. Notice under this paragraph is considered perfected upon the trustee receiving the return receipt bearing the signature of the obligor or junior interestholder, as applicable, within 30 calendar days after the trustee sent the notice under this paragraph. Notice under this paragraph is not perfected if:

a. The notice is returned as undeliverable within 30 calendar days after the trustee sent the notice;~~, if~~

b. The trustee cannot, in good faith, ascertain from the receipt that the obligor or junior interestholder, as applicable, is the person who signed the receipt because all or a portion of the obligor's or junior interestholder's name is not on the signed receipt or the trustee cannot otherwise determine that the obligor or junior interestholder signed the receipt;~~,~~ or

c. ~~if~~ The receipt from the obligor or junior interestholder, as applicable, is returned or refused within 30 calendar days after the trustee sent the notice.

(b) If the notice required by paragraph (a) is returned as undeliverable within 30 calendar days after the trustee sent the notice, the trustee shall perform a diligent search and inquiry

to obtain a different address for the obligor or junior interestholder. For purposes of this paragraph, any address known and used by the lienholder for sending regular mailings or other communications from the lienholder to the obligor or junior interestholder, as applicable, shall be included with other addresses produced from the diligent search and inquiry, if any.

1. If the trustee's diligent search and inquiry produces an address different from the notice address, the trustee shall mail a copy of the notice by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail ~~or permitted delivery service~~, postage prepaid, to the new address. Notice under this subparagraph is considered perfected upon the trustee receiving the return receipt bearing the signature of the obligor or junior interestholder, as applicable, within 30 calendar days after the trustee sent the notice under this subparagraph. Notice under this subparagraph is not perfected if the receipt from the obligor or junior interestholder is refused, returned, or the trustee cannot, in good faith, ascertain ~~from the receipt~~ that the obligor or junior interestholder, as applicable, is the person who signed the receipt because all or a portion of the obligor's or junior interestholder's name is not on the signed receipt or because the trustee cannot otherwise determine that the obligor or junior interestholder signed the receipt ~~or the receipt from the obligor or junior interestholder, as applicable, is returned refused~~. If the trustee does not perfect notice under this subparagraph, the trustee shall perfect service in the manner

set forth in paragraph (c).

2. If the trustee's diligent search and inquiry does not locate a different address for the obligor or junior interestholder, as applicable, the trustee may perfect notice against that person under paragraph (c).

(c) If the notice is not perfected under subparagraph (a)5., and such notice was not returned as undeliverable, or if the notice was not perfected under subparagraph (b)1., the trustee may perfect notice by publication in a newspaper of general circulation in the county or counties in which the timeshare interest is located. The notice shall appear at least once a week for 2 consecutive weeks. The notice of default and intent to foreclose perfected by publication shall identify the obligor, the notice address of the obligor, the legal description of the timeshare interest, the nature of the action in short and simple terms, the name and contact information of the trustee, and the period of time after the date of the notice of default and intent to foreclose within which the obligor may cure the default. The trustee may group an unlimited number of notices in the same publication, if all of the notices pertain to the same timeshare plan. Notice under this paragraph is considered perfected upon publication as required in this paragraph.

(d) If notice is perfected under subparagraph (a)5., the trustee shall execute an affidavit in recordable form setting forth the manner in which notice was perfected and attach the affidavit to the certificate of compliance set forth in subsection (9). The affidavit shall state the nature of the

notice, the date on which the notice was mailed, the name and address on the envelope containing the notice, the manner in which the notice was mailed, and the basis for that knowledge.

(e) If notice is perfected under subparagraph (b)1., the trustee shall execute an affidavit in recordable form setting forth the manner in which notice was perfected and attach the affidavit to the certificate of compliance set forth in subsection (9). The affidavit shall state the nature of the notice, the dates on which the notice was mailed, the name and addresses on the envelopes containing the notice, the manner in which the notice was mailed, and the fact that a signed receipt from the certified mail, registered mail, or permitted delivery service was timely received~~, and the name and address on the envelopes containing the notice~~.

(f) If notice is perfected under paragraph (c), the trustee shall execute an affidavit in recordable form setting forth the manner in which notice was perfected and attach the affidavit to the certificate of compliance set forth in subsection (9). The affidavit shall include all the information contained in either paragraph (d) or paragraph (e), as applicable, shall state that the notice was perfected by publication and shall state that ~~after~~ diligent search and inquiry was made for the current address for the person, if paragraph (b) applies. The affidavit shall also include ~~a statement that notice was perfected by publication, and shall set forth~~ the information required, as applicable, by s. 49.041 in the case of a natural person or s. 49.051 in the case of a corporation~~, whichever is applicable~~. No other action of the

trustee is necessary to perfect notice.

(g) Notice under paragraph (a) or paragraph (b) is perfected as to all obligors who have the same address if notice is perfected as to at least one obligor at that address pursuant to the provisions of this subsection.

(h) The initiation of a trustee foreclosure action operates as a lis pendens on the timeshare interest pursuant to s. 48.23 if a notice of lis pendens is recorded in the official records of the county or counties in which the mortgage is recorded and such notice has not expired pursuant to s. 48.23(2) or been withdrawn or discharged. The notice of lis pendens must contain the following:

1. The name of the obligor.

2. The date of the initiation of the trustee foreclosure action, which date shall be the date of the sending of the notice of default and intent to foreclose to the obligor.

3. The name and contact information of the trustee.

4. The legal description of the timeshare interest.

5. A statement that a trustee foreclosure action has been initiated against the timeshare interest pursuant to this section.

(6) NOTICE OF SALE.—

(c) After the date of recording of the notice of sale, notice is not required to be given to any person claiming an interest in the timeshare interest except as provided in this section. If a notice of lis pendens has not previously been recorded pursuant to paragraph (5)(h), the recording of the notice of sale has the same force and effect as the filing of a

lis pendens in a judicial proceeding under s. 48.23.

(d)1. The trustee shall publish the notice of sale in a newspaper of general circulation in the county or counties in which the timeshare interest is located at least once a week for 2 consecutive weeks before the date of the sale. The last publication shall occur at least 5 calendar days before the sale.

2. The trustee may group an unlimited number of notices of sale in the same publication, if all of the notices of sale pertain to the same timeshare plan.

(7) MANNER OF SALE.—

(b) The trustee shall conduct the sale and act as the auctioneer. The trustee may use a third party to conduct the sale on behalf of the trustee and the trustee is liable for the conduct of the sale and the actions of the third party with respect to the conduct of the sale.

(13) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE PROCEDURE.—

(b) Any trustee who intentionally violates the provisions of this section concerning the trustee foreclosure procedure commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A trustee who incorrectly ascertains that the obligor signed the return receipt as required in s. 721.855(5) does not violate this section if the trustee made a good faith effort to properly ascertain that it is the obligor who signed the return receipt in accordance with subsection (5).

Section 8. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7093 PCB IBS 13-01 Establishment of Clearinghouse Program within Citizens Property Insurance Corporation
SPONSOR(S): Insurance & Banking Subcommittee, Nelson
TIED BILLS: HB 7095 **IDEN./SIM. BILLS:** SB 1622

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee	12 Y, 1 N	Callaway	Cooper
1) Regulatory Affairs Committee		Callaway	Hamon

SUMMARY ANALYSIS

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. Although it operates like a private insurance company, it is not a private insurance company. As of January 31, 2013, Citizens is the largest property insurer in Florida with almost 1.3 million policies and over $418 billion in exposure.

In general, current law prohibits a homeowner from buying insurance in Citizens if an insurer in the private market offers the homeowner property insurance for a premium that is up to 15 percent more than the Citizens' premium. Currently, to comply with this premium restriction, an insurance agent selling a property insurance policy checks with the insurers in the private market represented by the agent to see if any of them will write the policy for a premium up to 15 percent more than the Citizens' premium. If an insurer will do that, the agent puts the policy with that insurer. However, the agent can only check with the insurers he or she represents and because captive agents represent only one insurer, these agents can only check with one insurer. There is no mechanism for any agent to check with all insurers in the private market to see if any will write insurance within the premium restriction. This likely allows policies to be written by Citizens even though an insurer will write the policy for a premium up to 15 percent more than the Citizens' premium. Additionally, homeowners can circumvent the premium eligibility restriction and buy insurance in Citizens even when a private insurer will write insurance within the restriction by shopping for property insurance with multiple agents.

The bill establishes a clearinghouse program (clearinghouse) for use by Citizens before property insurance can be written or renewed by Citizens. The purpose of the clearinghouse is to ensure only property meeting the Citizens' premium eligibility restrictions obtains insurance in Citizens. The bill also implements a five percent premium eligibility restriction for policies renewed by Citizens.

The bill requires all new applications and all renewals for insurance in Citizens to be submitted to the clearinghouse to determine if the policy can be written or renewed by a property insurer operating in the private market within the premium eligibility restrictions. Insurers are not required to participate in the clearinghouse. When an application for insurance in Citizens is submitted to the clearinghouse, the insurers participating in the clearinghouse have 48 hours to select the property to insure. If no insurer selects the property, Citizens will insure it. If an insurer selects the property and the premium offered by that insurer is within the premium eligibility guidelines, then the homeowner is not eligible for insurance in Citizens. Surplus lines insurers are allowed to participate in the clearinghouse, but the homeowner remains eligible for insurance in Citizens if the property is selected by a surplus lines insurer, regardless of the premium for the insurance. The same clearinghouse submission and selection process applies to Citizens' renewals, but there is no 48 hour waiting period. Citizens' renewals will be submitted to the clearinghouse for selection during the time period provided by law for notifying the policyholder their policy is being renewed, which is 45 days before renewal. The bill also allows Citizens to recognize a clearinghouse-type mechanism that is administered by a private entity as an alternative to the one administered by Citizens.

The bill has no fiscal impact on state or local government. The bill has a myriad of fiscal impacts on homeowners in Citizens, on homeowners not in Citizens, on some insurance agents, and on Citizens. These impacts are outlined in the Fiscal Analysis. The bill is effective July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. Although it operates like a private insurance company, it is not a private insurance company. As of January 31, 2013, Citizens is the largest property insurer in Florida with almost 1.3 million policies and over $418 billion in exposure. Citizens insures over 444,000 residential and commercial policies in Florida's coastal areas and over 835,000 residential policies in Florida's non-coastal areas. The remaining policies are commercial policies insured in Florida's non-coastal areas.

Current law allows homeowners with offers for property insurance from an insurer in the private market to still obtain insurance from Citizens if certain Citizens' eligibility requirements are met and requires Citizens to have a procedure to determine the eligibility of a potential risk. A major eligibility requirement for insurance in Citizens provided in current law is a 15 percent premium restriction. This restriction prohibits a homeowner from buying insurance in Citizens if an insurer in the private market offers the homeowner insurance for a premium that is up to 15 percent more than the Citizens' premium. In addition, the coverage offered by the private insurer must be comparable to Citizens' coverage. Thus, a homeowner can buy insurance from Citizens only if the private insurer's premium is more than 15 percent than the Citizens' premium.

Currently, an insurance agent selling a property insurance policy checks with the insurers in the private market represented by the agent to see if any of them will write the policy for a premium up to 15 percent more than the Citizens' premium. If an insurer will do that, the agent puts the policy with that insurer. However, the agent can only check with the insurers he or she represents and because captive agents represent only one insurer, these agents can only check with one insurer. There is no mechanism for any agent, either captive or not, to check with all insurers in the private market to see if any will write insurance within the premium restriction. This likely allows policies to be written by Citizens even though an insurer will write the policy for a premium up to 15 percent more than the Citizens' premium.

Additionally, homeowners can circumvent the premium eligibility restriction and buy insurance in Citizens even when an insurer in the private market will write insurance within the restriction by shopping for property insurance with multiple agents. If one agent denies the homeowner insurance in Citizens because he or she represents a private insurer that will write the policy for a premium up to 15 percent more than the Citizens' premium, the homeowner can go to a different agent. If that agent does not represent a private insurer willing to write the policy within the 15 percent premium eligibility restriction, the agent can place the policy into Citizens. Thus, the policy goes into Citizens even though there is a private insurer willing to write it within the 15 percent premium restriction simply because the agent selling the policy does not represent that private insurer.

Effect of Proposed Changes

The bill establishes a clearinghouse program (clearinghouse) for use by Citizens before property insurance can be written or renewed by Citizens. The purpose of the clearinghouse is to ensure only property meeting the Citizens' premium eligibility restrictions obtains insurance in Citizens.

The bill also implements a five percent premium eligibility restriction for policies renewed by Citizens. This is a new premium eligibility restriction for Citizens. Currently, the only eligibility restriction for coverage by Citizens applies to new coverage and not renewals. The renewal restriction provided in the bill prevents a homeowner from renewing insurance in Citizens if an insurer in the private market

offers the homeowner insurance for a premium up to 5 percent more than the Citizens' renewal premium.

All applications for insurance in Citizens and all policies to be renewed in Citizens must be submitted to the clearinghouse to determine if the policy can be written or renewed by a property insurer operating in the private market within the statutory premium eligibility restrictions of 15 percent for new insurance applications and five percent for renewals. Insurers are not required to participate in the clearinghouse.

When an application for insurance in Citizens is submitted to the clearinghouse, the insurers participating in the clearinghouse have 48 hours to select the property to insure. If the 48 hour period expires and no insurer has elected to insure the property, Citizens will insure it. If the property is selected by an insurer and the premium offered by the insurer is within the statutory premium eligibility guideline for new applications, then the homeowner is not eligible for insurance in Citizens. If more than one insurer offers insurance within the guideline, the homeowner can choose from which insurer to purchase insurance. If an insurer offers to write insurance, but the premium is more than the guideline, then the homeowner can choose to buy insurance with the insurer or buy insurance with Citizens.

The same clearinghouse submission and selection process applies to Citizens' renewals, but there is no 48 hour waiting period. Citizens' renewals will be submitted to the clearinghouse for selection during the time period provided by law for notifying the policyholder their policy is being renewed, which is 45 days before renewal. If property insured by Citizens is up for renewal and is selected from the clearinghouse by an insurer with a premium from the insurer within the statutory renewal premium eligibility guidelines, then the homeowner is not eligible to renew insurance in Citizens. If more than one insurer offers insurance at premiums within the renewal guideline, the homeowner can choose from which insurer to purchase insurance. If an insurer offers to write insurance, but the premium is more than the renewal guideline, then the homeowner can choose to buy insurance with the insurer or renew their insurance with Citizens.

Surplus lines insurers[1] can also participate in the clearinghouse. A surplus lines insurer cannot offer to insure a property if a Florida licensed insurer[2] makes an offer. Unlike offers of insurance made to homeowners through the clearinghouse from Florida licensed insurers, if a homeowner receives an offer of insurance through the clearinghouse from a surplus lines insurer within the Citizens' premium eligibility restrictions, the homeowner can still be insured by Citizens if they choose. Likewise, homeowners can choose to have their insurance renewed in Citizens even if they receive an offer of insurance from a surplus lines insurer within the renewal premium eligibility guidelines.

The bill specifies additional parameters for the clearinghouse. The clearinghouse must be an organizational unit within Citizens. Citizens is authorized to employ or contract with outside vendors for operation of the clearinghouse. To fund the clearinghouse, the bill allows Citizens to charge a reasonable percentage fee of the agent commission on policies written by an insurer through the clearinghouse. The bill provides exceptions to current law requiring insurance agents to be appointed by each insurer the agent sells insurance for in order to effectuate efficient implementation of the clearinghouse by independent and captive insurance agents.[3]

In order to allow homeowners to stay with their insurance agent, even if the agent is not appointed by the insurer that selected the property from the clearinghouse, the bill allows agents and insurers to enter into limited agency or service agreements. In effect, a limited agency or service agreement

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[1] Surplus lines insurance refers to a category of insurance for which there is no market available through standard insurance carriers in the admitted market (insurance companies licensed to transact insurance in Florida). Surplus lines insurers are not "authorized" insurers as defined in the Florida Insurance Code and thus do not obtain a certificate of authority from the Office of Insurance Regulation (OIR) to transact insurance in Florida. Rather, surplus lines insurers are "unauthorized" insurers, but are eligible to transact surplus lines insurance under the surplus lines law as "eligible surplus insurers". The OIR determines whether a surplus lines insurer is "eligible" based on statutory guidelines.

[2] Admitted insurer is one licensed to transact insurance in Florida.

[3] Independent insurance agents are those that are authorized by multiple insurers to place insurance with the insurers. Captive agents are those that are authorized to place insurance with one insurer only and operate as an exclusive agent for that insurer. Independent agents cannot place insurance with insurers that use captive agents.

allows the agent to keep his or her book of business, continue to be the agent on the policy, and to continue to continue to service the policy, which gives the homeowner a smooth transition to their new insurer. Independent agents are required to enter into limited agency agreements with insurers that do not currently appoint the agent but who write insurance through the clearinghouse for the agent's existing customer. Exclusive agents (i.e., captive agents) must enter into limited servicing agreements with these insurers only if the insurer appointing the exclusive agent approves the agreement.

The bill also provides exceptions to current law relating to payment of agent commissions for risks kept out of Citizens or taken out within the first 30 days of the policy to effectuate implementation of the clearinghouse. Finally, the bill requires insurance agents to retain expirations and records related to any insurance written through the clearinghouse.

The bill allows Citizens to recognize a clearinghouse-type mechanism that is administered by a private entity as an alternative to the one administered by Citizens. Citizens must publish standards for this private alternative by January 1, 2014. If this alternative is recognized, new applications for Citizens and Citizens' renewals can be submitted to the alternative instead of the Citizens' clearinghouse. Insurers are allowed to choose to participate only in the clearinghouse, but are not allowed to choose to participate only in the private alternative. Thus, insurers participating in the private alternative must also participate in the clearinghouse.

The clearinghouse established in the bill does not replace or supplant other depopulation programs by Citizens.[4] Depopulation of Citizens can occur two ways. One way is by keeping policies currently insured in the private market out of Citizens and keeping them in the private market. The second way is by taking policies out of Citizens by insurers in the private market. To date, most of Citizens' depopulation programs have focused on taking policies out of Citizens and the bill provides a new option for keeping policies out of Citizens.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.752, F.S., relating to exchange of business.

Section 2: Creates s. 627.3518, F.S., relating to Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.

Section 3: Provides an effective date of July 1, 2013.

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.

[4] Section 627.351(6)(q)3., F.S., requires Citizens to develop and maintain one or more depopulation programs to reduce its policy count and exposure. The depopulation programs must be approved by the Office of Insurance Regulation and be prudent and not unfairly discriminatory.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The number of policies obtaining insurance in Citizens and the number of policies currently insured by Citizens is expected to decline under the bill because the clearinghouse provides a way to ensure Citizens' eligibility restrictions are met before a policy is insured or renewed by them. A decline in the number of policies in Citizens will lower Citizens' exposure which in turn lowers the likelihood and amount of assessments levied by Citizens against Citizens' and non-Citizens' policyholders.[5] Homeowners insured by Citizens that are selected by an insurer in the private market through the clearinghouse are no longer subject to a maximum 45 percent assessment levied by Citizens against its policyholders.[6]

Some homeowners currently insured in Citizens may not be able to renew their insurance in Citizens under the bill if their policy is selected by an insurer participating in the clearinghouse. In addition, these homeowners may see premium increases for property insurance under the bill. Insurers using the clearinghouse to select a policy currently insured by Citizens can charge a premium for that policy that is up to 5 percent more than the Citizens' renewal premium. Conversely, some homeowners currently insured by Citizens may see a premium decrease if the private market insurer selecting their policy from the clearinghouse has premiums lower than Citizens.

Homeowners insured by Citizens that are selected by an insurer in the private market through the clearinghouse may obtain property insurance with expanded coverages. Recently, Citizens has significantly reduced coverages and reduced the policy limits on certain coverage.[7] For example, Citizens no longer insures screen enclosures or carports. And, Citizens now has a 10 percent mandatory sinkhole deductible and a policy limit for personal liability of $100,000, instead of $300,000. Some insurers in the private market have made coverage reductions similar to some of the ones made by Citizens, but no private insurer has made all of the reductions Citizens has made.

Insurance agents that enter into a limited agency arrangement with insurers participating in the clearinghouse with which they do not have an appointment should not be impacted by the bill. The limited agency agreement should allow the agent to continue to receive commissions on the policy, continue to service the policy, and continue to have the policy in the agent's book of business. However, exclusive insurance agents (i.e., captive agents) not approved by their insurer to enter into limited service arrangements with other insurers participating in the clearinghouse may lose some of their current business. These agents will no longer be able to renew or service the policy because they

[5] In the event Citizens incurs a deficit (i.e. its obligations to pay claims exceeds its capital plus reinsurance recoveries), it may levy assessments on most of Florida's property and casualty insurance policyholders in a specific sequence set by statute. If Citizens incurs a deficit, Citizens will first levy surcharges on its policyholders (Citizens Policyholder Assessment) of up to 15 percent of premium per account in deficit, for a maximum total of 45 percent. If the Coastal Account incurs a deficit that the levy of a Citizens Policyholder Assessment does not cure, then Citizens may levy another assessment, a regular assessment, of up to 2 percent of premium or 2 percent of the remaining deficit in the Coastal Account. The regular assessment is levied on virtually all property and casualty policies in the state, but not on Citizens' policies. The assessment is also not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies. If the PLA or CLA incurs a deficit that a Citizens Policyholder Assessment levy does not cure, then Citizens may levy another assessment, an emergency assessment, to cure the deficit. An emergency assessment may also be levied for deficits in the Coastal Account that a Citizens Policyholder Assessment and regular assessment do not cure. Emergency assessments are limited to 10 percent of premium or 10 percent of the deficit per account, for a maximum total of 30 percent. This assessment can be collected for as many years as is necessary to cure a deficit. Emergency assessments are levied on virtually all property and casualty policies in the state, including Citizens' own policies. However, this assessment is not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies.

[6] In the event Citizens incurs a deficit (i.e. its obligations to pay claims exceeds its capital plus reinsurance recoveries), it may levy assessments on most of Florida's property and casualty insurance policyholders in a specific sequence set by statute. If Citizens incurs a deficit, Citizens will first levy surcharges on its policyholders (Citizens Policyholder Assessment) of up to 15 percent of premium per account in deficit, for a maximum total of 45 percent.

[7] See Presentation to the Financial Services Commission by Citizens Property Corporation, dated June 26, 2012, available at https://www.citizensfla.com/about/mediaresources.cfm (last viewed February 22, 2013).

will have no contractual relationship with the new insurer on the policy. And, homeowners who use these agents will no longer be able to use them and will have to change agents.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Because the clearinghouse checks all participating private insurers to determine if one of them will insure the property within the statutory premium eligibility restrictions, use of the clearinghouse should ensure the current law relating to Citizens' eligibility is implemented. Use of the clearinghouse should mean only policies meeting the premium eligibility for new and renewal insurance in Citizens' are insured by Citizens. The clearinghouse will also prevent homeowners from shopping for insurance through various agents to work around the Citizens' eligibility premium restrictions.

The effectiveness of the clearinghouse to keep policies out of Citizens at issuance or renewal depends on the number of private insurers participating in the clearinghouse. If many or all private insurers participate, then the clearinghouse should be a more effective method of ensuring only policies eligible for Citizens are insured by Citizens.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the establishment of a clearinghouse program within the Citizens Property Insurance Corporation; amending s. 626.752, F.S.; exempting Citizens Property Insurance Corporation from exchange of business limitations and restrictions when placing business with authorized insurers; creating s. 627.3518, F.S.; providing definitions; requiring the creation of a clearinghouse program within the corporation; specifying the purposes of the program; specifying certain rights and responsibilities with respect to the program; authorizing the corporation to take specified actions in establishing the program; providing conditions and requirements relating to the participation of insurers in the program; providing conditions, requirements, limitations, and procedures applicable to offers of coverage with respect to applicants for coverage with the corporation and existing policyholders of the corporation; providing requirements for certain independent insurance agents and exclusive agents with respect to submitting applications for coverage or policies for renewal to the program; requiring the corporation to publish standards by a certain date for recognition of private entities as an alternative option to submitting risks to the program; providing conditions and requirements relating to such alternative options; providing for construction; providing an effective date.

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

Section 1. Subsection (4) of section 626.752, Florida Statutes, is amended to read:

626.752 Exchange of business.—

(4) The foregoing limitations and restrictions shall not be construed and shall not apply to the placing of surplus lines business under the provisions of part VIII or to the activities of Citizens Property Insurance Corporation in placing new and renewal business with authorized insurers in accordance with s. 627.3518.

Section 2. Section 627.3518, Florida Statutes, is created to read:

627.3518 Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.—

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

(a) "Corporation" means Citizens Property Insurance Corporation.

(b) "Exclusive agent" means any licensed insurance agent that has, by contract, agreed to act exclusively for one company or group of affiliated insurance companies and is disallowed by the provisions of that contract to directly write for any other unaffiliated insurer absent express consent from the company or group of affiliated insurance companies.

(c) "Independent agent" means any licensed insurance agent not described in paragraph (b).

(d) "Program" means the clearinghouse created under this

section.

(2) In order to confirm eligibility for coverage with the corporation, and to enhance access of applicants for coverage with the corporation and access of existing policyholders of the corporation to offers of coverage from authorized insurers at renewal, the corporation shall establish a clearinghouse program to facilitate the diversion of ineligible applicants and existing policyholders from the corporation into the voluntary insurance market.

(3) The corporation board shall establish the clearinghouse program as an organizational unit within the corporation. The program shall have all the rights and responsibilities in carrying out its duties as a licensed general lines agent, but may not be required to employ or engage a licensed general lines agent or to maintain an insurance agency license to carry out its activities in the solicitation and placement of insurance coverage. In establishing the program, the corporation may:

(a) Require all new applications, and all policies due for renewal, to be submitted for coverage to the program or any private alternative in order to facilitate obtaining an offer of coverage from an authorized insurer before binding or renewing coverage by the corporation.

(b) Employ or otherwise contract with individuals or other entities for appropriate administrative or professional services to effectuate the plan within the corporation in accordance with the applicable purchasing requirements under s. 627.351.

(c) Enter into contracts with any authorized or surplus

lines insurer to participate in the program and accept an appointment by such insurer.

(d) Provide funds to operate the program and charge a reasonable fee as a percentage of agent commission to offset, or partially offset, the costs of the program. Insurers participating in the program may not be required to pay a fee or use the program for renewals of any policy initially written through the program.

(e) Develop an enhanced application that includes information to assist private insurers in determining whether to make an offer of coverage through the program.

(f) Require, before approving all new applications for coverage by the corporation, that every application be subject to a 48-hour period when any insurer participating in the program may select the application for coverage. The insurer may issue a binder on any policy selected for coverage for a period of at least 30 days but not more than 60 days.

(g) Allow eligible surplus lines insurers to participate and make offers of coverage. An offer of coverage may be made by an eligible surplus lines insurer only if an authorized insurer does not make an offer of coverage through the program. Surplus lines insurers may offer premiums and coverages that are more favorable than those offered in the corporation, and agents are not required to compile three declinations from authorized insurers before binding coverage with a surplus lines insurer.

(4) Any authorized or surplus lines insurer may participate in the program; however, participation is not mandatory for any insurer. Insurers making offers of coverage to

new applicants or renewal policyholders through the program:

(a) May not be required to individually appoint any agent whose customer is underwritten and bound through the program. Notwithstanding s. 626.112, insurers are not required to appoint any agent on a policy underwritten through the program for as long as that policy remains with the insurer. Insurers may, at their election, appoint any agent whose customer is initially underwritten and bound through the program. In the event an insurer accepts a policy from an agent who is not appointed pursuant to this paragraph, and thereafter elects to accept a policy from such agent, the provisions of s. 626.112 requiring appointment apply to the agent.

(b) Must enter into a limited agency agreement with each agent that is not appointed in accordance with paragraph (a) and whose customer is underwritten and bound through the program.

(c) Must enter into its standard agency agreement with each agent whose customer is underwritten and bound through the program when that agent has been appointed by the insurer pursuant to s. 626.112.

(d) Must comply with s. 627.4133(2).

(5) Notwithstanding s. 627.3517, any applicant for new coverage from the corporation is not eligible for coverage from the corporation, if provided an offer of coverage from an authorized insurer through the program at a premium that is at or below the eligibility threshold established in s. 627.351(6)(c)5.a. and b. Whenever an offer of coverage for a personal lines or commercial lines risk is received for a policyholder of the corporation at renewal, notwithstanding any

other provisions of law, if the offer is no more than 5 percent above the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the corporation. In the event an offer of coverage for a new applicant is received from an insurer, and the premium offered exceeds the eligibility threshold contained in s. 627.351(6)(c)5.a. and b., the applicant or insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation. In the event an offer of coverage for a personal lines or commercial lines risk is received from an insurer at renewal, and the premium offered is more than 5 percent above the corporation's renewal premium for comparable coverage, the insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation. Any applicant for new coverage from the corporation, and policyholders of all policies for renewal, if provided an offer of coverage from a surplus lines insurer, are not required to accept such offer, and may be accepted for coverage or renewed by the corporation at the applicant's or policyholder's option. Sub-sub-subparagraphs 627.351(6)(c)5.a.(I) and b.(I) do not apply to an offer of coverage from an authorized insurer obtained through the program.

(6) Independent insurance agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Must maintain ownership and the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written

through the corporation or through an insurer participating in the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and (II)(B). Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit such rights of ownership. Such expirations, records, or other written or electronic information may be used to review an application, issue a policy, or for any other purpose necessary for placing such business through the program.

(b) May not be required to be appointed by any insurer participating in the program for policies written solely through the program, notwithstanding the provisions of s. 626.112.

(c) May accept an appointment from any insurer participating in the program.

(d) Must enter into either a standard or limited agency agreement with the insurer, at the insurer's option.

(7) Exclusive agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Must maintain ownership and the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and (II)(B). Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit such rights of ownership. Such expirations, records, or other written or electronic information may be used to review an application, issue a policy, or for any other purpose necessary

for placing such business through the program.

(b) May not be required to be appointed by any insurer participating in the program for policies written solely through the program, notwithstanding the provisions of s. 626.112.

(c) Must accept an offer of coverage from any insurer whose limited servicing agreement is approved by that agent's exclusive insurer as eligible to participate in the program with that insurer's exclusive agents.

(d) Must enter into only a limited servicing agreement with the insurer making an offer of coverage, and only after the exclusive agent's insurer has approved the limited servicing agreement terms. The exclusive agent's insurer must approve a limited service agreement for the program for any insurer for which it has approved a service agreement for other purposes.

(8) To promote private market initiatives to obtain offers of coverage from authorized and surplus lines insurers for applicants for coverage by the corporation and the corporation's policyholders on renewal, the corporation shall, by January 1, 2014, publish reasonable standards for the recognition of private alternatives to the submission of a risk to the program. Such private alternatives to the program may act in a master agency arrangement for producing agents who may be appointed as subagents of the master agency using such private alternatives for the submission of risks to the program. The alternative option permitted under this subsection is an alternative and not a replacement for the program established under this section. Neither the program nor any private entity operating under this subsection may prohibit insurers that elect to participate from

participating in more than one program or alternative; however, any insurer participating in the private entity must also participate in the program.

(9) Submission of an application for coverage by the corporation to the program does not constitute the binding of coverage by the corporation, and failure of the program to obtain an offer of coverage by an insurer may not be considered acceptance of coverage of the risk by the corporation.

Section 3. This act shall take effect July 1, 2013.

Regulatory Affairs Committee

Friday, March 22, 2013
8:30 AM
404 HOB

AMENDMENT PACKET

Will Weatherford
Speaker

Doug Holder
Chair

REGULATORY AFFAIRS COMMITTEE

CS/HB 269 by Rep. Beshears
Public Construction Projects

AMENDMENT SUMMARY
March 22, 2013

Amendment 1 by Rep. Beshears (Strike-all amendment): Retains the provisions of the CS, and makes the following changes:

- Clarifies that state agencies and specified local government entities are only required to use Florida lumber, timber, and other forest products for public works if the project requires a wood component.
- Provides exceptions for transportation projects that utilize federal aid funding.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 269 (2013)

Amendment No. 1

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

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative Beshears offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (3) of section 255.20, Florida Statutes, is amended to read:

255.20 Local bids and contracts for public construction works; specification of state-produced lumber.—

(3) All county officials, boards of county commissioners, school boards, city councils, city commissioners, and all other public officers of state boards or commissions that are charged with the letting of contracts for public work, for the construction of public bridges, buildings, and other structures must specify, in the contract, lumber, timber, and other forest products produced and manufactured in this state if wood is a component of the public work and if such products are available and their price, fitness, and quality are equal. This subsection does not apply to plywood specified for monolithic concrete

forms, if the structural or service requirements for timber for a particular job cannot be supplied by native species, or if the construction is financed in whole or in part from federal funds with the requirement that there be no restrictions as to species or place of manufacture. This subsection also does not apply to transportation projects for which federal aid funds are available.

Section 2. Paragraph (a) of 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) Each ~~All~~ state agency ~~agencies~~ shall use ~~adopt~~ a sustainable building rating system or ~~use~~ a national model green building code for each ~~all~~ new building ~~buildings~~ and renovation ~~renovations~~ to an existing building ~~buildings~~.

Section 3. Subsection (4) is added to section 255.2575, Florida Statutes, to read:

255.2575 Energy-efficient and sustainable buildings.—

(4) All state agencies, county officials, boards of county commissioners, school boards, city councils, city commissioners, and all other public officers of state boards or commissions that are charged with the letting of contracts for public work, for the construction of public bridges, buildings, and other structures must specify, in the contract, lumber, timber, and other forest products produced and manufactured in Florida if wood is a component of the public work and if such products are available and their price, fitness, and quality are equal. This

subsection does not apply to plywood specified for monolithic concrete forms, if the structural or service requirements for timber for a particular job cannot be supplied by native species, or if the construction is financed in whole or in part from federal funds with the requirement that there be no restrictions as to species or place of manufacture. This subsection also does not apply to transportation projects for which federal aid funds are available.

Section 4. This act shall take effect July 1, 2013.

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

Remove everything before the enacting clause and insert: An act relating to public construction projects; amending s. 255.20, F.S., requiring governmental entities to specify certain products associated with public works projects; providing exceptions; amending s. 255.257, F.S.; requiring state agencies to use certain building rating systems and building codes for each new construction and renovation project; amending s. 255.2575, F.S.; requiring governmental entities to specify certain products associated with public works projects; providing exceptions; providing an effective date.

REGULATORY AFFAIRS COMMITTEE

CS/HB 7023 by Rep. Cummings
The Department of Agriculture and Consumer Services

AMENDMENT SUMMARY
March 22, 2013

Amendment 1 by Rep. Cummings, with title amendment, between lines 1178-1179:

Creates a new Section 30 and Section 31 of the bill and renumbers subsequent Sections of the bill.

Section 30 amends s. 525.16, F.S., to limit liability for injuries or damages as ownership and custody of fuel is transferred provided that requirements and standards are met.

Section 31 amends s. 526.141, F.S., to limit liability in the case that a purchaser of fuel chooses a fuel that meets standards but is incompatible with the vehicle.

Amendment 2 by Rep. Cummings, with title amendment, between lines 1691-1692:

Provides a severability clause. The clause was added because the bill touches on so many areas.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 7023 (2013)

Amendment No. 1

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

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative Cummings offered the following:

Amendment (with title amendment)

Between lines 1178 and 1179, insert:

Section 30. Subsections (3) and (4) of section 525.16, Florida Statutes, are renumbered as subsections (4) and (5), respectively, and subsection (3) is added to that section, to read:

525.16 Administrative fine; penalties; prosecution of cases by state attorney.—

(3) Entities that sell, offer for sale, distribute or offer for distribution petroleum or alternative fuels shall ensure that their activities result in petroleum fuels that meet all requirements and standards adopted under s. 525.14. A terminal supplier, wholesaler, or blender licensed under chapter 206 is not liable for injuries or damages resulting from the subsequent blending of petroleum or alternative fuels occurring after the transfer of ownership of such fuels from the terminal

supplier, wholesaler, or blender if the petroleum or alternative fuels used to make the petroleum fuel at issue met the standards and requirements adopted by rule of the department under s. 525.14 while under ownership of the terminal supplier, wholesaler, or blender.

Section 31. Subsection (7) of section 526.141, Florida Statutes, is renumbered as subsection (8), respectively, and subsection (7) is added to that section, to read:

526.141 Self-service gasoline stations; attendants; regulations.—

(7) A refiner, terminal supplier, wholesaler, or retailer is not liable for damages caused by the use of incompatible motor fuel dispensed at a retail site if:

(a) The incompatible fuel meets the standards adopted under s. 525.14;

(b) The incompatible fuel is selected by the purchaser; and,

(c) The retail dispenser from which the incompatible fuel is dispensed was properly labeled with regard to the incompatible fuel pursuant to labeling requirements adopted under s. 525.14.

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

Remove line 88 and insert:

fund; amending s. 525.16, F.S.; requiring entities that sell or distribute certain fuels to meet fuel standards adopted by the

department; providing a release of liability for certain entities who supply and blend fuels that meet department standards; amending s. 526.141, F.S.; providing that certain entities are not liable for damages resulting from the incompatible use of motor fuels under certain circumstances; amending s. 527.01, F.S.; defining the term

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 7023 (2013)

Amendment No. 2

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

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative Cummings offered the following:

Amendment (with title amendment)

Between lines 1691 and 1692, insert:

Section 47. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

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

Remove line 132 and insert:

salespersons under ch. 501, F.S.; providing for severability; providing an

REGULATORY AFFAIRS COMMITTEE

HB 7025 by Rep. Eagle
Timeshares

AMENDMENT SUMMARY
March 22, 2013

Amendment 1 by Rep. Eagle (Lines 265 - 276): provides definitions for the terms "resale transfer agreement" and "timeshare interest transfer services."

Amendment 2 by Rep. Eagle (Lines 414 - 415):

- Section 4:
  - Requires a managing entity to provide an estoppel letter within 30 days, upon request, which closely follows estoppel provisions that currently exist for condominiums.
- Section 5:
  - Requires timeshare resale transfer service providers to deliver a written agreement to consumers that must include: the contact information for the escrow agent, a statement that no fee is to be paid until the consumer is delivered written evidence of completion of service, and notice that an aggrieved consumer may dispute a claim of completion within 5 days to the escrow agent.
  - Requires any fees for timeshare resale transfer services to be held by third party escrow agent until services are complete, sets standards for the release of escrowed funds, and provides an opportunity to dispute claims.
  - Prohibits the transfer of a timeshare interest to someone a person "knows" or "reasonably should know" does not have the ability, means, or intent to fulfill the financial obligations of ownership.
  - Provides that a violation of the prohibited transfer provision can be enforced by the timeshare managing entity in a private right of action. Further provides that a violation of the contract requirement or escrow provisions shall be a violation of Chapter 721.
  - Exempts resale advertisers from all provisions of the subsection in certain circumstances, exempts real estate brokers from the contract and escrow provisions of the subsection, and exempts timeshare developers and managing entities from the provisions of the subsection to the extent that they are taking timeshare interests back from consumers.

Amendment 3 by Rep. Eagle (Line 1004): corrects an incorrect cross-reference.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 7025 (2013)

Amendment No. 1

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

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative Eagle offered the following:

Amendment (with directory and title amendments)

Remove lines 265-276 and insert:

721.05 Definitions.-As used in this chapter, the term:

(34) "Timeshare estate" means a right to occupy a timeshare unit, coupled with a freehold estate or an estate for years with a future interest in a timeshare property or a specified portion thereof. The term includes ~~shall also mean~~ an interest in a condominium unit pursuant to s. 718.103, an interest in a cooperative unit pursuant to s. 719.103, or a direct or indirect ~~an~~ interest in a trust that complies in all respects with the provisions of s. 721.08(2)(c)4., provided that the trust does not contain any personal property timeshare interests. A timeshare estate is a parcel of real property under the laws of this state.

(51) "Resale transfer agreement" means a contract or other agreement between a person offering timeshare interest transfer

services and a consumer timeshare reseller, in which the person offering timeshare interest transfer services agrees to provide such services as described in s. 721.17(3).

(52) "Timeshare interest transfer services" means any good or service relating to an offer or agreement to transfer ownership of a consumer resale timeshare interest, or assistance with or a promise of assistance in connection with the transfer of ownership of a consumer resale timeshare interest, as described in s. 721.17(3).

D I R E C T O R Y A M E N D M E N T

Remove lines 263-264 and insert:

Section 2. Subsection (34) of section 721.05, Florida Statutes, is amended to read, and new subsections (51) and (52) of that section are created to read:

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

Remove lines 5-6 and insert:

condominiums; amending s. 721.05, F.S.; revising definitions related to the Florida Vacation Plan and Timesharing Act; amending s. 721.07,

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative Eagle offered the following:

Amendment (with title amendment)

Remove lines 414-415 and insert:

Section 4. Subsection (7) of section 721.15, Florida Statutes, is amended to read:

721.15 Assessments for common expenses.-

(7)(a) A purchaser, regardless of how her or his timeshare estate or timeshare license has been acquired, including a purchaser at a judicial sale, is personally liable for all assessments for common expenses which come due while the purchaser is the owner of such interest. A successor in interest is jointly and severally liable with her or his predecessor in interest for all unpaid assessments against such predecessor up to the time of transfer of the timeshare interest to such successor without prejudice to any right a successor in interest may have to recover from her or his predecessor in interest any

amounts assessed against such predecessor and paid by such successor. The predecessor in interest, or a person providing resale transfer services for the predecessor in interest pursuant to s. 721.17(3), shall provide the managing entity with a copy of the recorded deed of conveyance if the interest is a timeshare estate or a copy of the instrument of transfer if the interest is a timeshare license, containing the name and mailing address of the successor in interest within 15 days after the date of transfer. The managing entity shall not be liable to any person for any inaccuracy in the books and records of the timeshare plan arising from the failure of the predecessor in interest to timely and correctly notify the managing entity of the name and mailing address of the successor in interest.

(b) Within 30 days after receiving a written request from a timeshare interest owner, or from a person providing resale transfer services for a consumer timeshare reseller pursuant to s. 721.17(3), provided that all assessments and other monies owed by such timeshare interest owner to the managing entity have been previously paid in full, a managing entity shall provide a certificate or estoppel letter to or at the direction of such timeshare interest owner or to such person providing resale transfer services stating that all assessments and other monies owed to the managing entity by the timeshare interest owner have been paid in full with respect to the timeshare interest. The managing entity may charge a reasonable fee for the preparation and delivery of the certificate or estoppel letter. The amount of the fee must be included on the certificate or estoppel letter.

Section 5. Section 721.17, Florida Statutes, is amended to read:

721.17 Transfer of interest; resale transfer agreements.-

(1) Except in the case of a timeshare plan subject to the provisions of chapter 718 or chapter 719, no developer, owner of the underlying fee, or owner of the underlying personal property shall sell, lease, assign, mortgage, or otherwise transfer his or her interest in the accommodations and facilities of the timeshare plan except by an instrument evidencing the transfer recorded in the public records of the county in which such accommodations and facilities are located or, with respect to personal property timeshare plans, in full compliance with s. 721.08. The instrument shall be executed by both the transferor and transferee and shall state:

(a) ~~(1)~~ That its provisions are intended to protect the rights of all purchasers of the plan.

(b) ~~(2)~~ That its terms may be enforced by any prior or subsequent timeshare purchaser so long as that purchaser is not in default of his or her obligations.

(c) ~~(3)~~ That so long as a purchaser remains in good standing with respect to her or his obligations under the timeshare instrument, including making all payments to the managing entity required by the timeshare instrument with respect to the annual common expenses of the timeshare plan, the transferee shall honor all rights of such purchaser relating to the subject accommodation or facility as reflected in the timeshare instrument.

(d) ~~(4)~~ That the transferee will fully honor all rights of timeshare purchasers to cancel their resale transfer agreements and receive appropriate refunds.

(e) ~~(5)~~ That the obligations of the transferee under such instrument will continue to exist despite any cancellation or rejection of the resale transfer agreements between the developer and purchaser arising out of bankruptcy proceedings.

(2) Should any transfer of the interest of the developer, the owner of the underlying fee, or the owner of the underlying property occur in a manner which is not in compliance with subsection (1) ~~this section~~, the terms set forth in this section shall be presumed to be a part of the transfer and shall be deemed to be included in the instrument of transfer. Notice shall be mailed to each purchaser of record within 30 days after the transfer unless such transfer does not affect the purchaser's rights in or use of the timeshare plan. Persons who hold mortgages or liens on the property constituting a timeshare plan before the filed public offering statement of such plan is approved by the division shall not be considered transferees for the purposes of this subsection ~~section~~.

(3)(a) In the course of offering timeshare interest transfer services, no person shall:

1. Engage in any timeshare interest transfer services for consideration, or the expectation of receiving consideration, without first obtaining a written resale transfer agreement signed by the person offering timeshare interest transfer services and by the consumer timeshare reseller that complies with the provisions of this subsection.

2. Fail to provide both the consumer timeshare reseller and the escrow agent required by paragraph (c) with a fully-executed copy of the resale transfer agreement.

3. Fail to comply with the requirements of paragraphs (b) and (c).

(b) Each resale transfer agreement shall contain:

1. A statement that no fee, cost or other compensation may be paid to the person providing the timeshare resale transfer services prior to the delivery to the consumer timeshare reseller of written evidence that all promised timeshare interest transfer services have been performed, including, but not limited to, delivery to both the consumer timeshare reseller and the timeshare plan managing entity of a copy of the recorded instrument or other legal document evidencing the transfer of ownership of or legal title to the consumer resale timeshare interest to the transferee, accompanied by the full name, address and other known contact information for the transferee.

2. The name, address, current phone number and current electronic mail address of the escrow agent required by paragraph (c).

3. A statement that the person providing the timeshare resale transfer services will provide the consumer timeshare reseller with written notice of the full performance of the timeshare resale transfer services, together with a copy of the recorded instrument or other legal document evidencing the transfer of ownership of or legal title to the consumer resale timeshare interest from the consumer timeshare reseller to a transferee, and that the consumer timeshare reseller will have

five (5) business days after receipt of such written notice of full performance to notify the escrow agent in the manner described in the resale transfer agreement if the consumer timeshare reseller believes that all promised timeshare interest transfer services have not in fact been fully performed.

4. A statement in substantially the following form in conspicuous type immediately preceding the space in the resale transfer agreement provided for the consumer timeshare reseller's signature:

<Name> has agreed to provide you with timeshare resale transfer services pursuant to this resale transfer agreement. Once those services have been fully performed, <Name> is obligated to provide you with written notice of such full performance and a copy of the recorded instrument or other legal document evidencing the transfer of ownership of or legal title to the consumer resale timeshare interest to the transferee. Any fee or other compensation paid by you under this agreement prior to such full performance by <Name> must be held in escrow by the escrow agent specified in this agreement, and <Name> is prohibited from receiving any such fee or other compensation until all promised timeshare interest transfer services have been performed. You have five (5) business days after your receipt of written notice of full performance from <Name> to notify the escrow agent in the manner described in this agreement if you

believe that all promised timeshare interest transfer services have not in fact been fully performed.

(c)1. Prior to entering into any resale transfer agreement, a person providing timeshare resale transfer services shall establish an escrow account with an escrow agent for the purpose of protecting the funds or other property of consumer timeshare resellers required to be escrowed by this subsection. A licensed Florida attorney in good standing, a licensed Florida real estate broker in good standing, or a licensed Florida title insurance agent in good standing, any of whom also provides timeshare interest transfer services as described in this subsection, may serve as escrow agent under this subsection. The escrow agent shall maintain the escrow account only in such a manner as to be under the direct supervision and control of the escrow agent. The escrow agent shall have a fiduciary duty to each consumer timeshare reseller to maintain the escrow account in accordance with good accounting practices and to release the consumer timeshare reseller's funds or other property from escrow only in accordance with this subsection.

2. All funds or other property which is received from or on behalf of a consumer timeshare reseller pursuant to a resale transfer agreement to provide timeshare interest transfer services shall be deposited into an escrow account pursuant to this paragraph. Any fee, cost or other compensation that is due or that will be paid to the person providing the timeshare resale transfer services under the resale transfer agreement must be held in such escrow account until the person providing

the timeshare resale transfer services has fully complied with all of its obligations under the resale transfer agreement and under this subsection.

3. The funds or other property required to be escrowed hereunder may only be released from escrow as follows:

a. The escrow agent may release the escrowed funds or other property to or on the order of the person providing the timeshare resale transfer services upon presentation of an affidavit by such person that all promised timeshare interest transfer services have been performed, including delivery to both the consumer timeshare reseller and the timeshare plan managing entity of a copy of the recorded instrument or other legal document evidencing the transfer of ownership of or legal title to the consumer resale timeshare interest to the transferee, provided that at least five (5) days have passed since the consumer timeshare reseller has received the notice required under paragraph (b)3. and the escrow agent has not received notice from the consumer timeshare reseller pursuant to paragraph (b)3. disputing that all promised timeshare interest transfer services have in fact fully performed by the person providing the timeshare resale transfer services.

b. Should the escrow agent receive conflicting demands for funds or other property held in escrow, the escrow agent shall immediately notify the division of the dispute and either promptly submit the matter to arbitration or, by interpleader or otherwise, seek an adjudication of the matter by court.

c. The escrow agent shall retain all resale transfer agreements, escrow account records, affidavits and notices of

dispute received pursuant to this subsection for a period of 5 years.

(d) Any person providing timeshare resale transfer services, agent or third party service provider therefor, or escrow agent who intentionally fails to comply with the provisions of this subsection concerning the establishment of an escrow account, deposits of funds into escrow, withdrawal therefrom, and maintenance of records is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, or the successor thereof. The failure to establish an escrow account, place funds therein as required in this subsection, withdraw funds therefrom only as permitted in this subsection, or maintain records is prima facie evidence of an intentional and purposeful violation of this subsection.

(e)1. No person shall participate, for consideration or with the expectation of consideration, in any plan or scheme, a purpose of which is to transfer a consumer resale timeshare interest to a transferee that the person knows or reasonably should know does not have the ability, means or intent to pay all assessments and taxes for the consumer resale timeshare interest that are due or that come due during the transferee's ownership.

2. It shall be deemed a violation of this paragraph if there is any transfer, series of transfers, or other action made or taken by any person for the purpose of circumventing subparagraph 1.

3. It shall not be a violation of this paragraph when a managing entity performs such administrative acts as are

necessary to satisfy its fiduciary duties or to otherwise comply with the requirements of this chapter with respect to any transfer of a consumer resale timeshare interest, including the requirement to maintain and update the books and records of the timeshare plan pursuant to ss. 721.13(4) and 721.15(7).

(f) Providing timeshare interest transfer services with respect to a consumer resale timeshare interest in a timeshare property located or offered within this state, or in a multisite timeshare plan registered or required to be registered to be offered in this state, including acting as an agent or third-party service provider for a resale service provider, constitutes operating, conducting, engaging in, or carrying on a business or business venture in this state for the purposes of s. 48.193(1).

(g)1. Notwithstanding any other penalties provided for in this subsection, any violation of this subsection is subject to a civil penalty of not more than $10,000 per violation pursuant to s. 721.26(5)(e).

2. A managing entity may bring an action to enforce the provisions of paragraph (e). In any such action, the managing entity may recover its actual damages, plus attorney's fees and court costs. Without regard to any other remedy or relief to which the managing entity is entitled, the managing entity may also bring an action to obtain a declaratory judgment that an act or practice violates paragraph (e) and to enjoin a person who has violated, is violating, or is otherwise likely to violate paragraph (e).

(h) The provisions of this subsection shall not apply to any resale advertiser who offers resale advertising services to a consumer timeshare reseller, unless such person also specifically offers timeshare interest transfer services to such consumer timeshare reseller. The provisions of paragraphs (a)-(d) shall not apply to any resale broker who offers timeshare interest transfer services to a consumer timeshare reseller, so long as the resale broker complies in all respects with chapter 475 and with s. 721.20. The provisions of this subsection shall not apply to the transfer of ownership of a consumer resale timeshare interest from a consumer timeshare reseller to the developer or managing entity of that timeshare plan.

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

Remove line 9 and insert:

property timeshare plans; amending s. 721.15, F.S.; requiring an estoppel letter in certain timeshare resale transfer transactions; amending s. 721.17, F.S.; providing requirements for resale transfer agreements; amending s. 721.82, F.S.;

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 7025 (2013)

Amendment No. 3

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

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative Eagle offered the following:

Amendment

Remove line 1004 and insert:

required in s. 721.856(5) does not violate this section if the

REGULATORY AFFAIRS SUBCOMMITTEE

HB 7093 by Rep. Nelson
Establishment of a Clearinghouse Program within Citizens Property Insurance Corporation

AMENDMENT SUMMARY
March 22, 2013

Amendment 1 by Rep. Nelson (strike all): The strike all amendment makes the following major changes to the bill:

- Clarifies policyholders obtaining an offer of insurance through the clearinghouse from an insurer in the private market are not eligible for insurance in Citizens even if their insurance agent does not represent the insurer offering coverage.
- Adds a 21-day waiting period for commercial residential property to be in the clearinghouse for selection.
- Clarifies clearinghouse waiting period for personal residential property is two business days, rather than 48 hours.
- Specifies the clearinghouse will not be used for commercial nonresidential property.
- Clarifies the clearinghouse will only charge insurance agents a fee for use if an offer of coverage is made on the property through the clearinghouse.
- Clarifies Florida licensed insurers and eligible insurers can use a managing general agent or broker to participate in the clearinghouse.

All other provisions of the bill are unchanged by the strike all amendment.

Amendment No. (

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: Regulatory Affairs Committee

Representative Nelson offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (4) of section 626.752, Florida Statutes, is amended to read:

626.752 Exchange of business.—

(4) The foregoing limitations and restrictions shall not be construed and shall not apply to the placing of surplus lines business under the provisions of part VIII or to the activities of Citizens Property Insurance Corporation, or any private alternative under s. 627.3518(8), in placing new and renewal business with authorized insurers in accordance with s. 627.3518.

Section 2. Section 627.3518, Florida Statutes, is created to read:

627.3518 Citizens Property Insurance Corporation

policyholder eligibility clearinghouse program.—

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

(a) "Corporation" means Citizens Property Insurance Corporation.

(b) "Exclusive agent" means any licensed insurance agent that has, by contract, agreed to act exclusively for one company or group of affiliated insurance companies and is disallowed by the provisions of that contract to directly write for any other unaffiliated insurer absent express consent from the company or group of affiliated insurance companies.

(c) "Independent agent" means any licensed insurance agent not described in paragraph (b).

(d) "Program" means the clearinghouse created under this section.

(2) In order to confirm eligibility for coverage with the corporation, and to enhance access of applicants for coverage with the corporation and access at renewal of existing policyholders of the corporation to offers of coverage from authorized insurers and eligible insurers under s. 626.918, the corporation shall establish a clearinghouse program to facilitate the diversion of ineligible applicants and existing policyholders from the corporation into the voluntary insurance market.

(3) The corporation board shall establish the clearinghouse program as an organizational unit within the corporation. The program shall have all the rights and responsibilities in carrying out its duties as a licensed general lines agent, but may not be required to employ or engage

a licensed general lines agent or to maintain an insurance agency license to carry out its activities in the solicitation and placement of insurance coverage. In establishing the program, the corporation may:

(a) Require all new applications, and all policies due for renewal, to be submitted for coverage to the program or any private alternative in order to facilitate obtaining an offer of coverage from an authorized insurer before binding or renewing coverage by the corporation.

(b) Employ or otherwise contract with individuals or other entities for appropriate administrative or professional services to effectuate the plan within the corporation in accordance with the applicable purchasing requirements under s. 627.351.

(c) Enter into contracts with any authorized or eligible insurer to participate in the program and accept an appointment by such insurer.

(d) Provide funds to operate the program and charge a reasonable fee as a percentage of agent commission to offset, or partially offset, the costs of the program. Any fee charged as a percentage of agent commission can only be charged when there is an offer of coverage by an insurer participating in the program. Insurers participating in the program may not be required to pay a fee or use the program for renewals of any policy initially written through the program.

(e) Develop an enhanced application that includes information to assist private insurers in determining whether to make an offer of coverage through the program.

(f) For personal lines residential risks, require, before

approving all new applications for coverage by the corporation, that every application be subject to a period of two business days when any insurer participating in the program may select the application for coverage. The insurer may issue a binder on any policy selected for coverage for a period of at least 30 days but not more than 60 days.

(g) For commercial lines residential risks, require before approving all new applications for coverage by the corporation, that every application be subject to a 21-day period when any insurer participating in the program may select the application for coverage. The insurer may issue a binder on any policy selected for coverage for a period of at least 30 days but not more than 60 days.

(h) Allow eligible insurers to participate and make offers of coverage. An offer of coverage may be made by an eligible insurer only if an authorized insurer does not make an offer of coverage through the program. Eligible insurers may offer premiums and coverages that are more favorable than those offered in the corporation, and agents are not required to compile three declinations from authorized insurers before binding coverage with an eligible insurer.

(4) Any authorized or eligible insurer may participate in the program; however, participation is not mandatory for any insurer. Insurers making offers of coverage to new applicants or renewal policyholders through the program:

(a) May not be required to individually appoint any agent whose customer is underwritten and bound through the program. Notwithstanding s. 626.112, insurers are not required to appoint

any agent on a policy underwritten through the program for as long as that policy remains with the insurer. Insurers may, at their election, appoint any agent whose customer is initially underwritten and bound through the program. In the event an insurer accepts a policy from an agent who is not appointed pursuant to this paragraph, and thereafter elects to accept a policy from such agent, the provisions of s. 626.112 requiring appointment apply to the agent.

(b) Must enter into a limited agency agreement with each agent that is not appointed in accordance with paragraph (a) and whose customer is underwritten and bound through the program.

(c) Must enter into its standard agency agreement with each agent whose customer is underwritten and bound through the program when that agent has been appointed by the insurer pursuant to s. 626.112.

(d) Must comply with s. 627.4133(2).

(e) An authorized or eligible insurer participating in the program may participate through their single designated managing general agent or broker, however the provisions of paragraph (6)(a) regarding ownership, control and use of the expirations still apply.

(5) Notwithstanding s. 627.3517, any applicant for new coverage from the corporation is not eligible for coverage from the corporation, if provided an offer of coverage from an authorized insurer through the program at a premium that is at or below the eligibility threshold established in s. 627.351(6)(c)5.a. and b. Whenever an offer of coverage for a personal lines or commercial lines risk is received for a

policyholder of the corporation at renewal, notwithstanding any other provisions of law, if the offer is no more than 5 percent above the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the corporation. In the event an offer of coverage for a new applicant is received from an insurer, and the premium offered exceeds the eligibility threshold contained in s. 627.351(6)(c)5.a. and b., the applicant or insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation. In the event an offer of coverage for a personal lines or commercial lines risk is received from an insurer at renewal, and the premium offered is more than 5 percent above the corporation's renewal premium for comparable coverage, the insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation. Any applicant for new coverage from the corporation, and policyholders of all policies for renewal, if provided an offer of coverage from an eligible insurer, are not required to accept such offer, and may be accepted for coverage or renewed by the corporation at the applicant's or policyholder's option. Sub-sub-subparagraphs 627.351(6)(c)5.a.(I) and b.(I) do not apply to an offer of coverage from an authorized insurer obtained through the program.

(6) Independent insurance agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Must maintain ownership and the exclusive use of expirations, records, or other written or electronic information

directly related to such applications or renewals written through the corporation or through an insurer participating in the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and (II)(B). Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit such rights of ownership. Such expirations, records, or other written or electronic information may be used to review an application, issue a policy, or for any other purpose necessary for placing such business through the program.

(b) May not be required to be appointed by any insurer participating in the program for policies written solely through the program, notwithstanding the provisions of s. 626.112.

(c) May accept an appointment from any insurer participating in the program.

(d) Must enter into either a standard or limited agency agreement with the insurer, at the insurer's option.

(e) Applicants ineligible for coverage in accordance with paragraph (5) remain ineligible if their independent agent is unwilling or unable to enter into a standard or limited agency agreement with an insurer participating in the program.

(7) Exclusive agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Must maintain ownership and the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and

(II)(B). Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit such rights of ownership. Such expirations, records, or other written or electronic information may be used to review an application, issue a policy, or for any other purpose necessary for placing such business through the program.

(b) May not be required to be appointed by any insurer participating in the program for policies written solely through the program, notwithstanding the provisions of s. 626.112.

(c) Must accept an offer of coverage from any insurer whose limited servicing agreement is approved by that agent's exclusive insurer as eligible to participate in the program with that insurer's exclusive agents. Applicants ineligible for coverage in accordance with paragraph (5) remain ineligible if their exclusive agent is unwilling or unable to enter into a standard or limited agency agreement with an insurer making an offer of coverage to that applicant.

(d) Must enter into only a limited servicing agreement with the insurer making an offer of coverage, and only after the exclusive agent's insurer has approved the limited servicing agreement terms. The exclusive agent's insurer must approve a limited service agreement for the program for any insurer for which it has approved a service agreement for other purposes.

(8) To promote private market initiatives to obtain offers of coverage from authorized and eligible insurers for applicants for coverage by the corporation and the corporation's policyholders on renewal, the corporation shall, by January 1, 2014, publish reasonable standards for the recognition of

private alternatives to the submission of a risk to the program. Such private alternatives to the program may act in a master agency arrangement for producing agents who may be appointed as subagents of the master agency using such private alternatives for the submission of risks to the program. The alternative option permitted under this subsection is an alternative and not a replacement for the program established under this section. Neither the program nor any private entity operating under this subsection may prohibit insurers that elect to participate from participating in more than one program or alternative; however, any insurer participating in the private entity must also participate in the program.

(9) Submission of an application for coverage by the corporation to the program does not constitute the binding of coverage by the corporation, and failure of the program to obtain an offer of coverage by an insurer may not be considered acceptance of coverage of the risk by the corporation.

(10) The program shall not include commercial non-residential policies.

Section 3. This act shall take effect July 1, 2013.

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

Remove everything before the enacting clause and insert:

An act relating to the establishment of a clearinghouse program within the Citizens Property Insurance Corporation; amending s. 626.752, F.S.; exempting Citizens Property Insurance Corporation or

any private alternative from exchange of business limitations and restrictions when placing business with authorized insurers; creating s. 627.3518, F.S.; providing definitions; requiring the creation of a clearinghouse program within the corporation; specifying the purposes of the program; specifying certain rights and responsibilities with respect to the program; authorizing the corporation to take specified actions in establishing the program; providing conditions and requirements relating to the participation of insurers in the program; providing conditions, requirements, limitations, and procedures applicable to offers of coverage with respect to applicants for coverage with the corporation and existing policyholders of the corporation; providing requirements for certain independent insurance agents and exclusive agents with respect to submitting applications for coverage or policies for renewal to the program; requiring the corporation to publish standards by a certain date for recognition of private entities as an alternative option to submitting risks to the program; providing conditions and requirements relating to such alternative options; providing for construction; providing an effective date.