



Regulatory Affairs Committee

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

**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

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- 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


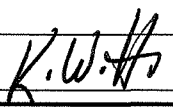
Pursuant to rule 7.12, the filing deadline for amendments to bills on the agenda by a member who is not a member of the committee or subcommittee considering the bill is 6:00 p.m., Thursday, March 21, 2013.

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.

1 A bill to be entitled
 2 An act relating to vehicle permits for the
 3 transportation of alcoholic beverages; amending s.
 4 561.57, F.S.; authorizing a licensed vendor to
 5 transport alcoholic beverages from a distributor's
 6 place of business in vehicles owned or leased by any
 7 person who has been disclosed on a license application
 8 filed by the vendor and approved by the Division of
 9 Alcoholic Beverages and Tobacco of the Department and
 10 Business and Professional Regulation; revising permit
 11 requirements for such vehicles; providing for
 12 cancellation of vehicle permits; authorizing the
 13 inspection and search of such vehicles without a
 14 search warrant; providing requirements for the use and
 15 storage of vehicle permits; amending s. 562.07, F.S.;
 16 revising an exception to the illegal transportation of
 17 beverages; providing an effective date.

18
 19 Be It Enacted by the Legislature of the State of Florida:

20
 21 Section 1. Subsections (3) and (4) of section 561.57,
 22 Florida Statutes, are amended to read:

23 561.57 Deliveries by licensees.—

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

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

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

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

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

70 | 562.07 Illegal transportation of beverages.—It is unlawful
 71 | for alcoholic beverages to be transported in quantities of more
 72 | than 12 bottles except as follows:

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

81 | 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 <i>smw</i>	Hamon <i>A.W.H.</i>

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

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

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 ratings¹³ 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

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 DMS²⁰ 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.

1 A bill to be entitled

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

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

11
 12 Section 1. Paragraph (a) of subsection (4) of section
 13 255.257, Florida Statutes, is amended to read:

14 255.257 Energy management; buildings occupied by state
 15 agencies.—

16 (4) ADOPTION OF STANDARDS.—

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

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

23 255.2575 Energy-efficient and sustainable buildings.—

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

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

38 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

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: 1) Insurance & Banking Subcommittee, 12 Y, 1 N, Bauer, Cooper. Row 2: 2) Regulatory Affairs Committee, Bauer, Hamon.

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.

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.

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.

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.

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

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

46 (3) OTHER CHARGES.-

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

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

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

57 | line-of-credit account;

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

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

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

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

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

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

80 | 9. A delinquency charge of up to \$15 ~~not to exceed \$10~~ for
 81 | each payment in default for at least ~~a period of not less than~~
 82 | 10 days, ~~if~~ the charge is agreed upon, in writing, between the
 83 | parties before imposing the charge.

84 |

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

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

96 516.19 Penalties.—Any person who violates any of the
 97 provisions of s. 516.02, s. 516.031, s. 516.05(3), s. 516.05(6),
 98 or s. 516.07(1)(e) commits ~~is guilty of~~ a misdemeanor of the
 99 first degree, punishable as provided in s. 775.082 or s.
 100 775.083.

101 Section 3. This act shall take effect July 1, 2013, and
 102 applies to all consumer finance loans entered into on or after
 103 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 <i>AK</i>	Hamon <i>K. W. H.</i>

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 Act² 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 exempt⁴ 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

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.

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.0713, F.S.; providing an exemption from public
 4 records requirements for specified proprietary
 5 confidential business information held by an electric
 6 utility that is subject to chapter 119, F.S., in
 7 conjunction with a due diligence review of an electric
 8 project or a project to improve the delivery, cost, or
 9 diversification of fuel or renewable energy resources;
 10 providing for the retention of such information for a
 11 specified time; providing for future review and repeal
 12 of the exemption; providing a statement of public
 13 necessity; providing an effective date.

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

16
 17 Section 1. Subsection (4) is added to section 119.0713,
 18 Florida Statutes, to read:

19 119.0713 Local government agency exemptions from
 20 inspection or copying of public records.—

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

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

- 33 1. Trade secrets.
- 34 2. Internal auditing controls and reports of internal
 35 auditors.
- 36 3. Security measures, systems, or procedures.
- 37 4. Information concerning bids or other contractual data,
 38 the disclosure of which would impair the efforts of the electric
 39 utility to contract for goods or services on favorable terms.
- 40 5. Information relating to competitive interests, the
 41 disclosure of which would impair the competitive business of the
 42 provider of the information.

43 (b) Proprietary confidential business information held by
 44 an electric utility that is subject to chapter 119 in
 45 conjunction with a due diligence review of an electric project
 46 as defined in s. 163.01(3)(d) or a project to improve the
 47 delivery, cost, or diversification of fuel or renewable energy
 48 resources is confidential and exempt from s. 119.07(1) and s.
 49 24(a), Art. I of the State Constitution.

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

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

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

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

85 services.


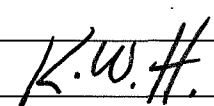
86 (2) Proprietary confidential business information derives
 87 actual or potential independent economic value from not being
 88 generally known to, and not being readily ascertainable by
 89 proper means by, other persons who can derive economic value
 90 from its disclosure or use. An electric utility,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

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

111 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.

1 A bill to be entitled
 2 An act relating to tied house regulation; amending s.
 3 561.42, F.S.; authorizing the Division of Alcoholic
 4 Beverages and Tobacco of the Department of Business
 5 and Professional Regulation to impose administrative
 6 sanctions for violations of specified provisions of
 7 the Beverage Law under certain circumstances;
 8 prohibiting licensees from possessing or using certain
 9 coupons for malt beverages; removing a provision
 10 prohibiting distributors of beer from furnishing
 11 certain coupons to consumers; providing an effective
 12 date.

13
 14 Be It Enacted by the Legislature of the State of Florida:
 15

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

19 561.42 Tied house evil; financial aid and assistance to
 20 vendor by manufacturer, distributor, importer, primary American
 21 source of supply, brand owner or registrant, or any broker,
 22 sales agent, or sales person thereof, prohibited; procedure for
 23 enforcement; exception.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

111 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 <i>JHW</i>	Hamon <i>K. Wolff</i>

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.

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

STORAGE NAME: h4001b.RAC.DOCX

DATE: 3/20/2013

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

³See 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 be 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.
STORAGE NAME: h4001b.RAC.DOCX
DATE: 3/20/2013

1 A bill to be entitled

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

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Sections 526.201, 526.202, 526.203, 526.204,
 15 526.205, 526.206, and 526.207, Florida Statutes, are repealed.

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

18 206.43 Terminal supplier, importer, exporter, blender, and
 19 wholesaler to report to department monthly; deduction.—The taxes
 20 levied and assessed as provided in this part shall be paid to
 21 the department monthly in the following manner:

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

HB 4001

2013


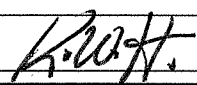
29 for resale at retail or use. All gallons of motor fuel sold
 30 shall be invoiced and shall name the county of destination for
 31 resale at retail or use.

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

36 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

¹http://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.

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 51 percent 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	<u>(\$1,400)</u>	\$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.

1 A bill to be entitled
 2 An act relating to the Department of Agriculture and
 3 Consumer Services; transferring, redesignating, and
 4 amending s. 525.09(1), F.S.; transferring collection
 5 of a motor fuel inspection fee from the Department of
 6 Agriculture and Consumer Services to the Department of
 7 Revenue; amending s. 493.6101, F.S.; revising the
 8 definition of the term "repossession"; amending s.
 9 493.6113, F.S.; revising firearms recertification
 10 training requirements for specified licenses of the
 11 private security, private investigative, and
 12 repossession industries; amending s. 493.6116, F.S.;
 13 deleting a provision prohibiting specified licensees
 14 from sponsoring certain interns; requiring interns to
 15 perform regulated duties within the state; amending s.
 16 493.6118, F.S.; providing additional grounds for
 17 disciplinary action against firearm licensees;
 18 amending s. 493.6120, F.S.; providing criminal
 19 penalties for a person who knowingly obtains a
 20 fraudulent document declaring a licensure applicant to
 21 have completed specified training; amending s.
 22 496.405, F.S.; revising procedures and requirements
 23 with respect to the submission and processing of
 24 registration statements and renewal statements by
 25 charitable organizations and sponsors; amending s.
 26 496.406, F.S.; exempting specified organizations and
 27 sponsors from filing a registration statement;
 28 requiring exempt organizations and sponsors to file

29 | specified documents; providing for applicability;
 30 | amending s. 496.407, F.S.; revising financial
 31 | reporting requirements; amending s. 496.409, F.S.;
 32 | revising registration procedures and requirements for
 33 | professional fundraising consultants; amending s.
 34 | 496.410, F.S.; revising registration procedures and
 35 | requirements for professional solicitors; amending s.
 36 | 496.411, F.S.; revising the information required to be
 37 | displayed on specified solicitation materials;
 38 | amending s. 496.415, F.S.; revising a provision
 39 | prohibiting specified persons from submitting false,
 40 | misleading, or inaccurate information related to a
 41 | solicitation or a charitable or sponsor sales
 42 | promotion; amending s. 496.419, F.S.; revising the
 43 | responsibility of the Department of Agriculture and
 44 | Consumer Services to report specified criminal
 45 | violations; authorizing the department to issue a
 46 | cease and desist order for specified violations;
 47 | amending s. 501.016, F.S.; revising the amount of a
 48 | surety bond, letter of credit, or guaranty agreement
 49 | furnished to the department by a health studio;
 50 | amending s. 501.059, F.S.; prohibiting a telephone
 51 | solicitor from calling certain consumers; amending s.
 52 | 501.603, F.S.; conforming a cross-reference; revising
 53 | definitions; amending s. 501.604, F.S.; revising
 54 | exemptions from specified provisions of the Florida
 55 | Telemarketing Act; amending s. 501.607, F.S.; revising
 56 | salesperson application requirements; amending s.

57 501.608, F.S.; requiring commercial telephone sellers
 58 seeking an affidavit of exemption to provide the
 59 department with certain information at the
 60 department's request; requiring licensees and exempt
 61 persons to display certain documentation; authorizing
 62 the department to issue a cease and desist order and
 63 to order a salesperson to leave an office if the
 64 salesperson is unable to properly display or produce a
 65 license or a receipt of filing of an affidavit of
 66 exemption; amending s. 501.611, F.S.; providing that a
 67 surety bond filed with the department by a commercial
 68 telephone seller remains in force for a specified
 69 period; amending s. 501.615, F.S.; revising the
 70 contract requirements and restrictions on telephonic
 71 sales by commercial telephone sellers; amending s.
 72 501.617, F.S.; authorizing an enforcing authority to
 73 conduct regulatory inspections; amending s. 507.03,
 74 F.S.; requiring moving brokers to provide certain
 75 information at the request of the department; amending
 76 s. 507.04, F.S.; deleting the requirement for a moving
 77 broker to maintain certain liability coverage;
 78 amending s. 507.07, F.S.; prohibiting movers and
 79 moving brokers from entering into certain service
 80 contracts with certain unregistered persons; amending
 81 s. 525.01, F.S.; revising the definition of the term
 82 "alternative fuel"; repealing s. 525.09(2)-(4), F.S.,
 83 relating to the payment and applicability of an
 84 inspection fee for testing and analyzing petroleum

85 fuels; amending s. 525.10, F.S.; deleting a provision
 86 requiring certain moneys to be paid into the State
 87 Treasury before being deposited into a specified trust
 88 fund; amending s. 527.01, F.S.; defining the term
 89 "license year" applicable to certain liquefied
 90 petroleum gas licenses; amending s. 527.0201, F.S.;
 91 revising examination requirements for applicants
 92 seeking certain licenses; revising continuing
 93 education requirements for specified qualifiers;
 94 amending s. 527.03, F.S.; revising the requirements
 95 and procedure for renewal of liquefied petroleum gas
 96 licenses; amending s. 531.415, F.S.; revising a
 97 provision exempting certain petroleum equipment from
 98 specified fees; amending s. 531.61, F.S.; revising a
 99 provision exempting certain devices from permitting
 100 requirements; creating s. 531.67, F.S., and repealing
 101 s. 40, ch. 2009-66, Laws of Florida, relating to
 102 permits for weights and measures instruments or
 103 devices, to provide for codification in the Florida
 104 Statutes of the expiration of specified provisions and
 105 extending the expiration date; amending s. 539.001,
 106 F.S.; revising fingerprinting requirements for a
 107 pawnbroker license application; amending s. 559.802,
 108 F.S.; requiring a specified notice to be filed on a
 109 form adopted by the department; amending s. 559.803,
 110 F.S.; revising the requirements of the mandatory
 111 written disclosure statement provided to purchasers of
 112 business opportunities; repealing s. 559.805, F.S.,

113 relating to mandatory filings and disclosure of
 114 advertisement identification numbers by sellers of
 115 business opportunities; amending s. 559.807, F.S.;
 116 deleting a provision providing for the use of certain
 117 securities requirements relating to selling business
 118 opportunities; amending s. 559.813, F.S.; deleting a
 119 provision authorizing the department to impose
 120 specified penalties for certain violations relating to
 121 selling business opportunities; deleting a provision
 122 authorizing the department to adopt rules; deleting a
 123 provision naming the department as an enforcing
 124 authority; amending s. 559.815, F.S.; conforming
 125 provisions to changes made by the act; amending s.
 126 559.9221, F.S.; revising the membership of the Motor
 127 Vehicle Repair Advisory Council; amending s. 616.242,
 128 F.S.; revising amusement ride insurance coverage
 129 requirements; amending s. 721.20, F.S.; requiring
 130 specified persons who sell timeshare plans to be
 131 licensed as commercial telephone sellers or
 132 salespersons under ch. 501, F.S.; providing an
 133 effective date.

134

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

136

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

141 206.41 State taxes imposed on motor fuel.—

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

144 (h)(1) An additional 0.125 cents per net gallon is levied
145 on all motor fuel for sale or use in this state for the purpose
146 of defraying the expenses incident to inspecting, testing, and
147 analyzing motor fuel petroleum fuels in this state, there shall
148 be paid to the department a charge of one-eighth cent per gallon
149 on all gasoline, kerosene (except when used as aviation turbine
150 fuel), and #1 fuel oil for sale or use in this state. All moneys
151 collected pursuant to this paragraph shall be deposited into the
152 State Treasury. Such moneys shall be distributed monthly into
153 the General Inspection Trust Fund. This inspection fee shall be
154 ~~imposed in the same manner as the motor fuel tax pursuant to s.~~
155 ~~206.41. Payment shall be made on or before the 25th day of each~~
156 ~~month.~~

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

159 493.6101 Definitions.—

160 (22) "Repossession" means the recovery of a motor vehicle
161 as defined under s. 320.01(1), a mobile home as defined in s.
162 320.01(2), a motorboat as defined under s. 327.02, an aircraft
163 as defined in s. 330.27(1), a personal watercraft as defined in
164 s. 327.02, an all-terrain vehicle as defined in s. 316.2074,
165 farm equipment as defined under s. 686.402, or industrial
166 equipment, by an individual who is authorized by the legal
167 owner, lienholder, or lessor to recover, or to collect money
168 payment in lieu of recovery of, that which has been sold or

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

185 Section 3. Paragraph (b) of subsection (3) of section
 186 493.6113, Florida Statutes, is amended to read:

187 493.6113 Renewal application for licensure.—

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

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

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

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

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

224 3. The applicant submits a valid firearm certificate among

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

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

230 493.6116 Sponsorship of interns.—

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

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

245 493.6118 Grounds for disciplinary action.—

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

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

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

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

258 493.6120 Violations; penalty.—

259 (1) Any person who violates any provision of this chapter
 260 except subsection (5) and s. 493.6405 commits a misdemeanor of
 261 the first degree, punishable as provided in s. 775.082 or s.
 262 775.083.

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

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

275 496.405 Registration statements by charitable
 276 organizations and sponsors.—

277 (1)

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

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

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

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

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

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

305 (d) A statement of whether:

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

308 2. The charitable organization or sponsor or any of its

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

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

318 4. The charitable organization or sponsor has voluntarily
 319 entered into an assurance of voluntary compliance in any
 320 jurisdiction or agreement similar to that set forth in s.
 321 496.420, together with a copy of that agreement.

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

336 6. The charitable organization or sponsor or any of its

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

351 ~~7.6.~~ The charitable organization or sponsor or any of its
 352 officers, directors, trustees, or employees has been enjoined
 353 from violating any law relating to a charitable solicitation,
 354 and, if so, the name of such person, the date of the injunction,
 355 and the court issuing the injunction.

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

364 (f) With initial registration only, a statement showing

365 when and where the organization was established and the tax-
 366 exempt status of the organization together with a copy of any
 367 federal tax exemption determination letter. If the charitable
 368 organization or sponsor has not received a federal tax exemption
 369 determination letter at the time of initial registration, a copy
 370 of such determination must be filed with the department within
 371 30 days after receipt of the determination by the charitable
 372 organization or sponsor. If the organization is subsequently
 373 notified by the Internal Revenue Service of any challenge to its
 374 continued entitlement to federal tax exemption, the charitable
 375 organization or sponsor shall notify the department of this fact
 376 within 30 days after receipt.

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

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

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

393 personnel.

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

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

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

401 (7) The department must examine each initial registration
402 statement or annual renewal statement and the supporting
403 documents filed by a charitable organization or sponsor and
404 shall determine whether the registration requirements are
405 satisfied. Within 15 ~~10~~ working days after its receipt of a
406 statement, the department must examine the statement, notify the
407 applicant of any apparent errors or omissions, and request any
408 additional information the department is allowed by law to
409 require. Failure to correct an error or omission or to supply
410 additional information is not grounds for denial of the initial
411 registration or annual renewal statement unless the department
412 has notified the applicant within the 15-working-day ~~10-working-~~
413 ~~day~~ period. The department must approve or deny each statement,
414 or must notify the applicant that the activity for which she or
415 he seeks registration is exempt from the registration
416 requirement, within 15 ~~10~~ working days after receipt of the
417 initial registration or annual renewal statement or the
418 requested additional information or correction of errors or
419 omissions. Any statement that is not approved or denied within
420 15 ~~10~~ working days after receipt of the requested additional

421 information or correction of errors or omissions is approved.
 422 Within 7 working days after receipt of a notification that the
 423 registration requirements are not satisfied, the charitable
 424 organization or sponsor may request a hearing. The hearing must
 425 be held within 7 working days after receipt of the request, and
 426 any recommended order, if one is issued, must be rendered within
 427 3 working days of the hearing. The final order must then be
 428 issued within 2 working days after the recommended order. If a
 429 recommended order is not issued, the final order must be issued
 430 within 5 working days after the hearing. The proceedings must be
 431 conducted in accordance with chapter 120, except that the time
 432 limits and provisions set forth in this subsection prevail to
 433 the extent of any conflict.

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

436 496.406 Exemption from registration.—

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

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

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

449 result of a solicitation.

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

453 (d) A charitable organization or sponsor that has less
454 than \$25,000 in total revenue during a fiscal year if the
455 fundraising activities of such organization or sponsor are
456 carried on by volunteers, members, or officers who are not
457 compensated and no part of the assets or income of such
458 organization or sponsor inures to the benefit of or is paid to
459 any officer or member of such organization or sponsor or to any
460 professional fundraising consultant, professional solicitor, or
461 commercial co-venturer. If a charitable organization or sponsor
462 that has less than \$25,000 in total revenue during a fiscal year
463 actually acquires total revenue equal to or in excess of
464 \$25,000, the charitable organization or sponsor must register
465 with the department as required by s. 496.405 within 30 days
466 after the date the revenue reaches \$25,000.

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

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

477 (b) The tax exempt status of the organization.
 478 (c) The date on which the organization's fiscal year ends.
 479 (d) The names, street addresses, and telephone numbers of
 480 the individuals or officers who have final responsibility for
 481 the custody of the contributions and who will be responsible for
 482 the final distribution of the contributions.

483 (e) A financial statement of support, revenue, and
 484 expenses and a statement of functional expenses that must
 485 include, but not be limited to, expenses in the following
 486 categories: program, management and general, and fundraising.
 487 In lieu of the financial statement, a charitable organization or
 488 sponsor may submit a copy of its Internal Revenue Service Form
 489 990 and all attached schedules or Internal Revenue Service Form
 490 990-EZ and Schedule O.

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

500 (4) Exemption from the registration requirements of s.
 501 496.405 does not limit the applicability of other provisions of
 502 this section to a charitable organization or sponsor.

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

505 | 496.407 Financial report.—

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

512 | Section 10. Subsections (2), (3), and (6) of section
 513 | 496.409, Florida Statutes, are amended to read:

514 | 496.409 Registration and duties of professional
 515 | fundraising consultant.—

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

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

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

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

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

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

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

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

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

566 (3) The application for registration must be accompanied
 567 by a fee of \$300. A professional fundraising consultant which is
 568 a partnership or corporation may register for and pay a single
 569 fee on behalf of all of its partners, members, officers,
 570 directors, agents, and employees. In that case, the names and
 571 street addresses of all the officers, employees, and agents of
 572 the fundraising consultant and all other persons with whom the
 573 fundraising consultant has contracted to work under its
 574 direction must be listed in the application. Each registration
 575 is valid for 1 year ~~or a part of 1 year and expires on March 31~~
 576 ~~of each year.~~ The registration may be renewed ~~on or before March~~
 577 ~~31 of each year~~ for additional 1-year periods upon application
 578 to the department and payment of the registration fee.

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

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

599 Section 11. Subsections (2), (3), (5), and (8) of section
 600 496.410, Florida Statutes, are amended to read:

601 496.410 Registration and duties of professional
 602 solicitors.-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

707 496.411 Disclosure requirements and duties of charitable
 708 organizations and sponsors.—

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

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

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

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

722

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

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

728 496.415 Prohibited acts.—It is unlawful for any person in

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

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

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

739 496.419 Powers of the department.—

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

743 (10) A finding of a violation of s. 496.415(3), (5), (6),
 744 (10), (12), (13), or (14) constitutes an immediate threat to the
 745 public health, safety, and welfare and is sufficient grounds for
 746 the department to issue an immediate order to cease and desist
 747 all solicitation activities. The order shall act as an immediate
 748 final order under s. 120.569(2)(n) and shall remain in effect
 749 until the violation has been remedied pursuant to this chapter.

750 Section 15. Subsections (1), (2), and (4) of section
 751 501.016, Florida Statutes, are amended to read:

752 501.016 Health studios; security requirements.—Each health
 753 studio that sells contracts for health studio services shall
 754 meet the following requirements:

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

757 do business in this state. The principal sum of the bond shall
 758 be \$25,000 ~~\$50,000~~, and the bond, when required, shall be
 759 obtained before a business tax receipt may be issued under
 760 chapter 205. Upon issuance of a business tax receipt, the
 761 licensing authority shall immediately notify the department of
 762 such issuance in a manner established by the department by rule.
 763 The bond shall be in favor of the state for the benefit of any
 764 person injured as a result of a violation of ss. 501.012-
 765 501.019. The aggregate liability of the surety to all persons
 766 for all breaches of the conditions of the bonds provided herein
 767 shall in no event exceed the amount of the bond. The original
 768 surety bond required by this section shall be filed with the
 769 department.

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

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

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

776
 777 The original letter of credit or certificate of deposit
 778 submitted in lieu of the bond shall be filed with the
 779 department. The department shall decide whether the security
 780 furnished in lieu of bond by the health studio is in compliance
 781 with the requirements of this section.

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

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

797 Section 16. Subsections (5) through (10) of section
 798 501.059, Florida Statutes, are renumbered as subsections (6)
 799 through (11), respectively, and a new subsection (5) is added to
 800 that section to read:

801 501.059 Telephone solicitation.—

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

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

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

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

812 501.603 Definitions.—As used in this part, unless the

813 context otherwise requires, the term:

814 (1) "Commercial telephone solicitation" means:

815 (a) An unsolicited telephone call to a person initiated by
 816 a commercial telephone seller or salesperson, or an automated
 817 dialing machine used in accordance with the provisions of s.
 818 501.059(8) ~~501.059(7)~~ for the purpose of inducing the person to
 819 purchase or invest in consumer goods or services;

820 (b) Other communication with a person where:

- 821 1. A gift, award, or prize is offered; or
- 822 2. A telephone call response is invited; and
- 823 3. The salesperson intends to complete a sale or enter
 824 into an agreement to purchase or invest in consumer goods or
 825 services during the course of the telephone call; or

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

830

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

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

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

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

851 | 501.604 Exemptions.—The provisions of this part, except
 852 | ss. 501.608 and 501.616(6) and (7), do not apply to:

853 | (4) A ~~Any~~ licensed securities, commodities, or investment
 854 | broker, dealer, or investment adviser, when soliciting within
 855 | the scope of his or her license, or a ~~any~~ licensed associated
 856 | person of a securities, commodities, or investment broker,
 857 | dealer, or investment adviser, when soliciting within the scope
 858 | of his or her license. As used in this section, "licensed
 859 | securities, commodities, or investment broker, dealer, or
 860 | investment adviser" means a person subject to license or
 861 | registration as such by the Securities and Exchange Commission,
 862 | by the Financial Industry Regulatory Authority National
 863 | ~~Association of Securities Dealers~~ or other self-regulatory
 864 | organization as defined by the Securities Exchange Act of 1934,
 865 | 15 U.S.C. s. 781, or by an official or agency of this state or
 866 | of any state of the United States. As used in this section,
 867 | "licensed associated person of a securities, commodities, or
 868 | investment broker, dealer, or investment adviser" means an ~~any~~

869 associated person registered or licensed by the Financial
 870 Industry Regulatory Authority ~~National Association of Securities~~
 871 ~~Dealers~~ or other self-regulatory organization as defined by the
 872 Securities Exchange Act of 1934, 15 U.S.C. s. 781, or by an
 873 official or agency of this state or of any state of the United
 874 States.

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

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

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

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

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

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

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

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

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

916 501.607 Licensure of salespersons.—

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

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

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

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

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

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

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

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

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

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

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

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

969 501.608 License or affidavit of exemption; occupational
 970 license.—

971 (1)

972 (b) Any commercial telephone seller claiming to be exempt
 973 from the act under s. 501.604(2), (3), (5), (6), (9), (10),
 974 (11), (12), (17), (21), (22), (24), or (26) must file with the
 975 department a notarized affidavit of exemption. The affidavit of
 976 exemption must be on forms prescribed by the department and must
 977 require the name of the commercial telephone seller, the name of
 978 the business, and the business address. At the request of the
 979 department, the commercial telephone seller shall provide sales
 980 scripts, contracts, and other documentation as needed to verify

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

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

995 (3) Failure to obtain or display a license or a receipt of
 996 filing of an ~~copy of the~~ affidavit of exemption is sufficient
 997 grounds for the department to issue an immediate cease and
 998 desist order, which shall act as an immediate final order under
 999 s. 120.569(2)(n). The order shall ~~may~~ remain in effect until the
 1000 commercial telephone seller or a person claiming to be exempt
 1001 shows the authorities that he or she is properly licensed or
 1002 exempt. The department may order the business to cease
 1003 operations and shall order the phones to be shut off. Failure of
 1004 a salesperson to display a license or a receipt of filing of an
 1005 affidavit of exemption may result in the salesperson being
 1006 summarily ordered by the department to leave the office until he
 1007 or she can produce a license or a receipt of filing of an
 1008 affidavit of exemption for the department.

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1009 Section 21. Subsection (3) of section 501.611, Florida
 1010 Statutes, is amended to read:

1011 501.611 Security.—

1012 (3) The bond shall be posted with the department and shall
 1013 remain in force throughout the period of licensure with the
 1014 department.

1015 Section 22. Subsection (12) of section 501.615, Florida
 1016 Statutes, is amended to read:

1017 501.615 Written contract; cancellation; refund.—

1018 (12) Exempt from the requirements of subsections (1)-(5)
 1019 is any sale in which the consumer is given a right to a full
 1020 refund for the return of undamaged and unused goods or a
 1021 cancellation of services notice is given to the seller, within 7
 1022 days after receipt of the goods or services by the consumer, and
 1023 the seller shall process the refund within 30 days after receipt
 1024 of the returned merchandise by the consumer. A commercial
 1025 telephone seller or salesperson engaged in activity regulated by
 1026 chapter 721 must comply with s. 721.205.

1027 Section 23. Subsection (1) of section 501.617, Florida
 1028 Statutes, is amended to read:

1029 501.617 Investigative powers of enforcing authority.—

1030 (1) If, by her or his own inquiries or as a result of
 1031 complaints, the enforcing authority has reason to believe that a
 1032 person has engaged in, or is engaging in, an act or practice
 1033 that violates ~~the provisions of~~ this part, she or he may
 1034 administer oaths and affirmations, subpoena witnesses or matter,
 1035 conduct regulatory inspections, and collect evidence. Within 10
 1036 days after the service of a subpoena or at any time before the

1037 return date specified therein, whichever is longer, the party
 1038 served may file in the circuit court in the county in which she
 1039 or he resides or in which she or he transacts business and serve
 1040 upon the enforcing authority a petition for an order modifying
 1041 or setting aside the subpoena. The petitioner may raise any
 1042 objection or privilege that ~~which~~ would be available under this
 1043 part or upon service of such subpoena in a civil action. The
 1044 subpoena shall inform the party served of her or his rights
 1045 under this subsection.

1046 Section 24. Subsection (9) of section 507.03, Florida
 1047 Statutes, is amended, and subsection (10) is added to that
 1048 section, to read:

1049 507.03 Registration.—

1050 (9) Each mover ~~and moving broker~~ shall provide evidence of
 1051 the current and valid insurance or alternative coverages
 1052 required under s. 507.04.

1053 (10) At the request of the department, each moving broker
 1054 shall provide a complete list of the movers that the moving
 1055 broker has contracted or is affiliated with, advertises on
 1056 behalf of, arranges moves for, or refers shippers to, including
 1057 each mover's complete name, address, telephone number, and e-
 1058 mail address and the name of each mover's owner or other
 1059 principal.

1060 Section 25. Paragraph (b) of subsection (1) of section
 1061 507.04, Florida Statutes, is amended to read:

1062 507.04 Required insurance coverages; liability
 1063 limitations; valuation coverage.—

1064 (1) LIABILITY INSURANCE.—

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1065 (b) A mover that operates two or fewer vehicles, in lieu
 1066 of maintaining the liability insurance coverage required under
 1067 paragraph (a), ~~may, and each moving broker must,~~ maintain one of
 1068 the following alternative coverages:

1069 1. A performance bond in the amount of \$25,000, for which
 1070 the surety of the bond must be a surety company authorized to
 1071 conduct business in this state; or

1072 2. A certificate of deposit in a Florida banking
 1073 institution in the amount of \$25,000.

1074
 1075 The original bond or certificate of deposit must be filed with
 1076 the department and must designate the department as the sole
 1077 beneficiary. The department must use the bond or certificate of
 1078 deposit exclusively for the payment of claims to consumers who
 1079 are injured by the fraud, misrepresentation, breach of contract,
 1080 misfeasance, malfeasance, or financial failure of the mover ~~or~~
 1081 ~~moving broker~~ or by a violation of this chapter by the mover ~~or~~
 1082 ~~broker~~. Liability for these injuries may be determined in an
 1083 administrative proceeding of the department or through a civil
 1084 action in a court of competent jurisdiction. However, claims
 1085 against the bond or certificate of deposit must only be paid, in
 1086 amounts not to exceed the determined liability for these
 1087 injuries, by order of the department in an administrative
 1088 proceeding. The bond or certificate of deposit is subject to
 1089 successive claims, but the aggregate amount of these claims may
 1090 not exceed the amount of the bond or certificate of deposit.

1091 Section 26. Section 507.07, Florida Statutes, is amended
 1092 to read:

1093 507.07 Violations.—It is a violation of this chapter ~~to~~:

1094 (1) To conduct business as a mover or moving broker, or

1095 advertise to engage in the business of moving or offering to

1096 move, without being registered with the department.

1097 (2) To knowingly make any false statement, representation,

1098 or certification in any application, document, or record

1099 required to be submitted or retained under this chapter.

1100 (3) To misrepresent or deceptively represent:

1101 (a) The contract for services, bill of lading, or

1102 inventory of household goods for the move estimated.

1103 (b) The timeframe or schedule for delivery or storage of

1104 household goods estimated.

1105 (c) The price, size, nature, extent, qualities, or

1106 characteristics of accessorial or moving services offered.

1107 (d) The nature or extent of other goods, services, or

1108 amenities offered.

1109 (e) A shipper's rights, privileges, or benefits.

1110 (4) To fail to honor and comply with all provisions of the

1111 contract for services or bill of lading regarding the

1112 purchaser's rights, benefits, and privileges thereunder.

1113 (5) To withhold delivery of household goods or in any way

1114 hold goods in storage against the expressed wishes of the

1115 shipper if payment has been made as delineated in the estimate

1116 or contract for services.

1117 (6)(a) To include in any contract any provision purporting

1118 to waive or limit any right or benefit provided to shippers

1119 under this chapter.

1120 (b) To seek or solicit a waiver or acceptance of

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1121 limitation from a shipper concerning rights or benefits provided
 1122 under this chapter.

1123 (c) To use a local mailing address, registration facility,
 1124 drop box, or answering service in the promotion, advertising,
 1125 solicitation, or sale of contracts, unless the mover's, and, if
 1126 applicable, the moving broker's, fixed business address is
 1127 clearly disclosed during any telephone solicitation and is
 1128 prominently and conspicuously disclosed on all solicitation
 1129 materials and on the contract.

1130 (d) To commit any other act of fraud, misrepresentation,
 1131 or failure to disclose a material fact.

1132 (e) To refuse or fail, or for any of the mover's or
 1133 broker's principal officers to refuse or fail, after notice, to
 1134 produce any document or record or disclose any information
 1135 required to be produced or disclosed.

1136 (f) To knowingly make a false statement in response to any
 1137 request or investigation by the department, the Department of
 1138 Legal Affairs, or the state attorney.

1139 (7) For a moving broker to enter into a contract or
 1140 agreement for moving, loading, shipping, transporting, or
 1141 unloading services with a mover who is not registered with the
 1142 department pursuant to this chapter.

1143 (8) For a mover to enter into a contract or agreement for
 1144 moving, loading, shipping, transporting, or unloading services
 1145 with a moving broker who is not registered with the department
 1146 pursuant to this chapter.

1147 Section 27. Paragraph (c) of subsection (1) of section
 1148 525.01, Florida Statutes, is amended to read:

1149 525.01 Gasoline and oil to be inspected.—
 1150 (1) For the purpose of this chapter:
 1151 (c) "Alternative fuel" means:
 1152 1. Methanol, denatured ethanol, or other alcohols;
 1153 2. Mixtures of gasoline or other fuels with methanol,
 1154 denatured ethanol, or other alcohols ~~containing 85 percent or~~
 1155 ~~more by volume of methanol, denatured ethanol, or other alcohols~~
 1156 ~~with gasoline or other fuels, or such other percentage, but not~~
 1157 ~~less than 70 percent, as determined by the department by rule,~~
 1158 ~~to provide for requirements relating to cold start, safety, or~~
 1159 ~~vehicle functions;~~
 1160 3. Hydrogen;
 1161 4. Coal-derived liquid fuels; and
 1162 5. Fuels, other than alcohol, derived from biological
 1163 materials.
 1164 Section 28. Subsections (2), (3), and (4) of section
 1165 525.09, Florida Statutes, are repealed.
 1166 Section 29. Section 525.10, Florida Statutes, is amended
 1167 to read:
 1168 525.10 ~~Moneys to be paid into State Treasury;~~ Payment of
 1169 expenses. ~~All moneys payable under this chapter shall be payable~~
 1170 ~~to the department and shall be paid by it into the State~~
 1171 ~~Treasury monthly to be deposited into the General Inspection~~
 1172 ~~Trust Fund.~~ All expenses incurred in the enforcement of this
 1173 chapter and other inspection laws of this state for which fees
 1174 are collected, including acquiring equipment and other property,
 1175 shall be paid from the General Inspection Trust Fund. No money
 1176 shall be paid to any inspector or employee created under this

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1177 chapter except from the funds collected from the administration
 1178 of this chapter.

1179 Section 30. Subsection (20) is added to section 527.01,
 1180 Florida Statutes, to read:

1181 527.01 Definitions.—As used in this chapter:

1182 (20) "License year" means the period from September 1
 1183 through the following August 31, or April 1 through the
 1184 following March 31, depending upon the type of license.

1185 Section 31. Subsections (1) and (3) and paragraphs (a) and
 1186 (c) of subsection (5) of section 527.0201, Florida Statutes, are
 1187 amended to read:

1188 527.0201 Qualifiers; master qualifiers; examinations.—

1189 (1) In addition to the requirements of s. 527.02, any
 1190 person applying for a license to engage in the activities of a
 1191 pipeline system operator, category I liquefied petroleum gas
 1192 dealer, category II liquefied petroleum gas dispenser, category
 1193 IV liquefied petroleum gas dispenser and recreational vehicle
 1194 servicer, category V liquefied petroleum gases dealer for
 1195 industrial uses only, LP gas installer, specialty installer,
 1196 requalifier ~~requalification~~ of cylinders, or fabricator,
 1197 repairer, and tester of vehicles and cargo tanks must prove
 1198 competency by passing a written examination administered by the
 1199 department or its agent with a grade of 75 percent or above in
 1200 each area tested. Each applicant for examination shall submit a
 1201 \$20 nonrefundable fee. The department shall by rule specify the
 1202 general areas of competency to be covered by each examination
 1203 and the relative weight to be assigned in grading each area
 1204 tested.

1205 (3) Qualifier cards issued to category I liquefied
 1206 petroleum gas dealers and liquefied petroleum gas installers
 1207 shall expire 3 years after the date of issuance. All category I
 1208 liquefied petroleum gas dealer qualifiers and liquefied
 1209 petroleum gas installer qualifiers holding a valid qualifier
 1210 card upon the effective date of this act shall retain their
 1211 qualifier status until July 1, 2003, and may sit for the master
 1212 qualifier examination at any time during that time period. All
 1213 such category I liquefied petroleum gas dealer qualifiers and
 1214 liquefied petroleum gas installer qualifiers may renew their
 1215 qualification on or before July 1, 2003, upon application to the
 1216 department, payment of a \$20 renewal fee, and documentation of
 1217 the completion of a minimum of 16 ~~12~~ hours approved continuing
 1218 education courses, as defined by department rule, during the
 1219 previous 3-year period. Applications for renewal must be made 30
 1220 calendar days before ~~prior to~~ expiration. Persons failing to
 1221 renew before ~~prior to~~ the expiration date must reapply and take
 1222 a qualifier competency examination in order to reestablish
 1223 category I liquefied petroleum gas dealer qualifier and
 1224 liquefied petroleum gas installer qualifier status. If a
 1225 category I liquefied petroleum gas qualifier or liquefied
 1226 petroleum gas installer qualifier becomes a master qualifier at
 1227 any time during the effective date of the qualifier card, the
 1228 card shall remain in effect until expiration of the master
 1229 qualifier certification.

1230 (5) In addition to all other licensing requirements, each
 1231 category I liquefied petroleum gas dealer and liquefied
 1232 petroleum gas installer must, at the time of application for

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1233 licensure, identify to the department one master qualifier who
 1234 is a full-time employee at the licensed location. This person
 1235 shall be a manager, owner, or otherwise primarily responsible
 1236 for overseeing the operations of the licensed location and must
 1237 provide documentation to the department as provided by rule. The
 1238 master qualifier requirement shall be in addition to the
 1239 requirements of subsection (1).

1240 (a) In order to apply for certification as a master
 1241 qualifier, each applicant must be a category I liquefied
 1242 petroleum gas dealer qualifier or liquefied petroleum gas
 1243 installer qualifier, must be employed by a licensed category I
 1244 liquefied petroleum gas dealer, liquefied petroleum gas
 1245 installer, or applicant for such license, must provide
 1246 documentation of a minimum of 1 year's work experience in the
 1247 gas industry, and must pass a master qualifier competency
 1248 examination. Master qualifier examinations shall be based on
 1249 Florida's laws, rules, and adopted codes governing liquefied
 1250 petroleum gas safety, general industry safety standards, and
 1251 administrative procedures. The applicant ~~examination~~ must ~~be~~
 1252 successfully pass the examination ~~completed by the applicant~~
 1253 with a grade of 75 percent or above ~~more~~. Each applicant for
 1254 master qualifier status must ~~shall~~ submit to the department a
 1255 nonrefundable \$30 examination fee before ~~prior to~~ the
 1256 examination.

1257 (c) Master qualifier status shall expire 3 years after the
 1258 date of issuance of the certificate and may be renewed by
 1259 submission to the department of documentation of completion of
 1260 at least 16 ~~12~~ hours of approved continuing education courses

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1261 during the 3-year period; proof of employment with a licensed
 1262 category I liquefied petroleum gas dealer, liquefied petroleum
 1263 gas installer, or applicant; and a \$30 certificate renewal fee.
 1264 The department shall define, by rule, approved courses of
 1265 continuing education.

1266 Section 32. Section 527.03, Florida Statutes, is amended
 1267 to read:

1268 527.03 Annual renewal of license.—All licenses required
 1269 under this chapter shall be renewed annually subject to the
 1270 license fees prescribed in s. 527.02. All licenses, except
 1271 Category III Liquefied Petroleum Gas Cylinder Exchange Unit
 1272 Operator licenses and Dealer in Appliances and Equipment for Use
 1273 of Liquefied Petroleum Gas licenses, shall be renewed for the
 1274 period beginning September 1 and shall expire on the following
 1275 August 31 unless sooner suspended, revoked, or otherwise
 1276 terminated. Category III Liquefied Petroleum Gas Cylinder
 1277 Exchange Unit Operator licenses and Dealer in Appliances and
 1278 Equipment for Use of Liquefied Petroleum Gas licenses shall be
 1279 renewed for the period beginning April 1 and shall expire on the
 1280 following March 31 unless sooner suspended, revoked, or
 1281 otherwise terminated. Any license allowed to expire ~~on August 31~~
 1282 shall become inoperative because of failure to renew. The fee
 1283 for restoration of a license is equal to the original license
 1284 fee and must be paid before the licensee may resume operations.

1285 Section 33. Subsection (3) of section 531.415, Florida
 1286 Statutes, is amended to read:

1287 531.415 Fees.—

1288 (3) Any ~~petroleum product taxed under s. 525.09 and any~~

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1289 petroleum equipment used to measure petroleum fuel, as defined
 1290 in s. 525.01, owned by a person licensed pursuant to chapter 206
 1291 is exempt from the fees established in this section.

1292 Section 34. Subsection (3) of section 531.61, Florida
 1293 Statutes, is amended to read:

1294 531.61 Exemptions from permit requirement.—Commercial
 1295 weights or measures instruments or devices are exempt from the
 1296 permit requirements of ss. 531.60-531.66 if:

1297 (3) The device is used exclusively for measuring aviation
 1298 fuel or petroleum products inspected ~~taxed~~ under chapter 525 s-
 1299 525.09.

1300 Section 35. Section 531.67, Florida Statutes, is created
 1301 to read:

1302 531.67 Expiration of sections.—Sections 531.60, 531.61,
 1303 531.62, 531.63, 531.64, 531.65, and 531.66 shall expire July 1,
 1304 2020.

1305 Section 36. Section 40 of chapter 2009-66, Laws of
 1306 Florida, is repealed.

1307 Section 37. Paragraph (c) of subsection (5) of section
 1308 539.001, Florida Statutes, is amended to read:

1309 539.001 The Florida Pawnbroking Act.—

1310 (5) APPLICATION FOR LICENSE.—

1311 (c) Each initial application for a license must be
 1312 accompanied by a complete set of fingerprints taken by an
 1313 authorized law enforcement officer or a fingerprinting service
 1314 provider approved by the Department of Law Enforcement, \$300 for
 1315 the first year's license fee, and the actual cost to the agency
 1316 for fingerprint analysis for each person subject to the

1317 | eligibility requirements. The agency shall submit the
 1318 | fingerprints to the Department of Law Enforcement for state
 1319 | processing, and the Department of Law Enforcement shall forward
 1320 | the fingerprints to the Federal Bureau of Investigation for a
 1321 | national criminal history check. These fees and costs are not
 1322 | refundable.

1323 | Section 38. Paragraph (b) of subsection (1) of section
 1324 | 559.802, Florida Statutes, is amended to read:

1325 | 559.802 Franchises; exemption.—

1326 | (1) The sale of a franchise is exempt from this part if:

1327 | (b) Before offering for sale or selling a franchise to be
 1328 | located in this state or to a resident of this state, the
 1329 | franchisor files a notice with the department, on a form adopted
 1330 | by the department, stating that the franchisor is in substantial
 1331 | compliance with the requirements of the Federal Trade Commission
 1332 | rule, and pays a fee in an amount set by the department, not
 1333 | exceeding \$100.

1334 | Section 39. Section 559.803, Florida Statutes, is amended
 1335 | to read:

1336 | 559.803 Disclosure statement.—At least 3 working days
 1337 | before ~~prior to~~ the time the purchaser signs a business
 1338 | opportunity contract, or at least 3 working days before ~~prior to~~
 1339 | the receipt of any consideration by the seller, whichever occurs
 1340 | first, the seller must provide the prospective purchaser a
 1341 | written document, the cover sheet of which is entitled in at
 1342 | least 12-point boldfaced capital letters "DISCLOSURES REQUIRED
 1343 | BY FLORIDA LAW." Under this title shall appear the following
 1344 | statement in at least 10-point type: "The State of Florida has

1345 not reviewed and does not approve, recommend, endorse, or
 1346 sponsor any business opportunity. The information contained in
 1347 this disclosure has not been verified by the state. If you have
 1348 any questions about this investment, see an attorney before you
 1349 sign a contract or agreement." Nothing except the title and
 1350 required statement shall appear on the cover sheet. Immediately
 1351 following the cover sheet, the seller must provide an index page
 1352 that briefly lists the contents of the disclosure document as
 1353 required in this section and any pages on which the prospective
 1354 purchaser can find each required disclosure. At the top of the
 1355 index page, the following statement must appear in at least 10-
 1356 point type: "The State of Florida requires sellers of business
 1357 opportunities to disclose certain information to prospective
 1358 purchasers. This index is provided to help you locate this
 1359 information." If the index contains other information not
 1360 required by this section, the seller shall place a designation
 1361 beside each of the disclosures required by this section and
 1362 provide an explanation of the designation at the end of the
 1363 statement at the top of the index page. The disclosure document
 1364 shall contain the following information:

1365 (1) The name of the seller; whether the seller is doing
 1366 business as an individual, partnership, corporation, or other
 1367 business entity; the names under which the seller has done
 1368 business; and the name of any parent or affiliated company that
 1369 will engage in business transactions with the purchasers or who
 1370 takes responsibility for statements made by the seller.

1371 (2) The names, addresses, and titles of the seller's
 1372 officers, directors, trustees, general partners, general

1373 managers, and principal executives and of any other persons
 1374 charged with the responsibility for the seller's business
 1375 activities relating to the sale of business opportunities.

1376 (3) The length of time the seller has:

1377 (a) Sold business opportunities; or

1378 (b) Sold business opportunities involving the products,
 1379 equipment, supplies, or services currently being offered to the
 1380 purchaser.

1381 (4) A full and detailed description of the actual services
 1382 that the business opportunity seller undertakes to perform for
 1383 the purchaser.

1384 (5) A copy of a current ~~(not older than 13 months)~~
 1385 financial statement of the seller that is no older than 13
 1386 months, updated to reflect material changes in the seller's
 1387 financial condition.

1388 (6) If training is promised by the seller, a complete
 1389 description of the training, the length of the training, and the
 1390 cost or incidental expenses of that training, including the
 1391 ~~which~~ cost or expense the purchaser will be required to incur.

1392 (7) If the seller promises services to be performed in
 1393 connection with the placement of the equipment, product, or
 1394 supplies at a location, the full nature of those services as
 1395 well as the nature of the agreements to be made with the owners
 1396 or managers of the location where the purchaser's equipment,
 1397 product, or supplies will be placed.

1398 (8) If the business opportunity seller is required to
 1399 secure a bond, guaranteed letter of credit, or certificate of
 1400 deposit pursuant to s. 559.807, either of the following

1401 statements:

1402 (a) "As required by Florida law, the seller has secured a
 1403 bond issued by, a surety company authorized to do business
 1404 in this state. Before signing a contract to purchase this
 1405 business opportunity, you should confirm the bond's status with
 1406 the surety company."; or

1407 (b) "As required by Florida law, the seller has
 1408 established a guaranteed letter of credit or certificate of
 1409 deposit ...(number of account)... with ...(name and address of
 1410 bank or savings institution).... Before signing a contract to
 1411 purchase this business opportunity, you should confirm with the
 1412 bank or savings institution the current status of the guaranteed
 1413 letter of credit or certificate of deposit."

1414 (9) The following statement: "If the seller fails to
 1415 deliver the product, equipment, or supplies necessary to begin
 1416 substantial operation of the business within 45 days of the
 1417 delivery date stated in your contract, you may notify the seller
 1418 in writing and cancel your contract."

1419 (10) If the seller makes any statement concerning sales or
 1420 earnings or a range of sales or earnings that may be made
 1421 through this business opportunity, a statement disclosing:

1422 (a) The total number of purchasers of business
 1423 opportunities involving the product, equipment, supplies, or
 1424 services being offered who have actually achieved sales of or
 1425 received earnings in the amount or range specified within 3
 1426 years prior to the date of the disclosure statement.

1427 (b) The total number of purchasers of business
 1428 opportunities involving the product, equipment, supplies, or

1429 services being offered within 3 years before ~~prior to~~ the date
 1430 of the disclosure statement.

1431 (11) (a) The total number of persons who purchased the
 1432 business opportunity being offered by the seller within the past
 1433 3 years.

1434 (b) The names, addresses, and telephone numbers of the 10
 1435 persons who previously purchased the business opportunity from
 1436 the seller and who are geographically closest to the potential
 1437 purchaser.

1438 (12) A statement disclosing who, if any, of the persons
 1439 listed in subsections (1) and (2):

1440 (a) Has, at any time during the previous 10 fiscal years,
 1441 regardless of adjudication, been convicted of, or found guilty
 1442 of, or pled guilty or nolo contendere to, or has been
 1443 incarcerated within the last 10 years as a result of having
 1444 previously been convicted of, or found guilty of, or pled guilty
 1445 or nolo contendere to, a felony or a crime involving fraud,
 1446 theft, larceny, violation of any franchise or business
 1447 opportunity law or unfair or deceptive practices law,
 1448 embezzlement, fraudulent conversion, misappropriation of
 1449 property, or restraint of trade.

1450 (b) Has, at any time during the previous 7 fiscal years,
 1451 been held liable in a civil action resulting in a final judgment
 1452 or has settled out of court any civil action or is a party to
 1453 any civil action involving allegations of fraud (including
 1454 violation of any franchise or business opportunity law or unfair
 1455 or deceptive practices law), embezzlement, fraudulent
 1456 conversion, misappropriation of property, or restraint of trade

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1457 or any civil action which was brought by a present or former
 1458 franchisee or franchisees and which involves or involved the
 1459 franchise relationship. However, only material individual civil
 1460 actions need be so listed pursuant to this paragraph, including
 1461 any group of civil actions which, irrespective of the
 1462 materiality of any single such action, in the aggregate is
 1463 material.

1464 (c) Is subject to any currently effective state or federal
 1465 agency or court injunctive or restrictive order, or has been
 1466 subject to any administrative action in which an order by a
 1467 governmental agency was rendered, or is a party to a proceeding
 1468 currently pending in which such order is sought, relating to or
 1469 affecting business opportunities activities or the business
 1470 opportunity seller-purchaser relationship or involving fraud,
 1471 ~~including violation of any franchise or business opportunity~~
 1472 ~~law or unfair or deceptive practices law~~, embezzlement,
 1473 fraudulent conversion, misappropriation of property, or
 1474 restraint of trade.

1475
 1476 Such statement shall set forth the identity and location of the
 1477 court or agency; the date of conviction, judgment, or decision;
 1478 the penalty imposed; the damages assessed; the terms of
 1479 settlement or the terms of the order; and the date, nature, and
 1480 issuer of each such order or ruling. A business opportunity
 1481 seller may include a summary opinion of counsel as to any
 1482 pending litigation, but only if counsel's consent to the use of
 1483 such opinion is included in the disclosure statement.

1484 (13) A statement disclosing who, if any, of the persons

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1485 listed in subsections (1) and (2) at any time during the
 1486 previous 7 fiscal years has:
 1487 (a) Filed in bankruptcy.
 1488 (b) Been adjudged bankrupt.
 1489 (c) Been reorganized due to insolvency.
 1490 (d) Been a principal, director, executive officer, or
 1491 partner of any other person that has so filed or was so adjudged
 1492 or reorganized during or within 1 year after the period that
 1493 such person held such position in relation to such other person.
 1494 If so, the name and location of the person having so filed or
 1495 having been so adjudged or reorganized, the date thereof, and
 1496 any other material facts relating thereto shall be set forth.

1497 (14) A copy of the business opportunity contract which the
 1498 seller uses as a matter of course and which is to be presented
 1499 to the purchaser at closing.

1500

1501 ~~Should any seller of business opportunities prepare a disclosure~~
 1502 ~~statement pursuant to 16 C.F.R. ss. 436.1 et seq., a Trade~~
 1503 ~~Regulation Rule of the Federal Trade Commission regarding~~
 1504 ~~Disclosure Requirements and Prohibitions Concerning Franchising~~
 1505 ~~and Business Opportunity Ventures, the seller may file that~~
 1506 ~~disclosure statement in lieu of the document required pursuant~~
 1507 ~~to this section. Should the seller be required pursuant to 16~~
 1508 ~~C.F.R. to prepare any other documents to be presented to the~~
 1509 ~~prospective purchaser, those documents shall also be filed with~~
 1510 ~~the department.~~

1511 Section 40. Section 559.805, Florida Statutes, is
 1512 repealed.

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1513 Section 41. Section 559.807, Florida Statutes, is amended
 1514 to read:

1515 559.807 Bond or other security required.—

1516 ~~(1)~~ If the business opportunity seller makes any
 1517 representations set forth in s. 559.801(1)(a)3., the seller must
 1518 either have obtained a surety bond issued by a surety company
 1519 authorized to do business in this state or have established a
 1520 certificate of deposit or a guaranteed letter of credit with a
 1521 licensed and insured bank or savings institution located in the
 1522 state. The amount of the bond, certificate of deposit, or
 1523 guaranteed letter of credit shall be an amount not less than
 1524 \$50,000.

1525 ~~(2) The bond, certificate of deposit, or guaranteed letter~~
 1526 ~~of credit shall be in the favor of the department for the use~~
 1527 ~~and benefit of any person who is injured by the fraud,~~
 1528 ~~misrepresentation, breach of contract, financial failure, or~~
 1529 ~~violation of any provision of this part by the seller. Such~~
 1530 ~~liability may be enforced by filing an action at law in a court~~
 1531 ~~of competent jurisdiction without precluding enforcement in an~~
 1532 ~~administrative action pursuant to chapter 120. However, the~~
 1533 ~~bond, certificate of deposit, or guaranteed letter of credit~~
 1534 ~~shall be amenable and enforceable only by and through~~
 1535 ~~administrative proceedings before the department. A money~~
 1536 ~~judgment resulting from an action at law, less any award for~~
 1537 ~~costs and attorney's fees, shall be prima facie evidence~~
 1538 ~~sufficient to establish the value of the claim in an~~
 1539 ~~administrative action. It is the intent of the Legislature that~~
 1540 ~~such bond, certificate of deposit, or guaranteed letter of~~

1541 ~~credit shall be applicable and liable only for payment of claims~~
 1542 ~~duly adjudicated by order of the department. The bond,~~
 1543 ~~certificate of deposit, or guaranteed letter of credit shall be~~
 1544 ~~open to successive claims but the aggregate amount may not~~
 1545 ~~exceed the amount of the bond, certificate of deposit, or~~
 1546 ~~guaranteed letter of credit.~~

1547 Section 42. Section 559.813, Florida Statutes, is amended
 1548 to read:

1549 559.813 Remedies; enforcement.—

1550 (1) If a business opportunity seller uses untrue or
 1551 misleading statements in the sale of a business opportunity,
 1552 fails to give the proper disclosures in the manner required by
 1553 this part, or fails to deliver the equipment, supplies, or
 1554 products necessary to begin substantial operation of the
 1555 business within 45 days after ~~of~~ the delivery date stated in the
 1556 business opportunity contract, or if the contract does not
 1557 comply with the requirements of this part, the purchaser may,
 1558 within 1 year after ~~of~~ the date of execution of the contract and
 1559 upon written notice to the seller, rescind the contract and
 1560 shall be entitled to receive from the business opportunity
 1561 seller all sums paid to the business opportunity seller. Upon
 1562 receipt of such sums, the purchaser shall make available to the
 1563 seller at the purchaser's address, or at the places at which
 1564 they are located at the time notice is given, all products,
 1565 equipment, or supplies received by the purchaser. The purchaser
 1566 shall not be entitled to unjust enrichment by exercising the
 1567 remedies provided in this subsection.

1568 ~~(2) (a) The department may enter an order imposing one or~~

1569 ~~more of the penalties set forth in paragraph (b) if the~~
 1570 ~~department finds that a seller or any of the seller's principal~~
 1571 ~~officers or agents:~~

1572 ~~1. Violated or is operating in violation of any of the~~
 1573 ~~provisions of this part or of the rules adopted or orders issued~~
 1574 ~~thereunder;~~

1575 ~~2. Made a material false statement in any application,~~
 1576 ~~document, or record required to be submitted or retained under~~
 1577 ~~this part;~~

1578 ~~3. Refused or failed, after notice, to produce any~~
 1579 ~~document or record or disclose any information required to be~~
 1580 ~~produced or disclosed under this part or the rules of the~~
 1581 ~~department;~~

1582 ~~4. Made a material false statement in response to any~~
 1583 ~~request or investigation by the department, the Department of~~
 1584 ~~Legal Affairs, or the state attorney; or~~

1585 ~~5. Has intentionally defrauded the public through~~
 1586 ~~dishonest or deceptive means.~~

1587 ~~(b) Upon a finding as set forth in paragraph (a), the~~
 1588 ~~department may enter an order doing one or more of the~~
 1589 ~~following:~~

1590 ~~1. Issuing a notice of noncompliance pursuant to s.~~
 1591 ~~120.695.~~

1592 ~~2. Imposing an administrative fine not to exceed \$5,000~~
 1593 ~~per violation for each act which constitutes a violation of this~~
 1594 ~~part or a rule or order.~~

1595 ~~3. Directing that the seller or its principal officers or~~
 1596 ~~agents cease and desist specified activities.~~

1597 4. ~~Refusing to issue or revoking or suspending an~~
 1598 ~~advertisement identification number.~~

1599 5. ~~Placing the registrant on probation for a period of~~
 1600 ~~time, subject to such conditions as the department may specify.~~

1601 ~~(c) The administrative proceedings which could result in~~
 1602 ~~the entry of an order imposing any of the penalties specified in~~
 1603 ~~paragraph (b) shall be conducted in accordance with chapter 120.~~

1604 (2)~~(3)~~ Any purchaser injured by a violation of this part,
 1605 or by the business opportunity seller's breach of a contract
 1606 subject to this part or any obligation arising therefrom, may
 1607 bring an action for recovery of damages, including reasonable
 1608 attorney ~~attorney's~~ fees.

1609 (3)~~(4)~~ Upon complaint of any person that a business
 1610 opportunity seller has violated ~~the provisions of~~ this part, the
 1611 circuit court shall have jurisdiction to enjoin the defendant
 1612 from further such violations.

1613 (4)~~(5)~~ The Department of Legal Affairs, ~~the Department of~~
 1614 ~~Agriculture and Consumer Services,~~ or the state attorney, is
 1615 a violation of this part occurs in her or his judicial circuit, is
 1616 ~~are~~ the enforcing authority ~~authorities~~ for purposes of this
 1617 part, ~~they~~ may bring civil actions in circuit court for
 1618 temporary or permanent injunctive relief and may seek other
 1619 appropriate civil relief, including, but not limited to, a civil
 1620 penalty not to exceed \$5,000 for each violation, restitution and
 1621 damages for injured purchasers of business opportunities, and
 1622 court costs and reasonable attorney ~~attorney's~~ fees.

1623 (5)~~(6)~~ Any remedy provided in this section may be
 1624 recovered in an appropriate action, or the enforcing authority

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1625 may terminate any investigation or action upon agreement by the
 1626 offender to pay a ~~as~~ stipulated civil penalty, to make
 1627 restitution or pay damages to purchasers, or to satisfy any
 1628 other relief authorized in this section and requested by the
 1629 enforcing authority.

1630 (6)~~(7)~~ The remedies provided in this section ~~herein~~ shall
 1631 be in addition to any other remedies provided by law or in
 1632 equity.

1633 ~~(8) The department has the authority to adopt rules~~
 1634 ~~pursuant to chapter 120 to implement this part.~~

1635 Section 43. Section 559.815, Florida Statutes, is amended
 1636 to read:

1637 559.815 Penalties.—Any person who ~~fails to file with the~~
 1638 ~~department as required by s. 559.805 or who~~ commits an act
 1639 described in s. 559.809 is guilty of a felony of the third
 1640 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 1641 775.084.

1642 Section 44. Paragraph (a) of subsection (1) of section
 1643 559.9221, Florida Statutes, is amended to read:

1644 559.9221 Motor Vehicle Repair Advisory Council.—The Motor
 1645 Vehicle Repair Advisory Council is created to advise and assist
 1646 the department in carrying out this part.

1647 (1) The membership of the council may not exceed nine ~~11~~
 1648 members appointed by the Commissioner of Agriculture.

1649 (a) Six ~~Eight~~ industry members of the council must be
 1650 chosen from individuals already engaged in the motor vehicle
 1651 repair business who are eligible to be registered under this
 1652 part. The professional members of this council must be licensed

1653 under this part. The commissioner shall select one industry
 1654 member from each of the following categories:

- 1655 1. Independent automotive mechanics shops.
- 1656 2. Franchise or company-owned automotive mechanics shops.
- 1657 3. ~~Independent~~ Automotive collision shops.
- 1658 ~~4. Franchise or company-owned automotive collision shops.~~
- 1659 4.5. ~~Independent~~ Tire dealer.
- 1660 ~~6. Franchise or company-owned tire dealer.~~
- 1661 5.7. Independent motor vehicle dealer licensed under s.
 1662 320.27.
- 1663 6.8. Franchise motor vehicle dealer licensed under s.
 1664 320.27.

1665 Section 45. Paragraphs (a) and (b) of subsection (9) of
 1666 section 616.242, Florida Statutes, are amended to read:

1667 616.242 Safety standards for amusement rides.—

1668 (9) INSURANCE REQUIREMENTS.—

1669 (a) An owner may not operate an amusement ride unless the
 1670 owner has in effect at all times of operation ~~insurance meeting~~
 1671 ~~the following requirements:~~

1672 ~~1.~~ an insurance policy in an amount of at least ~~not less~~
 1673 ~~than~~ \$1 million per occurrence, \$1 million in the aggregate,
 1674 which insures the owner of the amusement ride against liability
 1675 for injury to persons arising out of the use of the amusement
 1676 ride; ~~or~~

1677 ~~2. A bond in a like amount; however, the aggregate~~
 1678 ~~liability of the surety under the bond may not exceed the face~~
 1679 ~~amount thereof.~~

1680 (b) The policy ~~or bond~~ must be procured from an insurer ~~or~~

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1681 ~~surety~~ that is licensed to transact business in this state or
 1682 that is approved as a surplus lines insurer.

1683 Section 46. Subsection (9) is added to section 721.20,
 1684 Florida Statutes, to read:


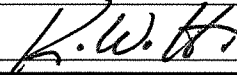
1685 721.20 Licensing requirements; suspension or revocation of
 1686 license; exceptions to applicability; collection of advance fees
 1687 for listings unlawful.—

1688 (9) A person who meets the definition of a commercial
 1689 telephone seller or salesperson as defined in s. 501.603 must be
 1690 licensed under part IV of chapter 501 before doing business in
 1691 this state under this chapter.

1692 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.

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.

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.

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

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

1 A bill to be entitled
2 An act relating to timeshares; amending s. 718.112,
3 F.S.; specifying that certain provisions relating to
4 condominium board elections do not apply to timeshare
5 condominiums; amending s. 721.05, F.S.; revising the
6 definition of "timeshare estate"; amending s. 721.07,
7 F.S.; revising formula requirements for calculating
8 reserves for accommodations and facilities of real
9 property timeshare plans; amending s. 721.82, F.S.;
10 revising definitions applicable to the Timeshare Lien
11 Foreclosure Act; amending s. 721.84, F.S.; making an
12 editorial change; amending s. 721.855, F.S.; revising
13 procedure for the trustee foreclosure of assessment
14 liens; revising conditions under which a trustee may
15 sell a foreclosed encumbered timeshare interest;
16 revising and providing notice requirements; providing
17 for perfection of notice; providing requirements for a
18 notice of lis pendens; providing sale requirements;
19 providing exceptions for actions for failure to follow
20 the trustee foreclosure procedure; amending s.
21 721.856, F.S.; revising procedure for the trustee
22 foreclosure of mortgage liens; revising conditions
23 under which a trustee may sell a foreclosed encumbered
24 timeshare interest; revising and providing notice
25 requirements; providing for perfection of notice;
26 providing requirements for a notice of lis pendens;
27 providing sale requirements; providing exceptions for
28 actions for failure to follow the trustee foreclosure

29 procedure; providing an effective date.

30

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

32

33 Section 1. Paragraph (d) of subsection (2) of section
 34 718.112, Florida Statutes, is amended to read:

35 718.112 Bylaws.—

36 (2) REQUIRED PROVISIONS.—The bylaws shall provide for the
 37 following and, if they do not do so, shall be deemed to include
 38 the following:

39 (d) Unit owner meetings.—

40 1. An annual meeting of the unit owners shall be held at
 41 the location provided in the association bylaws and, if the
 42 bylaws are silent as to the location, the meeting shall be held
 43 within 45 miles of the condominium property. However, such
 44 distance requirement does not apply to an association governing
 45 a timeshare condominium.

46 2. Unless the bylaws provide otherwise, a vacancy on the
 47 board caused by the expiration of a director's term shall be
 48 filled by electing a new board member, and the election must be
 49 by secret ballot. An election is not required if the number of
 50 vacancies equals or exceeds the number of candidates. For
 51 purposes of this paragraph, the term "candidate" means an
 52 eligible person who has timely submitted the written notice, as
 53 described in sub-subparagraph 4.a., of his or her intention to
 54 become a candidate. Except in a timeshare condominium, or if the
 55 staggered term of a board member does not expire until a later
 56 annual meeting, or if all members' terms would otherwise expire

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57 but there are no candidates, the terms of all board members
58 expire at the annual meeting, and such members may stand for
59 reelection unless prohibited by the bylaws. If the bylaws permit
60 staggered terms of no more than 2 years and upon approval of a
61 majority of the total voting interests, the association board
62 members may serve 2-year staggered terms. If the number of board
63 members whose terms expire at the annual meeting equals or
64 exceeds the number of candidates, the candidates become members
65 of the board effective upon the adjournment of the annual
66 meeting. Unless the bylaws provide otherwise, any remaining
67 vacancies shall be filled by the affirmative vote of the
68 majority of the directors making up the newly constituted board
69 even if the directors constitute less than a quorum or there is
70 only one director. In a condominium association of more than 10
71 units or in a condominium association that does not include
72 timeshare units or timeshare interests, coowners of a unit may
73 not serve as members of the board of directors at the same time
74 unless they own more than one unit or unless there are not
75 enough eligible candidates to fill the vacancies on the board at
76 the time of the vacancy. Any unit owner desiring to be a
77 candidate for board membership must comply with sub-subparagraph
78 4.a. and must be eligible to serve on the board of directors at
79 the time of the deadline for submitting a notice of intent to
80 run in order to have his or her name listed as a proper
81 candidate on the ballot or to serve on the board. A person who
82 has been suspended or removed by the division under this
83 chapter, or who is delinquent in the payment of any fee, fine,
84 or special or regular assessment as provided in paragraph (n),

85 is not eligible for board membership. A person who has been
 86 convicted of any felony in this state or in a United States
 87 District or Territorial Court, or who has been convicted of any
 88 offense in another jurisdiction which would be considered a
 89 felony if committed in this state, is not eligible for board
 90 membership unless such felon's civil rights have been restored
 91 for at least 5 years as of the date such person seeks election
 92 to the board. The validity of an action by the board is not
 93 affected if it is later determined that a board member is
 94 ineligible for board membership due to having been convicted of
 95 a felony.

96 3. The bylaws must provide the method of calling meetings
 97 of unit owners, including annual meetings. Written notice must
 98 include an agenda, must be mailed, hand delivered, or
 99 electronically transmitted to each unit owner at least 14 days
 100 before the annual meeting, and must be posted in a conspicuous
 101 place on the condominium property at least 14 continuous days
 102 before the annual meeting. Upon notice to the unit owners, the
 103 board shall, by duly adopted rule, designate a specific location
 104 on the condominium property or association property where all
 105 notices of unit owner meetings shall be posted. This requirement
 106 does not apply if there is no condominium property or
 107 association property for posting notices. In lieu of, or in
 108 addition to, the physical posting of meeting notices, the
 109 association may, by reasonable rule, adopt a procedure for
 110 conspicuously posting and repeatedly broadcasting the notice and
 111 the agenda on a closed-circuit cable television system serving
 112 the condominium association. However, if broadcast notice is

113 used, the notice and agenda must be broadcast at least four
 114 times every broadcast hour of each day that a posted notice is
 115 otherwise required under this section. If broadcast notice is
 116 provided, the notice and agenda must be broadcast in a manner
 117 and for a sufficient continuous length of time so as to allow an
 118 average reader to observe the notice and read and comprehend the
 119 entire content of the notice and the agenda. Unless a unit owner
 120 waives in writing the right to receive notice of the annual
 121 meeting, such notice must be hand delivered, mailed, or
 122 electronically transmitted to each unit owner. Notice for
 123 meetings and notice for all other purposes must be mailed to
 124 each unit owner at the address last furnished to the association
 125 by the unit owner, or hand delivered to each unit owner.
 126 However, if a unit is owned by more than one person, the
 127 association must provide notice to the address that the
 128 developer identifies for that purpose and thereafter as one or
 129 more of the owners of the unit advise the association in
 130 writing, or if no address is given or the owners of the unit do
 131 not agree, to the address provided on the deed of record. An
 132 officer of the association, or the manager or other person
 133 providing notice of the association meeting, must provide an
 134 affidavit or United States Postal Service certificate of
 135 mailing, to be included in the official records of the
 136 association affirming that the notice was mailed or hand
 137 delivered in accordance with this provision.

138 4. The members of the board shall be elected by written
 139 ballot or voting machine. Proxies may not be used in electing
 140 the board in general elections or elections to fill vacancies

141 | caused by recall, resignation, or otherwise, unless otherwise
 142 | provided in this chapter. This subparagraph does not apply to an
 143 | association governing a timeshare condominium.

144 | a. At least 60 days before a scheduled election, the
 145 | association shall mail, deliver, or electronically transmit, by
 146 | separate association mailing or included in another association
 147 | mailing, delivery, or transmission, including regularly
 148 | published newsletters, to each unit owner entitled to a vote, a
 149 | first notice of the date of the election. Any unit owner or
 150 | other eligible person desiring to be a candidate for the board
 151 | must give written notice of his or her intent to be a candidate
 152 | to the association at least 40 days before a scheduled election.
 153 | Together with the written notice and agenda as set forth in
 154 | subparagraph 3., the association shall mail, deliver, or
 155 | electronically transmit a second notice of the election to all
 156 | unit owners entitled to vote, together with a ballot that lists
 157 | all candidates. Upon request of a candidate, an information
 158 | sheet, no larger than 8 1/2 inches by 11 inches, which must be
 159 | furnished by the candidate at least 35 days before the election,
 160 | must be included with the mailing, delivery, or transmission of
 161 | the ballot, with the costs of mailing, delivery, or electronic
 162 | transmission and copying to be borne by the association. The
 163 | association is not liable for the contents of the information
 164 | sheets prepared by the candidates. In order to reduce costs, the
 165 | association may print or duplicate the information sheets on
 166 | both sides of the paper. The division shall by rule establish
 167 | voting procedures consistent with this sub-subparagraph,
 168 | including rules establishing procedures for giving notice by

169 | electronic transmission and rules providing for the secrecy of
170 | ballots. Elections shall be decided by a plurality of ballots
171 | cast. There is no quorum requirement; however, at least 20
172 | percent of the eligible voters must cast a ballot in order to
173 | have a valid election. A unit owner may not permit any other
174 | person to vote his or her ballot, and any ballots improperly
175 | cast are invalid. A unit owner who violates this provision may
176 | be fined by the association in accordance with s. 718.303. A
177 | unit owner who needs assistance in casting the ballot for the
178 | reasons stated in s. 101.051 may obtain such assistance. The
179 | regular election must occur on the date of the annual meeting.
180 | Notwithstanding this sub-subparagraph, an election is not
181 | required unless more candidates file notices of intent to run or
182 | are nominated than board vacancies exist.

183 | b. Within 90 days after being elected or appointed to the
184 | board, each newly elected or appointed director shall certify in
185 | writing to the secretary of the association that he or she has
186 | read the association's declaration of condominium, articles of
187 | incorporation, bylaws, and current written policies; that he or
188 | she will work to uphold such documents and policies to the best
189 | of his or her ability; and that he or she will faithfully
190 | discharge his or her fiduciary responsibility to the
191 | association's members. In lieu of this written certification,
192 | within 90 days after being elected or appointed to the board,
193 | the newly elected or appointed director may submit a certificate
194 | of having satisfactorily completed the educational curriculum
195 | administered by a division-approved condominium education
196 | provider within 1 year before or 90 days after the date of

197 | election or appointment. The written certification or
 198 | educational certificate is valid and does not have to be
 199 | resubmitted as long as the director serves on the board without
 200 | interruption. A director who fails to timely file the written
 201 | certification or educational certificate is suspended from
 202 | service on the board until he or she complies with this sub-
 203 | subparagraph. The board may temporarily fill the vacancy during
 204 | the period of suspension. The secretary shall cause the
 205 | association to retain a director's written certification or
 206 | educational certificate for inspection by the members for 5
 207 | years after a director's election. Failure to have such written
 208 | certification or educational certificate on file does not affect
 209 | the validity of any board action.

210 | 5. Any approval by unit owners called for by this chapter
 211 | or the applicable declaration or bylaws, including, but not
 212 | limited to, the approval requirement in s. 718.111(8), must be
 213 | made at a duly noticed meeting of unit owners and is subject to
 214 | all requirements of this chapter or the applicable condominium
 215 | documents relating to unit owner decisionmaking, except that
 216 | unit owners may take action by written agreement, without
 217 | meetings, on matters for which action by written agreement
 218 | without meetings is expressly allowed by the applicable bylaws
 219 | or declaration or any law that provides for such action.

220 | 6. Unit owners may waive notice of specific meetings if
 221 | allowed by the applicable bylaws or declaration or any law. If
 222 | authorized by the bylaws, notice of meetings of the board of
 223 | administration, unit owner meetings, except unit owner meetings
 224 | called to recall board members under paragraph (j), and

225 committee meetings may be given by electronic transmission to
 226 unit owners who consent to receive notice by electronic
 227 transmission.

228 7. Unit owners have the right to participate in meetings
 229 of unit owners with reference to all designated agenda items.
 230 However, the association may adopt reasonable rules governing
 231 the frequency, duration, and manner of unit owner participation.

232 8. A unit owner may tape record or videotape a meeting of
 233 the unit owners subject to reasonable rules adopted by the
 234 division.

235 9. Unless otherwise provided in the bylaws, any vacancy
 236 occurring on the board before the expiration of a term may be
 237 filled by the affirmative vote of the majority of the remaining
 238 directors, even if the remaining directors constitute less than
 239 a quorum, or by the sole remaining director. In the alternative,
 240 a board may hold an election to fill the vacancy, in which case
 241 the election procedures must conform to sub-subparagraph 4.a.
 242 unless the association governs 10 units or fewer and has opted
 243 out of the statutory election process, in which case the bylaws
 244 of the association control. Unless otherwise provided in the
 245 bylaws, a board member appointed or elected under this section
 246 shall fill the vacancy for the unexpired term of the seat being
 247 filled. Filling vacancies created by recall is governed by
 248 paragraph (j) and rules adopted by the division.

249 10. This chapter does not limit the use of general or
 250 limited proxies, require the use of general or limited proxies,
 251 or require the use of a written ballot or voting machine for any
 252 agenda item or election at any meeting of a timeshare

253 condominium association.

254

255 Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an
 256 association of 10 or fewer units may, by affirmative vote of a
 257 majority of the total voting interests, provide for different
 258 voting and election procedures in its bylaws, which may be by a
 259 proxy specifically delineating the different voting and election
 260 procedures. The different voting and election procedures may
 261 provide for elections to be conducted by limited or general
 262 proxy.

263 Section 2. Subsection (34) of section 721.05, Florida
 264 Statutes, is amended to read:

265 721.05 Definitions.—As used in this chapter, the term:

266 (34) "Timeshare estate" means a right to occupy a
 267 timeshare unit, coupled with a freehold estate or an estate for
 268 years with a future interest in a timeshare property or a
 269 specified portion thereof. The term includes ~~shall also mean~~ an
 270 interest in a condominium unit pursuant to s. 718.103, an
 271 interest in a cooperative unit pursuant to s. 719.103, or a
 272 direct or indirect ~~an~~ interest in a trust that complies in all
 273 respects with the provisions of s. 721.08(2)(c)4., provided that
 274 the trust does not contain any personal property timeshare
 275 interests. A timeshare estate is a parcel of real property under
 276 the laws of this state.

277 Section 3. Paragraph (t) of subsection (5) of section
 278 721.07, Florida Statutes, is amended to read:

279 721.07 Public offering statement.—Prior to offering any
 280 timeshare plan, the developer must submit a filed public

281 offering statement to the division for approval as prescribed by
 282 s. 721.03, s. 721.55, or this section. Until the division
 283 approves such filing, any contract regarding the sale of that
 284 timeshare plan is subject to cancellation by the purchaser
 285 pursuant to s. 721.10.

286 (5) Every filed public offering statement for a timeshare
 287 plan which is not a multisite timeshare plan shall contain the
 288 information required by this subsection. The division is
 289 authorized to provide by rule the method by which a developer
 290 must provide such information to the division.

291 (t) An estimated operating budget for the timeshare plan
 292 and a schedule of the purchaser's expenses shall be attached as
 293 an exhibit and shall contain the following information:

294 1. The estimated annual expenses of the timeshare plan
 295 collectible from purchasers by assessments. The estimated
 296 payments by the purchaser for assessments shall also be stated
 297 in the estimated amounts for the times when they will be due.
 298 Expenses shall also be shown for the shortest timeshare period
 299 offered for sale by the developer. If the timeshare plan
 300 provides for the offer and sale of units to be used on a
 301 nontimeshare basis, the estimated monthly and annual expenses of
 302 such units shall be set forth in a separate schedule.

303 2. The estimated weekly, monthly, and annual expenses of
 304 the purchaser of each timeshare interest, other than assessments
 305 payable to the managing entity. Expenses which are personal to
 306 purchasers that are not uniformly incurred by all purchasers or
 307 that are not provided for or contemplated by the timeshare plan
 308 documents may be excluded from this estimate.

309 3. The estimated items of expenses of the timeshare plan
 310 and the managing entity, except as excluded under subparagraph
 311 2., including, but not limited to, if applicable, the following
 312 items, which shall be stated either as management expenses
 313 collectible by assessments or as expenses of the purchaser
 314 payable to persons other than the managing entity:

315 a. Expenses for the managing entity:

316 (I) Administration of the managing entity.

317 (II) Management fees.

318 (III) Maintenance.

319 (IV) Rent for facilities.

320 (V) Taxes upon timeshare property.

321 (VI) Taxes upon leased areas.

322 (VII) Insurance.

323 (VIII) Security provisions.

324 (IX) Other expenses.

325 (X) Operating capital.

326 (XI) Reserves for deferred maintenance and reserves for
 327 capital expenditures, including:

328 (A) Reserves for deferred maintenance or capital
 329 expenditures of accommodations and facilities of a real property
 330 timeshare plan, if any. All reserves for any accommodations and
 331 facilities of real property timeshare plans located in this
 332 state shall be calculated using ~~by~~ a formula ~~which is~~ based upon
 333 estimated life and replacement cost of each reserve item that
 334 will provide funds equal to the total estimated deferred
 335 maintenance expense or total estimated life and replacement cost
 336 for an asset or group of assets over the remaining useful life

337 of the asset or group of assets. Funding formulas for reserves
 338 shall be based on either a separate analysis of each of the
 339 required assets using the straight-line accounting method or a
 340 pooled analysis of two or more of the required assets using the
 341 pooling accounting method. Reserves for deferred maintenance for
 342 such accommodations and facilities shall include accounts for
 343 roof replacement, building painting, pavement resurfacing,
 344 replacement of timeshare unit furnishings and equipment, and any
 345 other component, the useful life of which is less than the
 346 useful life of the overall structure. For any accommodations and
 347 facilities of real property timeshare plans located outside of
 348 this state, the developer shall disclose the amount of reserves
 349 for deferred maintenance or capital expenditures required by the
 350 law of the situs state, if applicable, and maintained for such
 351 accommodations and facilities.

352 (B) Reserves for deferred maintenance or capital
 353 expenditures of accommodations and facilities of a personal
 354 property timeshare plan, if any. If such reserves are
 355 maintained, the estimated operating budget shall disclose the
 356 methodology of how the reserves are calculated. If a personal
 357 property timeshare plan does not require reserves, the following
 358 statement, in conspicuous type, shall appear in both the budget
 359 and the public offering statement:

360 The estimated operating budget for this personal property
 361 timeshare plan does not include reserves for deferred
 362 maintenance or capital expenditures; each timeshare interest may
 363 be subject to substantial special assessments from time to time
 364 because no such reserves exist.

365 (XII) Fees payable to the division.
 366 b. Expenses for a purchaser:
 367 (I) Rent for the timeshare unit, if subject to a lease.
 368 (II) Rent payable by the purchaser directly to the lessor
 369 or agent under any lease for the use of facilities, which use
 370 and payment is a mandatory condition of ownership and is not
 371 included in the common expenses or assessments for common
 372 maintenance paid by the purchasers to the managing entity.
 373 4. The estimated amounts shall be stated for a period of
 374 at least 12 months and may distinguish between the period before
 375 ~~prior to~~ the time that purchasers elect a majority of the board
 376 of administration and the period after that date.
 377 5. If the developer intends to guarantee the level of
 378 assessments, such guarantee must be based upon a good faith
 379 estimate of the revenues and expenses of the timeshare plan. The
 380 guarantee must include a description of the following:
 381 a. The specific time period measured in one or more
 382 calendar or fiscal years during which the guarantee will be in
 383 effect.
 384 b. A statement that the developer will pay all common
 385 expenses incurred in excess of the total revenues of the
 386 timeshare plan pursuant to s. 721.15(2) if the developer has
 387 excused himself or herself from the payment of assessments
 388 during the guarantee period.
 389 c. The level, expressed in total dollars, at which the
 390 developer guarantees the budget. If the developer has reserved
 391 the right to extend or increase the guarantee level pursuant to
 392 s. 721.15(2), a disclosure must be included to that effect.

393 6. If the developer intends to provide a trust fund to
 394 defer or reduce the payment of annual assessments, a copy of the
 395 trust instrument shall be attached as an exhibit and shall
 396 include a description of such arrangement, including, but not
 397 limited to:

398 a. The specific amount of such trust funds and the source
 399 of the funds.

400 b. The name and address of the trustee.

401 c. The investment methods permitted by the trust
 402 agreement.

403 d. A statement in conspicuous type that the funds from the
 404 trust account may not cover all assessments and that there is no
 405 guarantee that purchasers will not have to pay assessments in
 406 the future.

407 7. The budget of a phase timeshare plan may contain a note
 408 identifying the number of timeshare interests covered by the
 409 budget, indicating the number of timeshare interests, if any,
 410 estimated to be declared as part of the timeshare plan during
 411 that calendar year, and projecting the common expenses for the
 412 timeshare plan based upon the number of timeshare interests
 413 estimated to be declared as part of the timeshare plan during
 414 that calendar year.

415 Section 4. Subsections (9) and (11) of section 721.82,
 416 Florida Statutes, are amended to read:

417 721.82 Definitions.—As used in this part, the term:

418 (9) "Notice address" means:

419 (a) As to an assessment lien, the address of the owner of
 420 a timeshare interest as reflected by the books and records of

421 the timeshare plan under ss. 721.13(4) and 721.15(7).

422 (b) As to a mortgage lien:

423 1. The address of the mortgagor as set forth in the
 424 mortgage, the promissory note or a separate document executed by
 425 the mortgagor at the time the mortgage lien was created, or the
 426 most current address of the mortgagor according to the records
 427 of the mortgagee; and

428 2. If the owner of the timeshare interest is different
 429 from the mortgagor, the address of the owner of the timeshare
 430 interest as reflected by the books and records of the mortgagee.

431 (c) As to a junior interestholder, the address as set
 432 forth in the recorded instrument creating the junior lien or
 433 interest, or in any recorded amendment thereto changing the
 434 address, or in any written notification by the junior
 435 interestholder to the foreclosing lienholder changing the
 436 address.

437 (d) As to an owner of a timeshare interest, mortgagor, or
 438 junior interestholder whose current address is not the address
 439 as determined by paragraph (a), paragraph (b), or paragraph (c),
 440 such address as is known to be the current address.

441 (11) "Permitted delivery service" means any nationally
 442 recognized common carrier delivery service, ~~or~~ international
 443 airmail service that allows for return receipt service, or a
 444 service recognized by an international jurisdiction as the
 445 equivalent of certified, registered mail for that jurisdiction.

446 Section 5. Subsection (6) of section 721.84, Florida
 447 Statutes, is amended to read:

448 721.84 Appointment of a registered agent; duties.—

449 (6) Unless otherwise provided in this section, a
 450 registered agent in receipt of any notice or other document
 451 addressed from the lienholder to the obligor in care of the
 452 registered agent at the registered office must mail, by first-
 453 class ~~first class~~ mail if the obligor's address is within the
 454 United States, and by international air mail if the obligor's
 455 address is outside the United States, with postage fees prepaid,
 456 such notice or documents to the obligor at the obligor's last
 457 designated address within 5 days after receipt.

458 Section 6. Paragraph (c) of subsection (2), subsections
 459 (4) and (5), paragraph (c) of subsection (6), paragraph (b) of
 460 subsection (7), and paragraph (b) of subsection (14) of section
 461 721.855, Florida Statutes, are amended to read:

462 721.855 Procedure for the trustee foreclosure of
 463 assessment liens.—The provisions of this section establish a
 464 trustee foreclosure procedure for assessment liens.

465 (2) INITIATING THE USE OF A TRUSTEE FORECLOSURE
 466 PROCEDURE.—

467 (c)1. In order to initiate a trustee foreclosure procedure
 468 against a timeshare interest, the lienholder shall deliver an
 469 affidavit to the trustee that identifies the obligor; the notice
 470 address of the obligor; the timeshare interest; the date that
 471 the notice of the intent to file a lien was given, if
 472 applicable; the official records book and page number where the
 473 claim of lien is recorded; and the name and notice address of
 474 any junior interestholder. ~~The affidavit shall be accompanied by~~
 475 ~~a title search of the timeshare interest identifying any junior~~
 476 ~~interestholders of record, and the effective date of the title~~

477 | ~~search must be a date that is within 60 calendar days before the~~
 478 | ~~date of the affidavit.~~

479 | 2. The affidavit shall also state the facts that establish
 480 | that the obligor has defaulted in the obligation to make a
 481 | payment under a specified provision of the timeshare instrument
 482 | or applicable law.

483 | 3. The affidavit shall also specify the amounts secured by
 484 | the lien as of the date of the affidavit and a per diem amount
 485 | to account for further accrual of the amounts secured by the
 486 | lien.

487 | 4. The affidavit shall also state that the assessment lien
 488 | was properly created and authorized pursuant to the timeshare
 489 | instrument and applicable law.

490 | (4) CONDITIONS TO TRUSTEE'S EXERCISE OF POWER OF SALE.—A
 491 | trustee may sell an encumbered timeshare interest foreclosed
 492 | under this section if:

493 | (a) The trustee has received the affidavit from the
 494 | lienholder under paragraph (2)(c);

495 | (b) The trustee has not received a written objection to
 496 | the use of the trustee foreclosure procedure under paragraph
 497 | (3)(a) and the timeshare interest was not redeemed under
 498 | paragraph (3)(b);

499 | (c) There is no lis pendens recorded and pending against
 500 | the same timeshare interest before the recording of the notice
 501 | of lis pendens pursuant to paragraph (5)(h), and the trustee has
 502 | not been served notice of the filing of any action to enjoin the
 503 | trustee foreclosure sale;

504 | (d) The trustee has provided written notice of default and

505 intent to foreclose as required under subsection (5) and a
 506 period of at least 30 calendar days has elapsed after such
 507 notice is deemed perfected under subsection (5); ~~and~~

508 (e) The notice of sale required under subsection (6) has
 509 been recorded in the official records of the county or counties
 510 in which the timeshare interest is located; and

511 (f) The lienholder has provided the trustee with a title
 512 search of the timeshare interest identifying any junior
 513 interestholders of record, the effective date of which search
 514 must be within 60 calendar days before the date it is delivered
 515 to the trustee. If a title search reveals that incorrect
 516 obligors or junior interestholders have been served or
 517 additional obligors or junior interestholders have not been
 518 served, the foreclosure action may not proceed until the notices
 519 required pursuant to this section have been served on the
 520 correct or additional obligors or junior interestholders and all
 521 applicable time periods have expired.

522 (5) NOTICE OF DEFAULT AND INTENT TO FORECLOSE.--

523 (a) In any foreclosure proceeding under this section, the
 524 trustee is required to notify the obligor of the proceeding by
 525 sending the obligor a written notice of default and intent to
 526 foreclose to the notice address of the obligor by certified
 527 mail, registered mail, or permitted delivery service, return
 528 receipt requested, and by first-class mail ~~or permitted delivery~~
 529 ~~service~~, postage prepaid, as follows:

530 1. The notice of default and intent to foreclose shall
 531 identify the obligor, the notice address of the obligor, the
 532 legal description of the timeshare interest, the nature of the

533 default, the amounts secured by the lien, and a per diem amount
 534 to account for further accrual of the amounts secured by the
 535 lien and shall state the method by which the obligor may cure
 536 the default, including the period of time after the date of the
 537 notice of default and intent to foreclose within which the
 538 obligor may cure the default.

539 2. The notice of default and intent to foreclose shall
 540 include an objection form with which the obligor can object to
 541 the use of the trustee foreclosure procedure by signing and
 542 returning the objection form to the trustee. The objection form
 543 shall identify the obligor, the notice address of the obligor,
 544 the timeshare interest, and the return address of the trustee
 545 and shall state: "The undersigned obligor exercises the
 546 obligor's right to object to the use of the trustee foreclosure
 547 procedure contained in section 721.855, Florida Statutes."

548 3. The notice of default and intent to foreclose shall
 549 also contain a statement in substantially the following form:
 550 If you fail to cure the default as set forth in this notice or
 551 take other appropriate action with regard to this foreclosure
 552 matter, you risk losing ownership of your timeshare interest
 553 through the trustee foreclosure procedure established in section
 554 721.855, Florida Statutes. You may choose to sign and send to
 555 the trustee the enclosed objection form, exercising your right
 556 to object to the use of the trustee foreclosure procedure. Upon
 557 the trustee's receipt of your signed objection form, the
 558 foreclosure of the lien with respect to the default specified in
 559 this notice shall be subject to the judicial foreclosure
 560 procedure only. You have the right to cure your default in the

561 manner set forth in this notice at any time before the trustee's
 562 sale of your timeshare interest. If you do not object to the use
 563 of the trustee foreclosure procedure, you will not be subject to
 564 a deficiency judgment even if the proceeds from the sale of your
 565 timeshare interest are insufficient to offset the amounts
 566 secured by the lien.

567 4. The trustee shall also mail a copy of the notice of
 568 default and intent to foreclose, without the objection form, to
 569 the notice address of any junior interestholder by certified
 570 mail, registered mail, or permitted delivery service, return
 571 receipt requested, and by first-class mail ~~or permitted delivery~~
 572 ~~service~~, postage prepaid.

573 5. Notice under this paragraph is considered perfected
 574 upon the trustee receiving the return receipt bearing the
 575 signature of the obligor or junior interestholder, as
 576 applicable, within 30 calendar days after the trustee sent the
 577 notice under this paragraph. Notice under this paragraph is not
 578 perfected if:

579 a. The notice is returned as undeliverable within 30
 580 calendar days after the trustee sent the notice;~~7~~ if

581 b. The trustee cannot, in good faith, ascertain ~~from the~~
 582 ~~receipt~~ that the obligor or junior interestholder, as
 583 applicable, is the person who signed the receipt because all or
 584 a portion of the obligor's or junior interestholder's name is
 585 not on the signed receipt or because the trustee cannot
 586 otherwise determine that the obligor or junior interestholder
 587 signed the receipt;~~7~~ or

588 c. ~~if~~ The receipt from the obligor or junior

589 interestholder, as applicable, is returned or refused within 30
 590 calendar days after the trustee sent the notice.

591 (b) If the notice required by paragraph (a) is returned as
 592 undeliverable within 30 calendar days after the trustee sent the
 593 notice, the trustee shall perform a diligent search and inquiry
 594 to obtain a different address for the obligor or junior
 595 interestholder. For purposes of this paragraph, any address
 596 known and used by the lienholder for sending regular mailings or
 597 other communications from the lienholder to the obligor or
 598 junior interestholder, as applicable, shall be included with
 599 other addresses produced from the diligent search and inquiry,
 600 if any.

601 1. If the trustee's diligent search and inquiry produces
 602 an address different from the notice address, the trustee shall
 603 mail a copy of the notice by certified mail, registered mail, or
 604 permitted delivery service, return receipt requested, and by
 605 first-class mail ~~or permitted delivery service~~, postage prepaid,
 606 to the new address. Notice under this subparagraph is considered
 607 perfected upon the trustee receiving the return receipt bearing
 608 the signature of the obligor or junior interestholder, as
 609 applicable, within 30 calendar days after the trustee sent the
 610 notice under this subparagraph. Notice under this subparagraph
 611 is not perfected if the receipt from the obligor or junior
 612 interestholder, as applicable, is refused, returned, or the
 613 trustee cannot, in good faith, ascertain from the receipt that
 614 the obligor or junior interestholder, as applicable, is the
 615 person who signed the receipt because all or a portion of the
 616 obligor's or junior interestholder's name is not on the signed

617 receipt or because the trustee cannot otherwise determine that
 618 the obligor or junior interestholder signed the receipt ~~or the~~
 619 ~~receipt from the obligor or junior interestholder, as~~
 620 ~~applicable, is returned refused.~~ If the trustee does not perfect
 621 notice under this subparagraph, the trustee shall perfect
 622 service in the manner set forth in paragraph (c).

623 2. If the trustee's diligent search and inquiry does not
 624 locate a different address for the obligor or junior
 625 interestholder, as applicable, the trustee may perfect notice
 626 against that person under paragraph (c).

627 (c) If the notice is not perfected under subparagraph
 628 (a)5., and such notice was not returned as undeliverable, or if
 629 the notice was not perfected under subparagraph (b)1., the
 630 trustee may perfect notice by publication in a newspaper of
 631 general circulation in the county or counties in which the
 632 timeshare interest is located. The notice shall appear at least
 633 once a week for 2 consecutive weeks. The notice of default and
 634 intent to foreclose perfected by publication shall identify the
 635 obligor, the notice address of the obligor, the legal
 636 description of the timeshare interest, the nature of the action
 637 in short and simple terms, the name and contact information of
 638 the trustee, and the period of time after the date of the notice
 639 of default and intent to foreclose within which the obligor may
 640 cure the default. The trustee may group an unlimited number of
 641 notices in the same publication, if all of the notices pertain
 642 to the same timeshare plan. Notice under this paragraph is
 643 considered perfected upon publication as required in this
 644 paragraph.

645 (d) If notice is perfected under subparagraph (a)5., the
 646 trustee shall execute an affidavit in recordable form setting
 647 forth the manner in which notice was perfected and attach the
 648 affidavit to the certificate of compliance set forth in
 649 subsection (9). The affidavit shall state the nature of the
 650 notice, the date on which the notice was mailed, the name and
 651 address on the envelope containing the notice, the manner in
 652 which the notice was mailed, and the basis for that knowledge.

653 (e) If notice is perfected under subparagraph (b)1., the
 654 trustee shall execute an affidavit in recordable form setting
 655 forth the manner in which notice was perfected and attach the
 656 affidavit to the certificate of compliance set forth in
 657 subsection (9). The affidavit shall state the nature of the
 658 notice, the dates on which the notice was mailed, the name and
 659 addresses on the envelopes containing the notice, the manner in
 660 which the notices were mailed, and the fact that a signed
 661 receipt from the certified mail, registered mail, or permitted
 662 delivery service was timely received, ~~and the name and address~~
 663 ~~on the envelopes containing the notice.~~

664 (f) If notice is perfected by publication under paragraph
 665 (c), the trustee shall execute an affidavit in recordable form
 666 setting forth the manner in which notice was perfected and
 667 attach the affidavit to the certificate of compliance set forth
 668 in subsection (9). The affidavit shall include all the
 669 information contained in either paragraph (d) or paragraph (e),
 670 as applicable, shall state that the notice was perfected by
 671 publication and shall state that ~~after~~ diligent search and
 672 inquiry was made for the current address for the person, if

673 paragraph (b) applies. The affidavit ~~and~~ shall also include a
 674 statement that notice was perfected by publication, and shall
 675 set forth the information required, as applicable, by s. 49.041
 676 in the case of a natural person or s. 49.051 in the case of a
 677 corporation, whichever is applicable. No other action of the
 678 trustee is necessary to perfect notice.

679 (g) Notice under paragraph (a) or paragraph (b) is
 680 perfected as to all obligors who have the same address if notice
 681 is perfected as to at least one obligor at that address pursuant
 682 to the provisions of this subsection.

683 (h) The initiation of a trustee foreclosure action
 684 operates as a lis pendens on the timeshare interest pursuant to
 685 s. 48.23 if a notice of lis pendens is recorded in the official
 686 records of the county in which the deed conveying the timeshare
 687 interest to the obligor was recorded and such notice has not
 688 expired pursuant to s. 48.23(2) or been withdrawn or discharged.
 689 The notice of lis pendens must contain the following:

- 690 1. The name of the obligor.
- 691 2. The date of the initiation of the trustee foreclosure
 692 action, which date shall be the date of the sending of the
 693 notice of default and intent to foreclose to the obligor.
- 694 3. The name and contact information of the trustee.
- 695 4. The legal description of the timeshare interest.
- 696 5. A statement that a trustee foreclosure action has been
 697 initiated against the timeshare interest pursuant to this
 698 section.

699 (6) NOTICE OF SALE.—

700 (c) After the date of recording of the notice of sale,

701 notice is not required to be given to any person claiming an
 702 interest in the timeshare interest except as provided in this
 703 section. If a notice of lis pendens has not previously been
 704 recorded pursuant to paragraph (5)(h), the recording of the
 705 notice of sale has the same force and effect as the filing of a
 706 lis pendens in a judicial proceeding under s. 48.23.

707 (7) MANNER OF SALE.—

708 (b) The trustee shall conduct the sale and act as the
 709 auctioneer. The trustee may use a third party to conduct the
 710 sale on behalf of the trustee and the trustee is liable for the
 711 conduct of the sale and the actions of the third party with
 712 respect to the conduct of the sale.

713 (14) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE
 714 PROCEDURE.—

715 (b) Any trustee who intentionally violates the provisions
 716 of this section concerning the trustee foreclosure procedure
 717 commits a felony of the third degree, punishable as provided in
 718 s. 775.082, s. 775.083, or s. 775.084. A trustee who incorrectly
 719 ascertains that the obligor signed the return receipt as
 720 required in s. 721.855(5) does not violate this section if the
 721 trustee made a good faith effort to properly ascertain that the
 722 obligor signed the return receipt in accordance with subsection
 723 (5).

724 Section 7. Paragraph (b) of subsection (2), subsections
 725 (4) and (5), paragraphs (c) and (d) of subsection (6), paragraph
 726 (b) of subsection (7), and paragraph (b) of subsection (13) of
 727 section 721.856, Florida Statutes, are amended to read:

728 721.856 Procedure for the trustee foreclosure of mortgage

729 liens.—The provisions of this section establish a trustee
 730 foreclosure procedure for mortgage liens.

731 (2) INITIATING THE TRUSTEE FORECLOSURE OF MORTGAGE LIENS.—

732 (b)1. In order to initiate a trustee foreclosure procedure
 733 against a timeshare interest, the lienholder shall deliver an
 734 affidavit to the trustee that identifies the obligor, the notice
 735 address of the obligor, the timeshare interest, the official
 736 records book and page number where the mortgage is recorded, and
 737 the name and notice address of any junior interestholder. ~~The~~
 738 ~~affidavit shall be accompanied by a title search of the~~
 739 ~~timeshare interest identifying any junior interestholders of~~
 740 ~~record, and the effective date of the title search must be a~~
 741 ~~date that is within 60 calendar days before the date of the~~
 742 ~~affidavit.~~

743 2. The affidavit shall also state the facts that establish
 744 that the obligor has defaulted in the obligation to make a
 745 payment under a specified provision of the mortgage or is
 746 otherwise deemed in uncured default under a specified provision
 747 of the mortgage.

748 3. The affidavit shall also specify the amounts secured by
 749 the lien as of the date of the affidavit and a per diem amount
 750 to account for further accrual of the amounts secured by the
 751 lien.

752 4. The affidavit shall also state that the appropriate
 753 amount of documentary stamp tax and intangible taxes has been
 754 paid upon recording of the mortgage, or otherwise paid to the
 755 state.

756 5. The affidavit shall also state that the lienholder is

757 the holder of the note and has complied with all preconditions
 758 in the note and mortgage to determine the amounts secured by the
 759 lien and to initiate the use of the trustee foreclosure
 760 procedure.

761 (4) CONDITIONS TO TRUSTEE'S EXERCISE OF POWER OF SALE.—A
 762 trustee may sell an encumbered timeshare interest foreclosed
 763 under this section if:

764 (a) The trustee has received the affidavit from the
 765 lienholder under paragraph (2) (b);

766 (b) The trustee has not received a written objection to
 767 the use of the trustee foreclosure procedure under paragraph
 768 (3) (a) and the timeshare interest was not redeemed under
 769 paragraph (3) (b);

770 (c) There is no lis pendens recorded and pending against
 771 the same timeshare interest before the initiation of the trustee
 772 foreclosure action and provided a notice of lis pendens has been
 773 recorded pursuant to paragraph (5) (h), and the trustee has not
 774 been served notice of the filing of any action to enjoin the
 775 trustee foreclosure sale;

776 (d) The trustee is in possession of the original
 777 promissory note executed by the mortgagor and secured by the
 778 mortgage lien;

779 (e) The trustee has provided written notice of default and
 780 intent to foreclose as required under subsection (5) and a
 781 period of at least 30 calendar days has elapsed after such
 782 notice is deemed perfected under subsection (5); ~~and~~

783 (f) The notice of sale required under subsection (6) has
 784 been recorded in the official records of the county in which the

785 mortgage was recorded; and

786 (g) The lienholder has provided the trustee with a title
 787 search of the timeshare interest identifying any junior
 788 interestholders of record, the effective date of which search
 789 must be within 60 calendar days before the date it is delivered
 790 to the trustee. If a title search reveals that incorrect
 791 obligors or junior interestholders have been served or
 792 additional obligors or junior interestholders have not been
 793 served, the foreclosure action may not proceed until the notices
 794 required pursuant to this section have been served on the
 795 correct or additional obligors or junior interestholders and all
 796 applicable time periods have expired.

797 (5) NOTICE OF DEFAULT AND INTENT TO FORECLOSE.—

798 (a) In any foreclosure proceeding under this section, the
 799 trustee is required to notify the obligor of the proceeding by
 800 sending the obligor a written notice of default and intent to
 801 foreclose to the notice address of the obligor by certified
 802 mail, registered mail, or permitted delivery service, return
 803 receipt requested, and by first-class mail ~~or permitted delivery~~
 804 ~~service~~, postage prepaid, as follows:

805 1. The notice of default and intent to foreclose shall
 806 identify the obligor, the notice address of the obligor, the
 807 legal description of the timeshare interest, the nature of the
 808 default, the amounts secured by the lien, and a per diem amount
 809 to account for further accrual of the amounts secured by the
 810 lien and shall state the method by which the obligor may cure
 811 the default, including the period of time after the date of the
 812 notice of default and intent to foreclose within which the

813 obligor may cure the default.

814 2. The notice of default and intent to foreclose shall
 815 include an objection form with which the obligor can object to
 816 the use of the trustee foreclosure procedure by signing and
 817 returning the objection form to the trustee. The objection form
 818 shall identify the obligor, the notice address of the obligor,
 819 the timeshare interest, and the return address of the trustee
 820 and shall state: "The undersigned obligor exercises the
 821 obligor's right to object to the use of the trustee foreclosure
 822 procedure contained in section 721.856, Florida Statutes."

823 3. The notice of default and intent to foreclose shall
 824 also contain a statement in substantially the following form:
 825 If you fail to cure the default as set forth in this notice or
 826 take other appropriate action with regard to this foreclosure
 827 matter, you risk losing ownership of your timeshare interest
 828 through the trustee foreclosure procedure established in section
 829 721.856, Florida Statutes. You may choose to sign and send to
 830 the trustee the enclosed objection form, exercising your right
 831 to object to the use of the trustee foreclosure procedure. Upon
 832 the trustee's receipt of your signed objection form, the
 833 foreclosure of the lien with respect to the default specified in
 834 this notice shall be subject to the judicial foreclosure
 835 procedure only. You have the right to cure your default in the
 836 manner set forth in this notice at any time before the trustee's
 837 sale of your timeshare interest. If you do not object to the use
 838 of the trustee foreclosure procedure, you will not be subject to
 839 a deficiency judgment even if the proceeds from the sale of your
 840 timeshare interest are insufficient to offset the amounts

841 | secured by the lien.

842 | 4. The trustee shall also mail a copy of the notice of
 843 | default and intent to foreclose, without the objection form, to
 844 | the notice address of any junior interestholder by certified
 845 | mail, registered mail, or permitted delivery service, return
 846 | receipt requested, and by first-class mail ~~or permitted delivery~~
 847 | ~~service~~, postage prepaid.

848 | 5. Notice under this paragraph is considered perfected
 849 | upon the trustee receiving the return receipt bearing the
 850 | signature of the obligor or junior interestholder, as
 851 | applicable, within 30 calendar days after the trustee sent the
 852 | notice under this paragraph. Notice under this paragraph is not
 853 | perfected if:

854 | a. The notice is returned as undeliverable within 30
 855 | calendar days after the trustee sent the notice; ~~if~~

856 | b. The trustee cannot, in good faith, ascertain from the
 857 | receipt that the obligor or junior interestholder, as
 858 | applicable, is the person who signed the receipt because all or
 859 | a portion of the obligor's or junior interestholder's name is
 860 | not on the signed receipt or the trustee cannot otherwise
 861 | determine that the obligor or junior interestholder signed the
 862 | receipt; ~~or~~

863 | c. ~~if~~ The receipt from the obligor or junior
 864 | interestholder, as applicable, is returned or refused within 30
 865 | calendar days after the trustee sent the notice.

866 | (b) If the notice required by paragraph (a) is returned as
 867 | undeliverable within 30 calendar days after the trustee sent the
 868 | notice, the trustee shall perform a diligent search and inquiry

869 to obtain a different address for the obligor or junior
 870 interestholder. For purposes of this paragraph, any address
 871 known and used by the lienholder for sending regular mailings or
 872 other communications from the lienholder to the obligor or
 873 junior interestholder, as applicable, shall be included with
 874 other addresses produced from the diligent search and inquiry,
 875 if any.

876 1. If the trustee's diligent search and inquiry produces
 877 an address different from the notice address, the trustee shall
 878 mail a copy of the notice by certified mail, registered mail, or
 879 permitted delivery service, return receipt requested, and by
 880 first-class mail ~~or permitted delivery service~~, postage prepaid,
 881 to the new address. Notice under this subparagraph is considered
 882 perfected upon the trustee receiving the return receipt bearing
 883 the signature of the obligor or junior interestholder, as
 884 applicable, within 30 calendar days after the trustee sent the
 885 notice under this subparagraph. Notice under this subparagraph
 886 is not perfected if the receipt from the obligor or junior
 887 interestholder is refused, returned, or the trustee cannot, in
 888 good faith, ascertain from the receipt that the obligor or
 889 junior interestholder, as applicable, is the person who signed
 890 the receipt because all or a portion of the obligor's or junior
 891 interestholder's name is not on the signed receipt or because
 892 the trustee cannot otherwise determine that the obligor or
 893 junior interestholder signed the receipt ~~or the receipt from the~~
 894 ~~obligor or junior interestholder, as applicable, is returned~~
 895 ~~refused~~. If the trustee does not perfect notice under this
 896 subparagraph, the trustee shall perfect service in the manner

897 set forth in paragraph (c).

898 2. If the trustee's diligent search and inquiry does not
 899 locate a different address for the obligor or junior
 900 interestholder, as applicable, the trustee may perfect notice
 901 against that person under paragraph (c).

902 (c) If the notice is not perfected under subparagraph
 903 (a)5., and such notice was not returned as undeliverable, or if
 904 the notice was not perfected under subparagraph (b)1., the
 905 trustee may perfect notice by publication in a newspaper of
 906 general circulation in the county or counties in which the
 907 timeshare interest is located. The notice shall appear at least
 908 once a week for 2 consecutive weeks. The notice of default and
 909 intent to foreclose perfected by publication shall identify the
 910 obligor, the notice address of the obligor, the legal
 911 description of the timeshare interest, the nature of the action
 912 in short and simple terms, the name and contact information of
 913 the trustee, and the period of time after the date of the notice
 914 of default and intent to foreclose within which the obligor may
 915 cure the default. The trustee may group an unlimited number of
 916 notices in the same publication, if all of the notices pertain
 917 to the same timeshare plan. Notice under this paragraph is
 918 considered perfected upon publication as required in this
 919 paragraph.

920 (d) If notice is perfected under subparagraph (a)5., the
 921 trustee shall execute an affidavit in recordable form setting
 922 forth the manner in which notice was perfected and attach the
 923 affidavit to the certificate of compliance set forth in
 924 subsection (9). The affidavit shall state the nature of the

925 | notice, the date on which the notice was mailed, the name and
 926 | address on the envelope containing the notice, the manner in
 927 | which the notice was mailed, and the basis for that knowledge.

928 | (e) If notice is perfected under subparagraph (b)1., the
 929 | trustee shall execute an affidavit in recordable form setting
 930 | forth the manner in which notice was perfected and attach the
 931 | affidavit to the certificate of compliance set forth in
 932 | subsection (9). The affidavit shall state the nature of the
 933 | notice, the dates on which the notice was mailed, the name and
 934 | addresses on the envelopes containing the notice, the manner in
 935 | which the notice was mailed, and the fact that a signed receipt
 936 | from the certified mail, registered mail, or permitted delivery
 937 | service was timely received, ~~and the name and address on the~~
 938 | ~~envelopes containing the notice.~~

939 | (f) If notice is perfected under paragraph (c), the
 940 | trustee shall execute an affidavit in recordable form setting
 941 | forth the manner in which notice was perfected and attach the
 942 | affidavit to the certificate of compliance set forth in
 943 | subsection (9). The affidavit shall include all the information
 944 | contained in either paragraph (d) or paragraph (e), as
 945 | applicable, shall state that the notice was perfected by
 946 | publication and shall state that ~~after~~ diligent search and
 947 | inquiry was made for the current address for the person, if
 948 | paragraph (b) applies. The affidavit shall also include a
 949 | ~~statement that notice was perfected by publication, and shall~~
 950 | ~~set forth~~ the information required, as applicable, by s. 49.041
 951 | in the case of a natural person or s. 49.051 in the case of a
 952 | corporation, ~~whichever is applicable.~~ No other action of the

953 trustee is necessary to perfect notice.

954 (g) Notice under paragraph (a) or paragraph (b) is
 955 perfected as to all obligors who have the same address if notice
 956 is perfected as to at least one obligor at that address pursuant
 957 to the provisions of this subsection.

958 (h) The initiation of a trustee foreclosure action
 959 operates as a lis pendens on the timeshare interest pursuant to
 960 s. 48.23 if a notice of lis pendens is recorded in the official
 961 records of the county or counties in which the mortgage is
 962 recorded and such notice has not expired pursuant to s. 48.23(2)
 963 or been withdrawn or discharged. The notice of lis pendens must
 964 contain the following:

- 965 1. The name of the obligor.
- 966 2. The date of the initiation of the trustee foreclosure
 967 action, which date shall be the date of the sending of the
 968 notice of default and intent to foreclose to the obligor.
- 969 3. The name and contact information of the trustee.
- 970 4. The legal description of the timeshare interest.
- 971 5. A statement that a trustee foreclosure action has been
 972 initiated against the timeshare interest pursuant to this
 973 section.

974 (6) NOTICE OF SALE.—

975 (c) After the date of recording of the notice of sale,
 976 notice is not required to be given to any person claiming an
 977 interest in the timeshare interest except as provided in this
 978 section. If a notice of lis pendens has not previously been
 979 recorded pursuant to paragraph (5)(h), the recording of the
 980 notice of sale has the same force and effect as the filing of a

981 | lis pendens in a judicial proceeding under s. 48.23.

982 | (d)1. The trustee shall publish the notice of sale in a
 983 | newspaper of general circulation in the county or counties in
 984 | which the timeshare interest is located at least once a week for
 985 | 2 consecutive weeks before the date of the sale. The last
 986 | publication shall occur at least 5 calendar days before the
 987 | sale.

988 | 2. The trustee may group an unlimited number of notices of
 989 | sale in the same publication, if all of the notices of sale
 990 | pertain to the same timeshare plan.

991 | (7) MANNER OF SALE.—

992 | (b) The trustee shall conduct the sale and act as the
 993 | auctioneer. The trustee may use a third party to conduct the
 994 | sale on behalf of the trustee and the trustee is liable for the
 995 | conduct of the sale and the actions of the third party with
 996 | respect to the conduct of the sale.


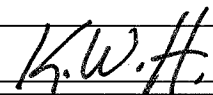
997 | (13) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE
 998 | PROCEDURE.—

999 | (b) Any trustee who intentionally violates the provisions
 1000 | of this section concerning the trustee foreclosure procedure
 1001 | commits a felony of the third degree, punishable as provided in
 1002 | s. 775.082, s. 775.083, or s. 775.084. A trustee who incorrectly
 1003 | ascertains that the obligor signed the return receipt as
 1004 | required in s. 721.855(5) does not violate this section if the
 1005 | trustee made a good faith effort to properly ascertain that it
 1006 | is the obligor who signed the return receipt in accordance with
 1007 | subsection (5).

1008 | 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 insurers¹ can also participate in the clearinghouse. A surplus lines insurer cannot offer to insure a property if a Florida licensed insurer² 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

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/mediareources.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

1 A bill to be entitled

2 An act relating to the establishment of a
3 clearinghouse program within the Citizens Property
4 Insurance Corporation; amending s. 626.752, F.S.;
5 exempting Citizens Property Insurance Corporation from
6 exchange of business limitations and restrictions when
7 placing business with authorized insurers; creating s.
8 627.3518, F.S.; providing definitions; requiring the
9 creation of a clearinghouse program within the
10 corporation; specifying the purposes of the program;
11 specifying certain rights and responsibilities with
12 respect to the program; authorizing the corporation to
13 take specified actions in establishing the program;
14 providing conditions and requirements relating to the
15 participation of insurers in the program; providing
16 conditions, requirements, limitations, and procedures
17 applicable to offers of coverage with respect to
18 applicants for coverage with the corporation and
19 existing policyholders of the corporation; providing
20 requirements for certain independent insurance agents
21 and exclusive agents with respect to submitting
22 applications for coverage or policies for renewal to
23 the program; requiring the corporation to publish
24 standards by a certain date for recognition of private
25 entities as an alternative option to submitting risks
26 to the program; providing conditions and requirements
27 relating to such alternative options; providing for
28 construction; providing an effective date.

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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

57 section.

58 (2) In order to confirm eligibility for coverage with the
 59 corporation, and to enhance access of applicants for coverage
 60 with the corporation and access of existing policyholders of the
 61 corporation to offers of coverage from authorized insurers at
 62 renewal, the corporation shall establish a clearinghouse program
 63 to facilitate the diversion of ineligible applicants and
 64 existing policyholders from the corporation into the voluntary
 65 insurance market.

66 (3) The corporation board shall establish the
 67 clearinghouse program as an organizational unit within the
 68 corporation. The program shall have all the rights and
 69 responsibilities in carrying out its duties as a licensed
 70 general lines agent, but may not be required to employ or engage
 71 a licensed general lines agent or to maintain an insurance
 72 agency license to carry out its activities in the solicitation
 73 and placement of insurance coverage. In establishing the
 74 program, the corporation may:

75 (a) Require all new applications, and all policies due for
 76 renewal, to be submitted for coverage to the program or any
 77 private alternative in order to facilitate obtaining an offer of
 78 coverage from an authorized insurer before binding or renewing
 79 coverage by the corporation.

80 (b) Employ or otherwise contract with individuals or other
 81 entities for appropriate administrative or professional services
 82 to effectuate the plan within the corporation in accordance with
 83 the applicable purchasing requirements under s. 627.351.

84 (c) Enter into contracts with any authorized or surplus

85 lines insurer to participate in the program and accept an
 86 appointment by such insurer.

87 (d) Provide funds to operate the program and charge a
 88 reasonable fee as a percentage of agent commission to offset, or
 89 partially offset, the costs of the program. Insurers
 90 participating in the program may not be required to pay a fee or
 91 use the program for renewals of any policy initially written
 92 through the program.

93 (e) Develop an enhanced application that includes
 94 information to assist private insurers in determining whether to
 95 make an offer of coverage through the program.

96 (f) Require, before approving all new applications for
 97 coverage by the corporation, that every application be subject
 98 to a 48-hour period when any insurer participating in the
 99 program may select the application for coverage. The insurer may
 100 issue a binder on any policy selected for coverage for a period
 101 of at least 30 days but not more than 60 days.

102 (g) Allow eligible surplus lines insurers to participate
 103 and make offers of coverage. An offer of coverage may be made by
 104 an eligible surplus lines insurer only if an authorized insurer
 105 does not make an offer of coverage through the program. Surplus
 106 lines insurers may offer premiums and coverages that are more
 107 favorable than those offered in the corporation, and agents are
 108 not required to compile three declinations from authorized
 109 insurers before binding coverage with a surplus lines insurer.

110 (4) Any authorized or surplus lines insurer may
 111 participate in the program; however, participation is not
 112 mandatory for any insurer. Insurers making offers of coverage to

113 new applicants or renewal policyholders through the program:

114 (a) May not be required to individually appoint any agent
115 whose customer is underwritten and bound through the program.
116 Notwithstanding s. 626.112, insurers are not required to appoint
117 any agent on a policy underwritten through the program for as
118 long as that policy remains with the insurer. Insurers may, at
119 their election, appoint any agent whose customer is initially
120 underwritten and bound through the program. In the event an
121 insurer accepts a policy from an agent who is not appointed
122 pursuant to this paragraph, and thereafter elects to accept a
123 policy from such agent, the provisions of s. 626.112 requiring
124 appointment apply to the agent.

125 (b) Must enter into a limited agency agreement with each
126 agent that is not appointed in accordance with paragraph (a) and
127 whose customer is underwritten and bound through the program.

128 (c) Must enter into its standard agency agreement with
129 each agent whose customer is underwritten and bound through the
130 program when that agent has been appointed by the insurer
131 pursuant to s. 626.112.

132 (d) Must comply with s. 627.4133(2).

133 (5) Notwithstanding s. 627.3517, any applicant for new
134 coverage from the corporation is not eligible for coverage from
135 the corporation, if provided an offer of coverage from an
136 authorized insurer through the program at a premium that is at
137 or below the eligibility threshold established in s.
138 627.351(6)(c)5.a. and b. Whenever an offer of coverage for a
139 personal lines or commercial lines risk is received for a
140 policyholder of the corporation at renewal, notwithstanding any

141 other provisions of law, if the offer is no more than 5 percent
 142 above the corporation's renewal premium for comparable coverage,
 143 the risk is not eligible for coverage with the corporation. In
 144 the event an offer of coverage for a new applicant is received
 145 from an insurer, and the premium offered exceeds the eligibility
 146 threshold contained in s. 627.351(6)(c)5.a. and b., the
 147 applicant or insured may elect to accept such coverage, or may
 148 elect to accept or continue coverage with the corporation. In
 149 the event an offer of coverage for a personal lines or
 150 commercial lines risk is received from an insurer at renewal,
 151 and the premium offered is more than 5 percent above the
 152 corporation's renewal premium for comparable coverage, the
 153 insured may elect to accept such coverage, or may elect to
 154 accept or continue coverage with the corporation. Any applicant
 155 for new coverage from the corporation, and policyholders of all
 156 policies for renewal, if provided an offer of coverage from a
 157 surplus lines insurer, are not required to accept such offer,
 158 and may be accepted for coverage or renewed by the corporation
 159 at the applicant's or policyholder's option. Sub-sub-
 160 subparagraphs 627.351(6)(c)5.a.(I) and b.(I) do not apply to an
 161 offer of coverage from an authorized insurer obtained through
 162 the program.

163 (6) Independent insurance agents submitting new
 164 applications for coverage or that are the agent of record on a
 165 renewal policy submitted to the program:

166 (a) Must maintain ownership and the exclusive use of
 167 expirations, records, or other written or electronic information
 168 directly related to such applications or renewals written

169 through the corporation or through an insurer participating in
 170 the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and
 171 (II)(B). Contracts with the corporation or required by the
 172 corporation must not amend, modify, interfere with, or limit
 173 such rights of ownership. Such expirations, records, or other
 174 written or electronic information may be used to review an
 175 application, issue a policy, or for any other purpose necessary
 176 for placing such business through the program.

177 (b) May not be required to be appointed by any insurer
 178 participating in the program for policies written solely through
 179 the program, notwithstanding the provisions of s. 626.112.

180 (c) May accept an appointment from any insurer
 181 participating in the program.

182 (d) Must enter into either a standard or limited agency
 183 agreement with the insurer, at the insurer's option.

184 (7) Exclusive agents submitting new applications for
 185 coverage or that are the agent of record on a renewal policy
 186 submitted to the program:

187 (a) Must maintain ownership and the exclusive use of
 188 expirations, records, or other written or electronic information
 189 directly related to such applications or renewals written
 190 through the corporation or through an insurer participating in
 191 the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and
 192 (II)(B). Contracts with the corporation or required by the
 193 corporation must not amend, modify, interfere with, or limit
 194 such rights of ownership. Such expirations, records, or other
 195 written or electronic information may be used to review an
 196 application, issue a policy, or for any other purpose necessary

197 | for placing such business through the program.

198 | (b) May not be required to be appointed by any insurer
 199 | participating in the program for policies written solely through
 200 | the program, notwithstanding the provisions of s. 626.112.

201 | (c) Must accept an offer of coverage from any insurer
 202 | whose limited servicing agreement is approved by that agent's
 203 | exclusive insurer as eligible to participate in the program with
 204 | that insurer's exclusive agents.

205 | (d) Must enter into only a limited servicing agreement
 206 | with the insurer making an offer of coverage, and only after the
 207 | exclusive agent's insurer has approved the limited servicing
 208 | agreement terms. The exclusive agent's insurer must approve a
 209 | limited service agreement for the program for any insurer for
 210 | which it has approved a service agreement for other purposes.

211 | (8) To promote private market initiatives to obtain offers
 212 | of coverage from authorized and surplus lines insurers for
 213 | applicants for coverage by the corporation and the corporation's
 214 | policyholders on renewal, the corporation shall, by January 1,
 215 | 2014, publish reasonable standards for the recognition of
 216 | private alternatives to the submission of a risk to the program.
 217 | Such private alternatives to the program may act in a master
 218 | agency arrangement for producing agents who may be appointed as
 219 | subagents of the master agency using such private alternatives
 220 | for the submission of risks to the program. The alternative
 221 | option permitted under this subsection is an alternative and not
 222 | a replacement for the program established under this section.
 223 | Neither the program nor any private entity operating under this
 224 | subsection may prohibit insurers that elect to participate from

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225 participating in more than one program or alternative; however,
226 any insurer participating in the private entity must also
227 participate in the program.

228 (9) Submission of an application for coverage by the
229 corporation to the program does not constitute the binding of
230 coverage by the corporation, and failure of the program to
231 obtain an offer of coverage by an insurer may not be considered
232 acceptance of coverage of the risk by the corporation.

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