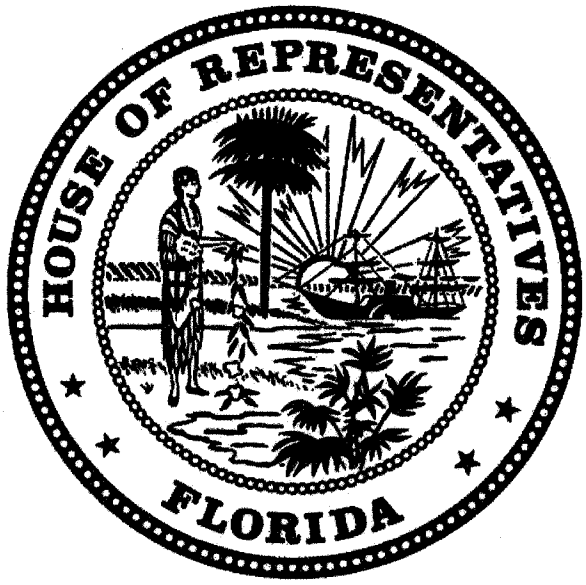

Regulatory Affairs Committee

Wednesday, March 27, 2013
2:00 PM
404 HOB

Will Weatherford
Speaker

Doug Holder
Chair

The Florida House of Representatives

Regulatory Affairs Committee

Will Weatherford
Speaker

Doug Holder
Chair

AGENDA

March 27, 2013
404 HOB
2:00 PM – 4:00 PM

I. Call to Order and Roll Call

II. CS/HB 39 by *Business & Professional Regulation Subcommittee; Reps. Raulerson; Ford and others*
Public Accountancy

III. HB 509 by *Rep. Van Zant*
Financial Guaranty Insurance Corporations

IV. CS/HB 665 by *Insurance & Banking Subcommittee; Rep. La Rosa*
Licensure by Office of Financial Regulation

V. CS/HB 675 by *Insurance & Banking Subcommittee; Rep. Ingram and others*
Health Insurance Marketing Materials

VI. CS/HB 795 by *Business & Professional Regulation Subcommittee; Rep. La Rosa and others*
Premises Inspections

VII. CS/HB 821 by *Insurance & Banking Subcommittee; Rep. Ingram*
Insurer Solvency

VIII. HB 1067 by *Reps. Hutson; Combee*
Pugilistic Exhibitions

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

IX. HB 4001 by *Reps. Gaetz; Perry*
Florida Renewable Fuel Standard Act

X. HB 4043 by *Rep. Raulerson*
Florida Building Code

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Regulatory Affairs Committee

Start Date and Time:	Wednesday, March 27, 2013 02:00 pm
End Date and Time:	Wednesday, March 27, 2013 04:00 pm
Location:	404 HOB
Duration:	2.00 hrs

Consideration of the following bill(s):

CS/HB 39 Public Accountancy by Business & Professional Regulation Subcommittee, Raulerson, Ford
HB 509 Financial Guaranty Insurance Corporations by Van Zant
CS/HB 665 Licensure by Office of Financial Regulation by Insurance & Banking Subcommittee, La Rosa
CS/HB 675 Health Insurance Marketing Materials by Insurance & Banking Subcommittee, Ingram
CS/HB 795 Premises Inspections by Business & Professional Regulation Subcommittee, La Rosa
CS/HB 821 Insurer Solvency by Insurance & Banking Subcommittee, Ingram
HB 1067 Pugilistic Exhibitions by Hutson, Combee
HB 4001 Florida Renewable Fuel Standard Act by Gaetz, Perry
HB 4043 Florida Building Code by Raulerson

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., Tuesday, March 26, 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., Tuesday, March 26, 2013.

NOTICE FINALIZED on 03/25/2013 16:21 by Ellinor.Martha

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 39 Public Accountancy
SPONSOR(S): Business & Professional Regulation Subcommittee; Raulerson; Ford and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 328

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	10 Y, 0 N, As CS	Collins	Luczynski
2) Government Operations Appropriations Subcommittee	11 Y, 0 N	Topp	Topp
3) Regulatory Affairs Committee		Collins RC	Hamon K. Watt.

SUMMARY ANALYSIS

The bill amends s. 473.3065, F.S., to allow the Department of Business and Professional Regulation (Department) to spend up to $200,000 annually from the Certified Public Accountant Education Minority Assistance Program to award scholarships. The statute currently allows the Department to spend up to $100,000. However, an increase in appropriation in the General Appropriations Act would be necessary to increase the funding of the minority scholarships from the current $100,000 to $200,000. In addition, the bill allows the Department to disburse scholarship funds up to two times per year rather than the present annual disbursement of funds.

The bill amends s. 473.311(2), F.S., to require firms that provide certain services to enroll in a peer review program by January 1, 2015.

The bill creates s. 473.3125, F.S., to provide definitions and to direct the Board of Accountancy (Board) to adopt rules establishing minimum standards for both peer review programs and for organizations that administer peer review programs.

The bill is not expected to have a fiscal impact on state or local governments. However, private sector CPA firms will be required to participate in and pay for their participation in a peer review program as required by the bill.

The bill has an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Certified Public Accountant Education Minority Assistance Program

Current Situation

The Certified Public Accountant (CPA) Education Minority Assistance Program provides scholarships for fifth year minority students seeking to become certified public accountants.[1] All moneys used to provide scholarships under the program are funded by a portion of existing license fees, as set by the board, not to exceed ten dollars per license.[2] The funds for the program are held in the Professional Regulation Trust Fund, to be distributed by the Board of Accountancy (the Board).[3] The Board may disburse up to $100,000 for the program annually, with one disbursement occurring per year.[4]

Effect of Proposed Changes

The bill amends s. 473.3065, F.S., to permit the Department to spend up to $200,000 annually on the minority scholarships program. In addition, the bill allows the Department to disburse funds two times per year. However, an appropriation would be necessary to increase the annual funding for minority scholarships from the current funding of $100,000 to $200,000 as provided for in this bill.

Peer Review Requirement

Current Situation

A "peer review" is a practice-monitoring program wherein an independent evaluator audits a firm's accounting and auditing practice and its related quality-control systems in order to ensure that the firm is complying with professional standards.[5] Currently, forty-eight states statutorily require CPA firms to participate in a peer review program; however, Florida does not have a statutory peer review requirement for its CPA firms.[6]

Despite the fact that participation in a peer review program is not statutorily required in Florida, many of the state's firms are still required to undergo peer reviews due to their membership in the American Institute of Certified Public Accountants (AICPA). Since 1988, the AICPA has required its members that are engaged in the practice of public accounting and auditing to undergo a peer review once every three years.[7] The result of an AICPA peer review is not disclosed to the public; the general public may only ascertain whether a specific firm is enrolled in the peer review program.[8]

As it relates to the AICPA peer review program, an "accounting and auditing practice" includes all of a CPA firm's engagements that are performed under:

- The Statements on Auditing Standards (SaSs);
- The Statements on Standards for Accounting and Review Services (SSARS);

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[1] Section 473.3065(1), Florida Statutes.
[2] Section 473.3065(2), Florida Statutes.
[3] Id.
[4] Id.
[5] AICPA Peer Review Program Manual, Appendix A, on file with subcommittee.
[6] Florida and Delaware are the only states without a statutory peer review requirement. *See*: AICPA Peer Review Program Annual Report on Oversight 2012, Exhibit 1, on file with subcommittee.
[7] http://www.aicpa.org/Advocacy/State/Pages/PeerReview.aspx (Last accessed on March 4, 2013).
[8] AICPA Peer Review Program Manual, page 6, on file with subcommittee.

- The Statements on Standard for Attestation Engagements (SSAEs) and Government Auditing Standards (the Yellow Book), issued by the U.S. General Accounting Office (GAO); and
- Audits of non-SEC issuers performed pursuant to the standards of the Public Company Accounting Oversight Board (PCAOB).[9]

As such, Florida CPA firms that perform these types of services and are members of the AICPA are required by the AICPA's bylaws to participate in its peer review program once every three years.

Effect of Proposed Changes

The bill amends s. 473.311, F.S., to require the state's CPA firms that engage in the practice of public accounting as defined by s. 473.302(8)(a), F.S., with one exception, to enroll in a peer review program.

Section 473.302(8)(a), F.S., defines the practice of public accounting as offering to perform, or performing for the public, one or more types of services involving:

- The expression of an opinion on financial statements;
- The attestation, as an expert in accountancy, as to the reliability or fairness of presentation of financial information;
- The utilization of any form of opinion or financial statements that provide a level of assurance;
- The utilization of a disclaimer of opinion which conveys an assurance of reliability as to matters not specifically disclaimed; or
- The expression of an opinion on the reliability of an assertion by one party for use by a third party.

The bill specifically exempts CPA firms that only engage in the practice of providing compilation services from having to comply with the peer review requirement. Firms that provide compilation services in addition to any of the other services listed in s. 473.302(8)(a), F.S., would still have to comply with the peer review requirement.

Moreover, firms that are not involved in the services described in s. 473.302(8)(a), F.S., and that instead limit their practice to tax or consulting services would not be required to undergo a peer review. The peer review requirement would also not apply to CPA's who practice in private industry, education, and government, as the requirement only applies to CPA firms in public practice.

Further, the bill creates s. 473.3125, F.S., to establish a peer review program, which is defined as the "study, appraisal, or review by one or more independent certified public accountants of one or more aspects of the professional work of a licensee." The section directs the Board to adopt rules establishing minimum standards for both peer review programs and for organizations that administer peer review programs.

The requirement that certain CPA firms undergo a peer review would begin on July 1, 2015.

B. SECTION DIRECTORY:

Section 1: amends s. 473.3065, F.S., to allow the Department to spend up to $200,000 annually for scholarships awarded by the CPA Education Minority Assistance Program. The Department may make disbursements up to two times per year.

Section 2: amends s. 473.311, F.S., to require firms that provide certain services to enroll in a peer review program.

[9] AICPA Peer Review Program Manual, page 2, on file with subcommittee.

Section 3: creates s 473.3125, F.S., to provide definitions and to direct the Board of Accountancy to adopt rules establishing minimum standards for both peer review programs and for organizations that administer peer review programs.

Section 4: 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:

   The bill is not expected to have a fiscal impact on state or local governments.

   The bill allows the department to spend up to $200,000 per year on the Certified Public Accountant Education Minority Program for scholarships. The current statutory spending cap for minority scholarships is $100,000.[10] However, an increase in appropriation would be necessary to increase the funding amount of the minority scholarships from $100,000 to $200,000. The bill also allows for disbursement of scholarship funds to be twice a year rather than the current once a year.

   The Department has indicated that the bill will not have a fiscal impact related to complaints and investigations based upon the failure of licensees to comply with the peer review requirements of the bill.[11] Rulemaking will be required regarding both the CPA Education Minority Assistance Program and the peer review program. However, the Department indicates that any rule making will be handled within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

CPA firms will be required to participate in and pay for their participation in a peer review program. There is a potential for reduction in competition due to fewer firms performing audits if all current auditing firms do not enroll in a peer review program.

Moreover, CPA firms will incur costs related to preparing for and participating in a peer review program. The cost of a peer review is based upon the nature, complexity, and size of a firm's accounting and auditing practice. The FICPA has indicated that the cost of a peer review every three years is

[10] The CPA Education Minority Assistance Program account cash balance, as of June 30, 2012, is $139,754. This is the largest account balance in the last six years. Department of Business and Professional Regulation Legislative Analysis, page 3, dated January 29, 2013, on file with subcommittee.

[11] E-mail correspondence between the staff of the Department of Business and Professional Regulation and staff of the House Government Operations Appropriations Subcommittee, March 13, 2013. E-mail correspondence on file with the subcommittee.

estimated to range from $990 to $3,015, depending on the number of peer review hours required to conduct the review, as shown below.[12]

Sample Peer Review Costs for Sole Practitioner Firms

Sole practitioner with no audits:	
Administrative fee per year @ $130 x 3 years	$390
Peer Review- reviewer- approximately	$600
Total cost over three years	$990
Annualized Cost	$330
Sole practitioner firm with one audit, review, and compilations:	
Administrative fee per year @ $130 x 3 years	$390
Peer Review- reviewer- approximately 10-15 hours at Reviewer rate (for example $175/hour)	$1,750- $2,625
Total cost over three years	$2,140- $3,015
Annualized Cost	$713- $1,005

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of sales tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill modifies the frequency and maximum disbursement amount of scholarships for the CPA Education Minority Assistance Program. This change will require minor rulemaking revisions in order to conform the new statutory provisions to existing Board rules.

In addition, the bill provides the Board with the responsibility of adopting rules to establish minimum standards for both peer review programs and for organizations that administer peer review programs.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

[12] FICPA CPA Licensure, page 3, dated January 14, 2013, on file with the Business and Professional Regulation Subcommittee.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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

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

- Eliminated CPAs who solely conduct compilations from having to comply with the peer review requirement;
- Eliminated the requirement of the Board to adopt minimum standards related to the administering, performing, and reporting of peer reviews, although the Board must still adopt rules establishing minimum standards for the peer review program and minimum criteria for organizations that administer the peer review program; and
- Removed language permitting the Board to create a Peer Review Oversight Committee.

The staff analysis is drafted to reflect the committee substitute.

A bill to be entitled

An act relating to public accountancy; amending s. 473.3065, F.S.; revising provisions for the distribution of scholarships under the Certified Public Accountant Education Minority Assistance Program; revising the annual maximum expenditures and frequency of distribution of moneys for the scholarships; amending s. 473.311, F.S.; providing a peer review requirement for certain firms engaged in the practice of public accounting; creating s. 473.3125, F.S.; providing definitions; requiring the Board of Accountancy to adopt rules for peer review programs; providing an effective date.

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

Section 1. Subsection (2) of section 473.3065, Florida Statutes, is amended to read:

473.3065 Certified Public Accountant Education Minority Assistance Program; advisory council.—

(2) All moneys used to provide scholarships under the program shall be funded by a portion of existing license fees, as set by the board, not to exceed $10 per license. Such moneys shall be deposited into the Professional Regulation Trust Fund in a separate account maintained for that purpose. The department may ~~is authorized to~~ spend up to $200,000 ~~$100,000~~ per year for the program from this program account~~,~~ but may not allocate overhead charges to it. Moneys for scholarships shall

be disbursed twice per year ~~annually~~ upon recommendation of the advisory council and approval by the board, based on the adopted eligibility criteria and comparative evaluation of all applicants. Funds in the program account may be invested by the Chief Financial Officer under the same limitations as apply to investment of other state funds, and all interest earned thereon shall be credited to the program account.

Section 2. Section 473.311, Florida Statutes, is amended to read:

473.311 Renewal of license.—

(1) The department shall renew a license issued under s. 473.308 upon receipt of the renewal application and fee and upon certification by the board that the Florida certified public accountant has satisfactorily completed the continuing education requirements of s. 473.312.

(2) Effective January 1, 2015, a sole proprietor, partnership, corporation, limited liability company, or other firm licensed under s. 473.3101 and engaged in the practice of public accounting as defined in s. 473.302(8)(a), other than compilations, shall be enrolled in a peer review program.

(3) ~~(2)~~ The department shall adopt rules establishing a procedure for the biennial renewal of licenses issued pursuant to this section.

Section 3. Section 473.3125, Florida Statutes, is created to read:

473.3125 Peer review.—

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

(a) "Licensee" means a sole proprietor, partnership,

corporation, limited liability company, or any other firm engaged in the practice of public accounting as defined in s. 473.302(8)(a) that is required to be licensed under s. 473.3101.

(b) "Peer review" means the study, appraisal, or review by one or more independent certified public accountants of one or more aspects of the professional work of a licensee.

(2) The board shall adopt rules establishing minimum standards for peer review programs and minimum criteria for organizations that administer peer review programs.

Section 4. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 509 Financial Guaranty Insurance Corporations
SPONSOR(S): Van Zant
TIED BILLS: **IDEN./SIM. BILLS:** SB 356

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N	Bauer	Cooper
2) Government Operations Appropriations Subcommittee	11 Y, 0 N	Keith	Topp
3) Regulatory Affairs Committee		Bauer	Hamon

SUMMARY ANALYSIS

Financial guaranty insurance is regulated by the Office of Insurance Regulation and involves surety bonds, insurance policies, indemnity contracts, or any similar guaranty, under which loss is payable upon proof of occurrence of financial loss to an insured claimant, obligee, or indemnitee as a result of:

1. The failure of an obligor on a debt instrument or other monetary obligation, including common or preferred stock guaranteed under a surety bond, insurance policy, or indemnity contract, to make principal, interest, premium, dividend, or purchase price payments when due, if the failure is the result of a financial default or insolvency, whether such obligation is incurred directly or as guarantor by or on behalf of another obligor who also defaulted;
2. Changes in the levels of interest rates or the differential in interest rates between various markets or products;
3. Changes in the rate of exchange of currency;
4. Changes in the value of specific assets or commodities, financial or commodity indices, or price levels in general; or
5. Other events which the office determines are substantially similar to any of the foregoing.

In order to qualify for a certificate of authority to transact financial guaranty insurance in Florida, the insurer must meet capital, surplus, and contingency reserve requirements, in addition to other provisions in the Insurance Code relating to property and casualty insurance. Currently, only stock property and casualty insurers are permitted to become financial guaranty insurance corporations, but not mutual insurers. Stock insurers divide their capital into shares and pay dividends to investors, and mutual insurers are cooperatives without permanent capital and pay dividends to policyholders (members).

HB 509 amends provisions of Part XX, Chapter 627, Florida Statutes, to permit mutual property and casualty insurers to become licensed financial guaranty insurance corporations

The bill has no fiscal impact on state and local government.

The bill provides that the act shall take effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation: Background

In order to transact insurance in this state, the Florida Insurance Code ("Code") states that a certificate of authority is required.[1] To qualify for and hold authority to transact insurance in this state, an insurer must be in compliance with the Code and its charter powers, and must be an incorporated stock insurer, an incorporated mutual insurer, or a reciprocal insurer.[2] In addition to applying for a certificate of authority to transact a particular kind of insurance, domestic insurers must apply to the Office of Insurance Regulation ("OIR") for a permit to form as either a stock or mutual insurer, and have its articles of incorporation approved by the Department of State.[3]

The distinction between stock and mutual insurers is governed by Part I, Chapter 628, F.S.:

- *Stock insurers* are defined as "incorporated insurers with its capital divided into shares and owned by its stockholders," and pay dividends to their stockholders.[4]
- *Mutual insurers*, on the other hand, are "incorporated insurers without permanent capital stock, the governing body of which is elected in accordance with this part," and pay dividends to their policyholders, who are members of the insurer.[5]

In other words, stock insurers are investor-owned, while mutual insurers are owned by their policyholders.

Mutual insurers may apply to demutualize to become a stock insurer (and vice versa), subject to the OIR's approval.[6] In order to obtain regulatory approval of a mutual insurer's plan to demutualize, the plan must be equitable to the members and be approved by at least three-fourths of the insurer's members. In addition, the members must be given the opportunity to receive stock or cash for their ownership rights in the mutual organization.[7] According to the National Association of Mutual Insurance Companies, demutualization is a complex, expensive, and lengthy process. While demutualization can provide additional capital, cash distributions to policyholders can deplete surplus.[8]

Financial Guaranty Insurance

Part XX of Chapter 627, Florida Statutes, was enacted in 1988[9] to set forth requirements for transacting financial guaranty insurance. *Financial guaranty insurance* means a surety bond, insurance policy, an indemnity contract issued by an insurer, or any similar guaranty, under which loss is payable upon proof of occurrence of financial loss to an insured claimant, obligee, or indemnitee as a result of:

> 1. The failure of an obligor on a debt instrument or other monetary obligation, including common or preferred stock guaranteed under a surety bond, insurance policy, or indemnity contract, to make principal, interest, premium, dividend, or purchase price payments when due, if the failure is the result of a financial default or insolvency, whether such obligation is incurred directly or as guarantor by or on behalf of another obligor who also defaulted;

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[1] Section 624.401, F.S. The Florida Insurance Code consists of chs. 624, 632, 634, 635, 636, 641, 642, 648, and 651, F.S.
[2] Section 624.404, F.S.
[3] Section 628.051, F.S. Domestic insurers are formed under Florida law. Insurers formed under other states' laws (foreign insurers) are entitled to become domestic insurers by complying with the same legal requirements for licensing and organization and by designating a principal place of business inside Florida upon the OIR's approval. See ss. 624.06 and 628.520, F.S.
[4] Sections 628.021and 628.371, F.S.
[5] Sections 628.031, 628.381 and 628.301, F.S.
[6] Sections 628.431 and 628.441, F.S.
[7] Section 628.441(2), F.S.
[8] NAMIC, Focus on the Future Options for the Mutual Insurance Company: https://www.namic.org/policy/futureMutualAlts.asp (last accessed February 25, 2013).
[9] Chapter 88-87, Laws of Florida.

2. Changes in the levels of interest rates or the differential in interest rates between various markets or products;
3. Changes in the rate of exchange of currency;
4. Changes in the value of specific assets or commodities, financial or commodity indices, or price levels in general; or
5. Other events which the office determines are substantially similar to any of the foregoing.[10]

Part XX of Chapter 627, F.S. requires an insurer to obtain a certificate of authority from the Office of Insurance Regulation (OIR) to transact financial guaranty insurance in Florida. The insurer must meet an initial $50 million surplus requirement at the date of initial licensing, and must maintain minimum capital, surplus, contingency reserve requirements and be within loss exposure limitations. Financial guaranty insurance corporations are subject to all provisions of the Florida Insurance Code applicable to property and casualty insurance, to the extent they are not inconsistent with Part XX, Ch. 627, F.S.[11] According to OIR's company search website, there are currently 50 insurers with financial guaranty insurance as an authorized line of business.[12]

By definition and by express requirement under current law, only stock property and casualty insurers are eligible to become financial guaranty insurance corporations, but not mutual insurers.[13]

The Financial Guaranty Insurance Guidelines, adopted by the National Association of Insurance Commissioners in 2008, does not make a distinction between stock and mutual insurers for purposes of transacting financial guaranty insurance.[14]

Effect of House Bill 509

The bill amends ss. 627.971 and 627.972, F.S. to allow mutual property and casualty insurers to become financial guaranty insurance corporations, subject to meeting the requirements of the Code. The bill does not change any existing requirements to become a stock or mutual insurer.

The bill also makes technical changes for purposes of clarity, and provides that the act shall take effect upon becoming a law.

B. SECTION DIRECTORY:

Section 1. Amends s. 627.971, F.S. relating to definitions, to include mutual insurers in the definition of financial guaranty insurance corporation.

Section 2. Amends s. 627.972, F.S., providing that financial guaranty insurance corporations include mutual property and casualty insurers as well as stock property and casualty insurers.

Section 3. Provides that the act shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

[10] Section 627.971(1)(a), F.S. See subsection (1)(b) for exclusions from the definition of "financial guaranty insurance."
[11] Section 627.972(1)(c), F.S.
[12] OIR Company Directory, http://www.floir.com/CompanySearch, last accessed February 20, 2013.
[13] Sections 627.971(6) and 627.972(1), F.S.
[14] GDL-1626, at NAIC Model Laws, Regulations, and Guidelines: http://www.naic.org/store_model_laws.htm (last accessed February 20, 2013).

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will allow mutual insurers to become licensed as financial guaranty insurance corporations.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The OIR has indicated its support for the bill in the interest of bringing new insuring entities into Florida.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

A bill to be entitled

An act relating to financial guaranty insurance corporations; amending ss. 627.971 and 627.972, F.S.; providing that such corporations include licensed mutual insurers as well as licensed stock insurers; providing an effective date.

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

Section 1. Subsection (6) of section 627.971, Florida Statutes, is amended to read:

627.971 Definitions.—As used in this part:

(6) "Financial guaranty insurance corporation" means a stock or mutual insurer licensed to transact financial guaranty insurance business in this state.

Section 2. Subsection (1) of section 627.972, Florida Statutes, is amended to read:

627.972 Organization; financial requirements.—

(1) A financial guaranty insurance corporation must be organized and licensed in the manner prescribed in this code for stock or mutual property and casualty insurers except that:

(a) A corporation organized to transact financial guaranty insurance may, subject to ~~the provisions of~~ this code, be licensed to transact:

1. Residual value insurance, as defined by s. 624.6081;

2. Surety insurance, as defined by s. 624.606;

3. Credit insurance, as defined by s. 624.605(1)(i); and

4. Mortgage guaranty insurance as defined in s. 635.011

if~~, provided that~~ the provisions of chapter 635 are met.

(b)1. Prior to the issuance of a license, a corporation must submit to the office for approval~~,~~ a plan of operation detailing:

a. The types and projected diversification of guaranties to be issued;

b. The underwriting procedures to be followed;

c. The managerial oversight methods;

d. The investment policies; and

e. Any other matters prescribed by the office.~~;~~

2. An insurer that ~~which~~ is writing only the types of insurance allowed under this part on July 1, 1988, and otherwise meets the requirements of this part, is exempt from ~~the requirements of~~ this paragraph.

(c) An insurer transacting financial guaranty insurance is subject to all provisions of this code which ~~that~~ are applicable to property and casualty insurers to the extent that those provisions are not inconsistent with this part.

(d) The investments of an insurer transacting financial guaranty insurance in any entity insured by the corporation may not exceed 2 percent of its admitted assets as of the end of the prior calendar year.

(e) An insurer transacting financial guaranty insurance may only assume those lines of insurance for which it is licensed to write direct business.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 665 Licensure by Office of Financial Regulation
SPONSOR(S): Insurance & Banking Subcommittee; La Rosa and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 644

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Bauer	Cooper
2) Government Operations Appropriations Subcommittee	12 Y, 0 N	Keith	Topp
3) Regulatory Affairs Committee		Bauer	Hamon K.W.H.

SUMMARY ANALYSIS

The Office of Financial Regulation (OFR) administers Florida laws and rules governing the licensure and regulation of individuals and entities in the non-depository mortgage, securities, and money services business industries. This bill proposes the following changes to several statutes under the OFR's jurisdiction:

- Current law requires the OFR to deny an application for a mortgage broker or mortgage lender license when the applicant has had an equivalent license revoked in another state. This has resulted in the OFR having to deny some mortgage company licenses where the applicant's out-of-state revocation was due to purely administrative reasons, such as an expired license. The bill eliminates the mandatory language in current law, and gives the OFR discretion to review an applicant's out-of-state mortgage company revocations on a case-by-case basis. The bill provides that these provisions will be effective upon becoming a law.

- Current law requires applicants for securities and money services business licenses to submit fingerprint cards to the OFR for state and federal criminal background checks in order for the OFR to determine an applicant's fitness for licensure. However, the Florida Department of Law Enforcement (FDLE) and the Federal Bureau of Investigation, who conduct these background checks, no longer accept physical fingerprint cards for processing and now process fingerprints electronically or through the live-scan system through contracted vendors throughout the state. This bill amends various provisions to require securities and money services business license applicants to submit electronic or live-scan fingerprints and pay the processing costs to the live-scan vendor. The bill also provides that the fingerprints of money services business applicants be entered into and retained in FDLE's database, the cost of which would be collected by OFR and submitted to FDLE.

The bill has an insignificant fiscal impact on state government expenditures. The OFR would no longer be responsible for the collection and transfer of fingerprint processing fees to FDLE. However, OFR would collect and transfer to FDLE the fingerprint retention fees paid to OFR at initial licensing and renewal by money services business at $6 per year. The fingerprint retention fee, after collection by OFR, would be transferred to FDLE. The bill has a private sector impact, in that 1) electronic/live-scan fingerprint processing costs slightly more than physical fingerprinting, and 2) easing the restriction on out-of-state mortgage broker or mortgage lender revocations may result in more mortgage company licenses issued in Florida.

The bill provides for an effective date of October 1, 2013, except as otherwise expressly provided.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background: The Office of Financial Regulation (OFR)
The OFR regulates and licenses a wide range of entities and individuals in the banking, securities, and consumer finance industries. For purposes of HB 665, some of the licensing and enforcement programs that OFR administers are:

- Non-depository mortgage loan originators, brokers, and lenders (Chapter 494, F.S.);
- Money services businesses (MSBs), which include check cashers, foreign currency exchangers, and deferred presentment providers (Chapter 560, F.S.);
- Securities dealers, issuer dealers, investment advisers, and branch offices (Chapter 517, F.S.).

Pursuant to s. 20.121(3)(a), F.S., the Financial Services Commission (the Governor and Cabinet) serves as the agency head for purposes of rulemaking and appoints the OFR's Commissioner, who serves as the agency head for purposes of final agency action for all areas within the OFR's regulatory authority.

Current Situation: Licensure Revocation
The federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008[1] sets forth minimum standards for state-licensed individual loan originators. One requirement is that an individual who is an applicant for a state loan originator license must have never had his or her loan originator license revoked in any other governmental jurisdiction.[2] In 2009, the Florida Legislature adopted the minimum requirements of the SAFE Act, including this requirement for loan originators in s. 494.00312(5), F.S.[3] In addition, Florida exceeded the federal requirements by adopting parallel requirements for mortgage company licenses (i.e., mortgage brokers and mortgage lenders), thereby mandating the OFR to deny licensure to any mortgage lender or mortgage broker applicant who has had an equivalent license revoked in another state, regardless of the underlying reason.[4]

Since the enactment of this requirement, the OFR has encountered situations where other states interpret the term "revoked" differently. For example, Florida uses an annual renewal and fee process. If a Florida mortgage licensee does not timely complete their annual renewal or pay the annual fee, the license "expires" on December 31 and the person must apply for a new license in order to continue conducting mortgage business lawfully. On the other hand, other states may use a permanent license with an annual assessment. If the licensee decides it wants to discontinue doing its licensed business in the other state and does not pay that state's annual assessment when due, the other state's regulatory process may be to administratively revoke the permanent license. Therefore, because the license status will be "revoked" in the other state, it would cause a Florida mortgage license application in Florida to be denied under current law, even though the underlying reason was technical or ministerial in nature.[5]

Proposed Changes: License Revocation
The bill amends ss. 494.00321 and 494.00611, F.S. to provide the OFR discretion in denying applicants a mortgage broker and mortgage lender license, respectively, if the applicant has had an equivalent license revoked in another jurisdiction. This allows the OFR to consider out-of-state company revocations on a case-by-case basis in determining applicants' fitness for mortgage broker or mortgage lender licensure. The bill provides that these changes are effective upon becoming a law.

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[1] 12 U.S.C. § 4501 et seq.
[2] 12 U.S.C. § 5104(b)(1).
[3] Chapter 2009-241, L.O.F.
[4] Sections 494.00321(5) and 494.00611(5), F.S.
[5] Bill analysis from the OFR (dated March 6, 2013), on file with the Government Operations Appropriations Subcommittee staff.

The bill does not affect the OFR's discretion and authority under current law to impose disciplinary action on existing mortgage lender or mortgage broker licensees who have equivalent licenses revoked in other states.[6]

The bill provides that these provisions shall take effect upon becoming a law.

Current Situation: Fingerprinting for Securities and MSB Applicants

Under Chapter 517, F.S., no dealer, associated person, or issuer of securities is authorized to sell or offer for sale any securities in or from offices in this state, or sell securities to persons in this state from offices outside this state without being registered with the OFR. The application for such registration requires dealers, investment advisers, and associated persons to submit fingerprint cards, which are then processed by the Florida Department of Law Enforcement (FDLE) for state criminal background checks and Federal Bureau of Investigation (FBI) for federal criminal background checks. These background checks enable the OFR to determine an applicant's fitness for registration in accordance with Chapter 517, F.S. Currently, the fingerprint processing fee for securities applicants is $40.50.[7] The cost of the processing may be borne by the OFR, the employer, or the person subject to the background check.[8]

Under Chapter 560, F.S., persons engaged in business as a money services business must be licensed with the OFR.[9] The application for such license requires each officer, director, responsible person, the compliance officer, each controlling shareholder, and any other person who has a controlling interest in the money services business to submit a fingerprint card, which is processed by the FDLE and FBI for state and federal criminal background checks.[10] Applicants that are publicly traded corporations are not required to submit individual fingerprints. These background checks enable the OFR to determine an applicant's fitness for licensure in accordance with Chapter 560, F.S. MSB applicants are required to pay non-refundable fingerprint fees to the OFR as prescribed by rule.[11] The fingerprint fee is currently $40.50 per person.[12] The cost of the processing may be borne by the Office, the employer, or the person subject to the background check.[13]

Currently, the OFR collects fingerprint cards and fingerprint processing fees from Securities and MSB applicants, and mails them to FDLE. Effective April 2012, the FDLE and FBI have discontinued accepting physical fingerprint cards and now process fingerprints electronically or via live-scan technology. Live-scan fingerprints are taken on glass plates and electronically scanned, enabling more legible prints and shorter processing times than traditional ink-and-paper fingerprinting yields.[14] Currently, there are 120 FDLE-approved live-scan service providers in the state which submit electronic prints to FDLE for processing.[15] The average cost to obtain live-scan fingerprints from an approved live-scan service provider is $57.75.[16]

Proposed Changes: Fingerprinting for Securities and MSB Applicants

The bill removes the requirement that securities and MSB applicants submit fingerprint "cards," and replaces it with the requirement that applicants submit their fingerprints for live-scan processing in accordance with the rules adopted by the Financial Services Commission. With live-scan fingerprints,

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[6] Section 494.00255(1)(n), F.S.
[7] Rule 69W-600.006, F.A.C.
[8] Section 517.12(7), F.S.
[9] Sections 560.204, 560.303, and 560.403, F.S.
[10] Section 560.141(1)(b)2., F.S.
[11] Section 560.143(1)(f), F.S.
[12] Form OFR-560-01, Application for Licensure as a Money Services Business, incorporated by reference in Rule 69V-560.102, F.A.C.
[13] Section 560.141(1)(b)2., F.S.
[14] Background information from OFR (dated February 25, 2013), on file with Insurance & Banking Subcommittee staff.
[15] FDLE Livescan Service Providers and Device Vendors, at http://www.fdle.state.fl.us/Content/getdoc/941d4e90-131a-45ef-8af3-3c9d4efefd8e/Livescan-Service-Providers-and-Device-Vendors.aspx (last accessed February 21, 2013).
[16] Information provided by OFR (February 21, 2013); on file with the Insurance & Banking Subcommittee staff.

the applicants would pay the processing fee directly to the vendor, who in turn pays FDLE for the background checks. The OFR would no longer have to collect fingerprint processing fees from applicants. The bill states that the cost of the processing shall be borne by the person subject to the background check, which can vary depending on the live-scan service provider's rates.

The bill deletes a requirement in current law[17] that MSB applicants submit non-refundable fingerprint processing fees, as prescribed by rule, with their initial applications for licensure to OFR. This provision is unnecessary since the bill requires MSB applicants to pay fingerprint processing fees directly to the live-service provider.

For MSBs applicants only, all fingerprints electronically submitted to the FDLE will be entered into and retained in the statewide automated fingerprint identification system, which provides for immediate notification if an individual is arrested in Florida. The cost of retaining fingerprints, which is currently $6 per year per applicant,[18] shall be borne by the person subject to the background check.[19] The bill provides that MSB applicants and licensees must submit fingerprint retention fees, as set by rule, to the OFR upon initial application and renewal. The bill requires the OFR to pay an annual fee to FDLE to participate in this system and to inform FDLE of any person whose fingerprints are no longer required to be retained, such as a control person on an expired license.[20]

The bill also provides that MSBs who become licensed after the bill's effective date (October 1, 2013) must submit fingerprints for live-scan processing before seeking license renewal between April 30, 2014 and December 31, 2015. This provision will ensure that all new and existing MSB licensees' fingerprints are retained in the statewide automatic fingerprint identification system.

The bill provides that these changes are effective October 1, 2013.

B. SECTION DIRECTORY:

Section 1. Amends s. 494.00321, F.S., to authorize, rather than require, the OFR to deny a mortgage broker license application if the applicant had a mortgage broker license previously revoked in another jurisdiction.

Section 2. Amends s. 494.00611, F.S., to authorize, rather than require, the OFR to deny a mortgage lender license application if the applicant had a mortgage lender license previously revoked in another jurisdiction.

Section 3. Amends s. 517.12, F.S., to revise the procedures and requirements for submitting fingerprints as part of an application to sell or offer to sell securities; removes conflicting language.

Section 4. Amends s. 560.141, F.S. revise the procedures and requirements for submitting fingerprints for a money services business license; requires the OFR to pay an annual fee to the Department of Law Enforcement; removes conflicting language.

Section 5. Repeals s. 560.143(1)(f), F.S., relating to fingerprint fees when applying for a money services business license.

Section 6. Provides that the act shall take effect October 1, 2013, except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law.

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[17] Section 560.143(1)(f), F.S.

[18] FDLE Criminal History Record Checks/Background Checks Fact Sheet, dated October 7, 2011.

[19] MSBs licensees would pay $12 once every two years, since MSB licenses are issued and renewed on a two-year cycle. Sections 560.141(2) and 560.142, F.S.

[20] According to information provided by OFR, the bill does not include fingerprint retention for securities applicants, since the majority of securities registrants do not reside in Florida.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments below.

2. Expenditures:

   The bill is expected to have an insignificant fiscal impact on OFR expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Securities and MSB applicants currently pay $40.50 to have a physical fingerprint card processed for state and federal criminal background checks. Live-scan fingerprint processing costs generally range from between $50 to $65, depending on the vendor, and average $57.75.

Easing the restriction on out-of-state mortgage lender and mortgage broker license revocations may result in more mortgage company licenses issued in Florida.

D. FISCAL COMMENTS:

Currently, the OFR collects a paper fingerprint card and the fingerprint fee from money services business and securities applicants. The fingerprint fee is collected as revenue and deposited into the Regulatory Trust Fund. The whole fee is then transferred on to the FDLE.

The bill would require applicants to obtain and submit their fingerprints electronically through a live-scan vendor. The applicants would pay the vendor, who would then pay FDLE for the background check. Thus, the OFR would no longer have to collect fingerprinting fees from applicants, nor would they have the expenses of doing so. Currently the OFR has 1.00 FTE in the Division of Securities and 1.00 FTE in the Division of Consumer Finance that process fingerprint cards, which is approximately 5% of their daily workload. During FY 2012-13, the OFR went through a considerable reorganization of work duties and reduced the agency's FTE count by 18.5% in the process. With the reorganization of duties, the workload eliminated as a result of not processing fingerprint cards is minimal.

Fingerprint *retention* fees only apply to new money services businesses that apply for licensure after October 1, 2013, and have submitted electronic fingerprints. The OFR estimates that 500 new sets of fingerprints are retained each year, based on historical fingerprint card submissions. The current annual retention cost charged by the FDLE is $6 per set of fingerprints. The OFR would collect fingerprint retention fees from licensees during the application and renewal process, and submit those fees to FDLE. The OFR would transfer an estimated $99,000 in fingerprint retention fees annually to FDLE.

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:

If enacted, the administrative rules governing fingerprint fees for MSB and securities applicants (Chapters 69V-560 and 69W-600, F.A.C., respectively) will need to be updated to reflect the live-scan fingerprinting processes.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 211-215 of the committee substitute should be clarified to state that MSB licensees who are approved before October 1, 2013 and seek renewal must have certain individuals fingerprinted for live-scan processing by the next license renewal cycle. These individuals are officers, directors, compliance officers, and persons with a controlling interest in a MSB.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 6, 2013, the Insurance and Banking Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. One amendment provided that money services businesses that become initially licensed before the bill's effective date (October 1, 2013) must submit fingerprints for live-scan processing before seeking license renewal between April 30, 2014 and December 31, 2015. The second amendment restored current statutory language regarding licensing fees for money services businesses, and clarified that applicants and licensees must submit fingerprint retention fees, as prescribed by rule, to the OFR upon initial application and renewal. This analysis is drafted to the committee substitute as passed by the Insurance and Banking Subcommittee.

A bill to be entitled

An act relating to licensure by the Office of Financial Regulation; amending s. 494.00321, F.S.; authorizing, rather than requiring, the office to deny a mortgage broker license application if the applicant had a mortgage broker license revoked previously; amending s. 494.00611, F.S.; authorizing, rather than requiring, the office to deny a mortgage lender license application if the applicant had a mortgage lender license revoked previously; amending s. 517.12, F.S.; revising the procedures and requirements for submitting fingerprints as part of an application to sell, or offer to sell, securities; removing conflicting language; amending s. 560.141, F.S.; revising the procedures and requirements for submitting fingerprints to apply for a license as a money services business; requiring the Office of Financial Regulation to pay an annual fee to the Department of Law Enforcement; removing conflicting language; requiring certain licensees to submit live-scan fingerprints before the next renewal period; amending s. 560.143, F.S.; conforming provisions to changes made by the act; providing effective dates.

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

Section 1. Effective upon this act becoming a law, subsection (5) of section 494.00321, Florida Statutes, is

amended to read:

494.00321 Mortgage broker license.—

(5) The office may ~~shall~~ deny a license if the applicant has had a mortgage broker license, or its equivalent, revoked in any jurisdiction and shall deny a license~~, or~~ if any of the applicant's control persons has had a loan originator license, or its equivalent, revoked in any jurisdiction.

Section 2. Effective upon this act becoming a law, subsection (5) of section 494.00611, Florida Statutes, is amended to read:

494.00611 Mortgage lender license.—

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

Section 3. Subsection (7) of section 517.12, Florida Statutes, is amended to read:

517.12 Registration of dealers, associated persons, investment advisers, and branch offices.—

(7) The application must ~~shall~~ also contain such information as the commission or office may require about the applicant; any member, principal, or director of the applicant or any person having a similar status or performing similar functions; any person directly or indirectly controlling the applicant; or any employee of a dealer or of an investment adviser rendering investment advisory services. Each applicant

and any direct owners, principals, or indirect owners that are required to be reported on Form BD or Form ADV pursuant to subsection (15) shall submit fingerprints for live-scan processing in accordance with rules adopted by the commission. The fingerprints may be submitted through a third-party vendor authorized by the Department of Law Enforcement to provide live-scan fingerprinting. The costs of fingerprint processing shall be borne by the person subject to the background check. The Department of Law Enforcement shall conduct a state criminal history background check, and a federal criminal history background check must be conducted through the Federal Bureau of Investigation. The office shall review the results of the state and federal criminal history background checks and determine whether ~~file a complete set of fingerprints. A fingerprint card submitted to the office must be taken by an authorized law enforcement agency or in a manner approved by the commission by rule. The office shall submit the fingerprints to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for federal processing. The cost of the fingerprint processing may be borne by the office, the employer, or the person subject to the background check. The Department of Law Enforcement shall submit an invoice to the office for the fingerprints received each month. The office shall screen the background results to determine if~~ the applicant meets licensure requirements. The commission may waive, by rule, the requirement that applicants, including any direct owners, principals, or indirect owners that are required to be reported on Form BD or

Form ADV pursuant to subsection (15), submit ~~file a set of~~ fingerprints or the requirement that such fingerprints be processed by the Department of Law Enforcement or the Federal Bureau of Investigation. The commission or office may require information about any such applicant or person concerning such matters as:

(a) His or her full name, and any other names by which he or she may have been known, and his or her age, social security number, photograph, qualifications, and educational and business history.

(b) Any injunction or administrative order by a state or federal agency, national securities exchange, or national securities association involving a security or any aspect of the securities business and any injunction or administrative order by a state or federal agency regulating banking, insurance, finance, or small loan companies, real estate, mortgage brokers, or other related or similar industries, which injunctions or administrative orders relate to such person.

(c) His or her conviction of, or plea of nolo contendere to, a criminal offense or his or her commission of any acts which would be grounds for refusal of an application under s. 517.161.

(d) The names and addresses of other persons of whom the office may inquire as to his or her character, reputation, and financial responsibility.

Section 4. Subsection (1) of section 560.141, Florida Statutes, is amended to read:

560.141 License application.—

(1) To apply for a license as a money services business under this chapter, the applicant must submit:

(a) ~~Submit~~ An application to the office on forms prescribed by rule which includes the following information:

1. The legal name and address of the applicant, including any fictitious or trade names used by the applicant in the conduct of its business.

2. The date of the applicant's formation and the state in which the applicant was formed, if applicable.

3. The name, social security number, alien identification or taxpayer identification number, business and residence addresses, and employment history for the past 5 years for each officer, director, responsible person, the compliance officer, each controlling shareholder, and any other person who has a controlling interest in the money services business as provided in s. 560.127.

4. A description of the organizational structure of the applicant, including the identity of any parent or subsidiary of the applicant, and the disclosure of whether any parent or subsidiary is publicly traded.

5. The applicant's history of operations in other states if applicable and a description of the money services business or deferred presentment provider activities proposed to be conducted by the applicant in this state.

6. If the applicant or its parent is a publicly traded company, copies of all filings made by the applicant with the United States Securities and Exchange Commission, or with a similar regulator in a country other than the United States,

within the preceding year.

7. The location at which the applicant proposes to establish its principal place of business and any other location, including branch offices and authorized vendors operating in this state. For each branch office and each location of an authorized vendor, the applicant shall include the nonrefundable fee required by s. 560.143.

8. The name and address of the clearing financial institution or financial institutions through which the applicant's payment instruments are drawn or through which the payment instruments are payable.

9. The history of the applicant's material litigation, criminal convictions, pleas of nolo contendere, and cases of adjudication withheld.

10. The history of material litigation, arrests, criminal convictions, pleas of nolo contendere, and cases of adjudication withheld for each executive officer, director, controlling shareholder, and responsible person.

11. The name of the registered agent in this state for service of process unless the applicant is a sole proprietor.

12. Any other information specified in this chapter or by rule.

(b) ~~In addition to the application form, submit:~~

~~1.~~ A nonrefundable application fee as provided in s. 560.143.

(c)~~2.~~ Fingerprints for each person listed in subparagraph (a)3. for live-scan processing in accordance with rules adopted by the commission.

1. The fingerprints may be submitted through a third-party vendor authorized by the Department of Law Enforcement to provide live-scan fingerprinting.

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

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

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

5. The office shall review the results of the state and federal criminal history background checks and determine whether the applicant meets licensure requirements.

6. For purposes of this paragraph, fingerprints are not required to be submitted if ~~A fingerprint card for each of the persons listed in subparagraph (a)3. unless~~ the applicant is a publicly traded corporation~~,~~ or is exempted from this chapter under s. 560.104(1). ~~The fingerprints must be taken by an authorized law enforcement agency. The office shall submit the fingerprints to the Department of Law Enforcement for state~~

~~processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for federal processing. The cost of the fingerprint processing may be borne by the office, the employer, or the person subject to the criminal records background check. The office shall screen the background results to determine if the applicant meets licensure requirements. As used in this section,~~ The term "publicly traded" means a stock is currently traded on a national securities exchange registered with the federal Securities and Exchange Commission or traded on an exchange in a country other than the United States regulated by a regulator equivalent to the Securities and Exchange Commission and the disclosure and reporting requirements of such regulator are substantially similar to those of the commission.

7. Licensees initially approved before October 1, 2013, who are seeking renewal must submit fingerprints for live-scan processing in accordance with this paragraph. Such fingerprints must be submitted before renewing a license that is scheduled to expire between April 30, 2014 and December 31, 2015.

(d)~~3.~~ A copy of the applicant's written anti-money laundering program required under 31 C.F.R. s. 103.125.

(e)~~4.~~ Within the time allotted by rule, any information needed to resolve any deficiencies found in the application.

Section 5. Section 560.143, Florida Statutes, is amended to read:

560.143 Fees.—

(1) LICENSE APPLICATION FEES.—The applicable non-refundable fees must accompany an application for licensure:

(a) Part II.....$375.

(b) Part III.....$188.

(c) Per branch office.....$38.

(d) For each location of an authorized vendor.....$38.

(e) Declaration as a deferred presentment provider.....$1,000.

(f) Fingerprint retention fees as prescribed by rule.

(g) License application fees for branch offices and authorized vendors are limited to $20,000 when such fees are assessed as a result of a change in controlling interest as defined in s. 560.127.

(2) LICENSE RENEWAL FEES.—The applicable non-refundable license renewal fees must accompany a renewal of licensure:

(a) Part II.....$750.

(b) Part III.....$375.

(c) Per branch office.....$38.

(d) For each location of an authorized vendor.....$38.

(e) Declaration as a deferred presentment provider.....$1,000.

(f) Renewal fees for branch offices and authorized vendors are limited to $20,000 biennially.

(g) Fingerprint retention fees as prescribed by rule.

(3) LATE LICENSE RENEWAL FEES.—

(a) Part II.....$500.

(b) Part III.....$250.

(c) Declaration as a deferred presentment

provider.....$500.

Section 6. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect October 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 675 Health Insurance Marketing Materials
SPONSOR(S): Insurance & Banking Subcommittee; Ingram and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 648

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Cooper	Cooper
2) Health Innovation Subcommittee	12 Y, 0 N	McElroy	Shaw
3) Regulatory Affairs Committee		Cooper	Hamon

SUMMARY ANALYSIS

The Employee Health Care Access Act is intended to promote the availability of health insurance coverage to small employers, and establishes certain requirements to accomplish that purpose. The Act defines small employer as any person, sole proprietor, self-employed person, independent contractor, firm, association, or other business entity that is based in Florida, actively engaged in business, with at least one, and no more than 50 employees.

Among its many features, the Act requires carriers to offer any small employer, upon request, a standard health benefit plan, a basic health benefit plan, and a high deductible plan that meets the requirements of health savings account plans. As a part of their offer, insurers must disclose certain information relating to health benefit mandates, managed care arrangements, and the plans' primary and preventive care features.

Current law also requires that each marketing communication that is to be used in the marketing of a health benefit plan be submitted for review by the Office of Insurance Regulation (OIR) prior to use. The law also requires such marketing communication to contain the disclosures referenced above.

The bill repeals an insurer's obligation to submit the marketing materials to OIR prior to use as well as the requirement that the marketing communication contain the specified disclosures. The bill does not repeal the mandate that the insurer present the disclosure statement to the small employer. Nor does the bill eliminate the ability of OIR to review the marketing communications and disclosure statements as part of complaint investigations or market conduct reviews. The bill also does not modify the current statutory authority of the Financial Services Commission to establish regulations setting forth additional standards to provide for the fair marketing and broad availability of health benefit plans to small employers.

The bill also addresses the regulation of advertising materials utilized by long-term care insurers. Long-term care insurance is insurance which covers the cost of certain health and personal services needed over a long period of time. Most of these benefits are not covered by traditional health insurance or Medicare. These include services in one's home such as assistance with Activities of Daily Living or Instrumental Activities of Daily Living as well as care in a variety of facility and community settings.

The bill deletes the current statutory requirement that insurers have to submit their advertising materials to OIR prior to their use. However, the bill still requires insurers to file the materials with OIR. The effect of this change is that insurers can immediately use their advertisements upon filing and the opportunity for OIR to disapprove before their use is removed. The bill retains the office's authority to disapprove an advertisement at any time and to enter an immediate order for the insurer to stop its use.

The bill should have a minimal positive fiscal impact on OIR. The bill may have a small positive fiscal impact for insurers. The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Employee Health Care Access Act

In 1992, the Florida Legislature created the Employee Health Care Access Act to promote the availability of health insurance coverage to small employers and to establish certain requirements to accomplish that purpose.[1] Small employer is defined as any person, sole proprietor, self-employed person, independent contractor, firm, association, or other business entity that is based in Florida, actively engaged in business, with at least one, and no more than 50 employees.[2]

Among its many features, the Act requires carriers to offer any small employer, upon request, a standard health benefit plan, a basic health benefit plan, and a high deductible plan that meets the requirements of health savings account plans.[3] The offer of coverage must include a statement disclosing the following:

a) An explanation of those mandated benefits and providers that are not covered by the policy or contract;
b) An explanation of the managed care and cost control features of the policy or contract, along with all appropriate mailing addresses and telephone numbers to be used by insureds in seeking information or authorization; and
c) An explanation of the primary and preventive care features of the policy or contract.[4]

Current law also requires that each marketing communication that is to be used in the marketing of a health benefit plan be submitted for review by the Office of Insurance Regulation (OIR) prior to use. The law also requires such marketing communication to contain the aforementioned disclosures.[5]

The bill repeals an insurer's obligation to submit the marketing materials to OIR prior to use as well the requirement that the marketing communication contain the specified disclosures. The bill does not repeal the mandate that the insurer present the disclosure statement to the small employer. Nor does the bill extinguish the ability of OIR to review the marketing communications and disclosure statements as part of complaint investigations or market conduct reviews. The bill also does not modify the current statutory authority of the Financial Services Commission (FSC) to establish regulations setting forth additional standards to provide for the fair marketing and broad availability of health benefit plans to small employers.

Long-Term Care Insurance

Long-term care insurance is insurance which covers the cost of certain health and personal services, most of which are not covered by traditional health insurance or Medicare, These include services in one's home such as assistance with Activities of Daily Living (ADL) as well as care in a variety of facility and community settings. Examples of ADLs include bathing, dressing, caring for incontinence, and eating. Other common long-term care services and supports are assistance to complete Instrumental Activities of Daily Living, which may include such activities as housework, taking medication, shopping for groceries or clothes, and the caring of pets.[6] Benefits may also be provided when the insured is experiencing cognitive impairment.

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[1] Section 627.6699(2), F.S.
[2] Section 627.6699(3)(v), F.S.
[3] Section 627.6699(12)(b)1., F.S
[4] Section 627.6699(12)(d)1., F.S.
[5] Section 627.6699(12)(d)4., F.S.
[6] http://www.longtermcare.gov/LTC/Main_Site/Understanding/Definition/Index.aspx (last accessed: March 4, 2013).

The regulatory framework in statute for long-term care insurance policies is ss. 627.9401-627.9408, F.S. In part, the law requires the FSC to adopt rules setting forth standards for the advertising, marketing, and sale of long-term care policies in order "to protect applicants from unfair or deceptive sales or enrollment practices." The law also states that an insurer shall file with OIR any long-term care insurance advertising material at least 30 days before the date of use of the advertisement in Florida. Within 30 days after receiving the material OIR is required to review and disapprove any advertisement it finds violates the law. The statute further authorizes OIR to disapprove an advertisement at any time and to order its use be discontinued if the office determines the advertisement violates the law.[7]

The bill deletes the requirement that insurers have to submit their advertising materials to OIR prior to their use. However, the bill still requires insurers to file the materials with OIR. The effect of this change is that insurers can immediately use their advertisements upon filing and the opportunity for OIR to disapprove before their use is removed. The bill adds a new provision permitting OIR to issue notices of disapproval of materials. The bill also retains the office's authority to disapprove an advertisement at any time and to enter an immediate order for the insurer to stop its use.

B. SECTION DIRECTORY:

Section 1. Amends s. 627.6699, F.S., relating to standard, basic, high deductible, and limited health benefit plans for the Employee Health Care Access Act.

Section 2. Amends s. 627.9407, F.S., relating to disclosure, advertising, and performance standards for long-term care insurance.

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:

By potentially streamlining the process for distributing marketing materials, the bill may a small positive impact on insurers.

[7] Section 627.9407, F.S.

D. FISCAL COMMENTS:

According to OIR, "[t]here will be some reduction in staff time devoted to review of marketing material for health insurance, but the reduction would have no significant impact on resources otherwise allocated to health and life insurance form reviews."[8]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 6th, 2013, the Insurance and Banking Subcommittee considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment provided that advertising materials for long-term care insurance may be used immediately by insurers upon filing without prior approval of OIR, but allowed OIR to disapprove subsequently.

The staff analysis has been updated to reflect the committee substitute.

[8] Bill Analysis for HB 675, Florida Office of Insurance Regulation, February 21, 2013. On file with the Insurance & Banking Subcommittee.

A bill to be entitled

An act relating to health insurance marketing materials; amending ss. 627.6699 and 627.9407, F.S.; deleting requirements that a health insurer submit proposed marketing communications or advertising material to the Office of Insurance Regulation for review and approval; establishing procedures for disapproval of long-term care insurance advertising materials; providing an effective date.

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

Section 1. Paragraph (d) of subsection (12) of section 627.6699, Florida Statutes, is amended to read:

627.6699 Employee Health Care Access Act.—

(12) STANDARD, BASIC, HIGH DEDUCTIBLE, AND LIMITED HEALTH BENEFIT PLANS.—

(d)1. Upon offering coverage under a standard health benefit plan, a basic health benefit plan, or a limited benefit policy or contract for a ~~any~~ small employer group, the small employer carrier shall provide such employer group with a written statement that contains, at a minimum:

a. An explanation of those mandated benefits and providers that are not covered by the policy or contract;

b. An explanation of the managed care and cost control features of the policy or contract, along with all appropriate mailing addresses and telephone numbers to be used by insureds in seeking information or authorization; and

c. An explanation of the primary and preventive care features of the policy or contract.

Such disclosure statement must be presented in a clear and understandable form and format and must be separate from the policy or certificate or evidence of coverage provided to the employer group.

2. Before a small employer carrier issues a standard health benefit plan, a basic health benefit plan, or a limited benefit policy or contract, the carrier ~~it~~ must obtain from the prospective policyholder a signed written statement in which the prospective policyholder:

a. Certifies as to eligibility for coverage under the standard health benefit plan, basic health benefit plan, or limited benefit policy or contract;

b. Acknowledges the limited nature of the coverage and an understanding of the managed care and cost control features of the policy or contract;

c. Acknowledges that if misrepresentations are made regarding eligibility for coverage under a standard health benefit plan, a basic health benefit plan, or a limited benefit policy or contract, the person making such misrepresentations forfeits coverage provided by the policy or contract; and

d. If a limited plan is requested, acknowledges that the prospective policyholder had been offered, at the time of application for the insurance policy or contract, the opportunity to purchase any health benefit plan offered by the carrier and that the prospective policyholder ~~had~~ rejected that

coverage.

A copy of such written statement must ~~shall~~ be provided to the prospective policyholder by ~~no later than at~~ the time of delivery of the policy or contract, and the original of such written statement must ~~shall~~ be retained in the files of the small employer carrier for the period of time that the policy or contract remains in effect or for 5 years, whichever ~~period~~ is longer.

3. Any material statement made by an applicant for coverage under a health benefit plan which falsely certifies ~~as to~~ the applicant's eligibility for coverage serves as the basis for terminating coverage under the policy or contract.

~~4. Each marketing communication that is intended to be used in the marketing of a health benefit plan in this state must be submitted for review by the office prior to use and must contain the disclosures stated in this subsection.~~

Section 2. Subsection (2) of section 627.9407, Florida Statutes, is amended to read:

627.9407 Disclosure, advertising, and performance standards for long-term care insurance.—

(2) ADVERTISING.—The commission shall adopt rules establishing ~~setting forth~~ standards for the advertising, marketing, and sale of long-term care insurance policies in order to protect applicants from unfair or deceptive sales or enrollment practices. An insurer shall file with the office any long-term care insurance advertising material intended for use in this state. The materials may be effective immediately,

subject to disapproval by the office. Following receipt of notice of such disapproval, a long-term care insurer may not issue or use any advertisement disapproved by the office or for which the office has withdrawn approval ~~at least 30 days before the date of use of the advertisement in this state~~. ~~Within 30 days after the date of receipt of the advertising material, the office shall review the material and shall disapprove any advertisement if, in the opinion of the office, such advertisement violates any of the provisions of this part or of part IX of chapter 626 or any rule of the commission.~~ The office may disapprove an advertisement at any time and enter an immediate order requiring that the use of the advertisement be discontinued if it determines that the advertisement violates ~~any of the provisions of~~ this part, ~~or of~~ part IX of chapter 626, or any rule of the commission.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 795 Premises Inspections
SPONSOR(S): Business & Professional Regulation Subcommittee; La Rosa and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 842

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	13 Y, 0 N, As CS	Livingston	Luczynski
2) Government Operations Appropriations Subcommittee	12 Y, 0 N	Topp	Topp
3) Regulatory Affairs Committee		Livingston	Hamon K.W.H.

SUMMARY ANALYSIS

The Division of Hotels and Restaurants licenses and inspects public food service (and public lodging establishments) as required by statute. Public food service establishments are defined as:

> any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.

The Division of Hotels and Restaurants is statutorily required to inspect most licensed establishments twice per year with certain exceptions. Temporary public food service establishments are inspected each time they operate at a temporary event.

The bill changes the inspection frequency for public food service establishments from biannual to a risk-based frequency requiring from one to four inspections annually, as adopted by rule. The bill specifies that the inspection frequency may be based on rules that consider establishment inspection and compliance history, type of food and food preparation, and type of service.

The division is required to annually reassess the inspection frequency. Such establishment-specific frequency categories and annual reassessment is designed to support the development of data to classify establishments within the correct frequency category each year based upon public health risk.

The Department of Business & Professional Regulation (DBPR) indicates that the bill will result in no increased costs and that the provisions of the bill will be accomplished within existing resources.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present situation

Three Florida agencies operate food safety programs: Department of Business and Professional Regulation (DBPR), Department of Agriculture and Consumer Services (DACS), and Department of Health (DOH). In general, DBPR regulates restaurants, while DACS regulates grocery stores and supermarkets, as well as, bakeries, and convenience stores that offer food service and DOH regulates facilities such as hospitals, nursing homes, and schools that serve high-risk populations. Each agency issues licenses or permits to the food establishments that fall within their regulation and conducts food safety inspections of these establishments. Depending on the severity of violations, inspectors may require food items be removed from sale and destroyed or can close or fine the food establishment.

The Division of Hotels and Restaurants (division) within the DBPR licenses and inspects public food service establishments as required by ch. 509, F.S. Section 509.013(5)(a), F.S., defines public food service establishments as

> any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.

New public food service establishments, except vending machines, must pass a licensure inspection (61C-1.002, FAC). The division also requires a licensure inspection when a public food service establishment changes owner and the establishment 1) has not passed an inspection within 120 days of application, 2) completed a plan review or variance, or 3) is due for an inspection. An inspection is not required for license renewal.

Division inspectors record inspection results electronically on personal digital assistants (PDAs) or manually on paper inspection forms. Inspection results are uploaded to the DBPR's Single Licensing System and available for public review on the DBPR's website. The division conducted 108,731 public food services inspections in FY 2011-2012.[1]

OPPAGA has reviewed the division's inspection program and has recommended that "the Legislature direct the agencies to adopt a consistent methodology for measuring performance and authorize DBPR to use a risk-based approach to target its resources to restaurants that pose the greatest threat to public health."[2]

In a follow-up report, OPPAGA published progress report to inform the Legislature of actions taken in response to the 2008 OPPAGA report that examined Florida's food safety programs. The progress report noted that "Risk-based inspection frequency models consider the risk posed by different types of facilities, and enable regulators to target limited resources to the highest risk facilities."[3]

Effective, January 1, 2013, the division adopted provisions of the 2009 Food and Drug Administration (FDA) Food Code, which establishes provisions for reducing risk factors known to cause or contribute to foodborne illness. The new risk designations for Food Code provisions establishes a three-tiered

[1] Division of Hotels and Restaurants, Annual Report: FY 2011-2012, pg. 11.
[2] State Food Safety Programs Should Improve Performance and Financial Self-Sufficiency, OPPAGA Report No. 08-67, December 2008.
[3] State Food Safety Programs Should Improve Performance and Financial Self-Sufficiency, OPPAGA Report No. 10-44, December 2010.

system which replaces the designations of "critical" or "non-critical" violations. The new designations include "High Priority," "Intermediate," and "Basic."

Effect of proposed changes

The bill changes the inspection frequency for public food service establishments from biannual to a risk-based frequency requiring from one to four inspections a*nnually, as adopted by rule. The bill specifies that the inspection frequency may be based on rules that* consider establishment inspection and compliance history, type of food and food preparation, and type of service. The division is required to annually reassess the inspection frequency. Such establishment-specific frequency categories and annual reassessment is designed to support the development of data to classify establishments within the correct frequency category each year based upon public health risk.

The division continues to be authorized to perform inspections at such other times as the division determines is necessary to ensure the public's health, safety, and welfare,[4] as well as, to investigate a complaints.

B. SECTION DIRECTORY:

Section 1 amends s. 509.032, F.S., to require the division to inspect public food service establishments one to four times a year, as determined by a risk-based frequency adopted by rule.

Section 2 provides for an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The DBPR indicates that the bill will result in no increased costs and that the provisions of the bill can be accomplished with existing resources.[5]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The division states that "this bill would streamline regulation by reducing the inspection burden on the type of establishments that present low risk to the public's health, safety and welfare, while focusing inspection resources on the type of establishments that present higher risk.

[4] See s. 509.032(2), F.S.

[5] Department of Business and Professional Regulation, Bill Analysis on HB 795, dated February 20, 2013, on file with the Government Operations Appropriations Subcommittee.

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:

Currently, ch. 509, F.S. authorizes the division to adopt rules to carry out the provisions of this chapter. The bill specifies that the division, no later than July 1, 2014, adopt by rule a risk-based inspection frequency for public food service establishments.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 12, 2013, the Business & Professional Regulation Subcommittee considered one technical title amendment to correct an inadvertent reference to public lodging establishments and reported the bill favorably with a committee substitute (CS).

The staff analysis is drafted to reflect the CS.

A bill to be entitled

An act relating to premises inspections; amending s. 509.032, F.S.; requiring the Division of Hotels and Restaurants of the Department of Business and Professional Regulation to adopt rules for a risk-based inspection frequency for licensed public food service establishments; providing criteria; conforming terminology; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) of section 509.032, Florida Statutes, is amended to read:

509.032 Duties.—

(2) INSPECTION OF PREMISES.—

(a) The division has ~~responsibility and~~ jurisdiction and is responsible for all inspections required by this chapter. The division is responsible ~~has responsibility~~ for quality assurance. The division shall inspect each licensed public lodging establishment ~~shall be inspected~~ at least biannually, except for transient and nontransient apartments, which shall be inspected at least annually. Each establishment licensed by the division~~, and~~ shall be inspected at such other times as the division determines is necessary to ensure the public's health, safety, and welfare. The division shall, by no later than July 1, 2014, adopt by rule a risk-based ~~establish a system to determine~~ inspection frequency for each licensed public food service establishment. The rule must require at least one, but

not more than four, routine inspections that must be performed annually, and may include guidelines that consider the inspection and compliance history of a public food service establishment, the type of food and food preparation, and the type of service. The division shall annually reassess the inspection frequency of all licensed public food service establishments. Public lodging units classified as vacation rentals are not subject to this requirement but shall be made available to the division upon request. If, during the inspection of a public lodging establishment classified for renting to transient or nontransient tenants, an inspector identifies vulnerable adults who appear to be victims of neglect, as defined in s. 415.102, or, in the case of a building that is not equipped with automatic sprinkler systems, tenants or clients who may be unable to self-preserve in an emergency, the division shall convene meetings with the following agencies as appropriate to the individual situation: the Department of Health, the Department of Elderly Affairs, the area agency on aging, the local fire marshal, the landlord and affected tenants and clients, and other relevant organizations, to develop a plan that ~~which~~ improves the prospects for safety of affected residents and, if necessary, identifies alternative living arrangements such as facilities licensed under part II of chapter 400 or under chapter 429.

Section 2. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 821 Insurer Solvency
SPONSOR(S): Insurance & Banking Subcommittee; Ingram
TIED BILLS: CS/HB 823 **IDEN./SIM. BILLS:** SB 836

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Bauer	Cooper
2) Regulatory Affairs Committee		Bauer GB	Hamon K.W.H.

SUMMARY ANALYSIS

The Office of Insurance Regulation (OIR) is a member of the National Association of Insurance Commissioners (NAIC), an organization consisting of state insurance regulators. As a member of the NAIC, the OIR is required to participate in the organization's accreditation program. NAIC accreditation is a certification that legal, regulatory, and organizational oversight standards and practices are being fulfilled by a state insurance department. The OIR is slated for its accreditation review during the fall of 2013.

The NAIC also periodically reviews its solvency standards as set forth in its model acts, and revises accreditation requirements to adapt to evolving industry standards. The OIR has identified several model act components not found in the current Insurance Code, and which must be implemented in order for the OIR to maintain its accreditation.

HB 821 implements the following NAIC components:

- Requires insurers to file actuarial opinion summaries and supporting workpapers annually;
- Requires acquirers of controlling interests to disclose "enterprise risk" and for ultimate controlling persons to file an annual enterprise risk report;
- Requires insurance holding companies to file an annual registration statement;
- Allows the OIR to examine any insurer and its affiliates to ascertain enterprise risk;
- Provides for confidentiality of enterprise risk reports, actuarial opinion summaries;
- Provides a privilege for memoranda supporting actuarial opinions on reserves, actuarial opinion summaries and related information;
- Requires health maintenance organizations and prepaid limited health service organizations to file risk-based capital filings;
- Incorporates a risk-based capital trend test for life and health and property and casualty insurers; This trend test expands the scenarios in which a company may be required to take corrective action;
- Allows the OIR to initiate the establishment of and to participate in supervisory colleges with other state insurance regulators; and
- Updates the Financial Services Commission's rulemaking authority to reflect these new NAIC requirements.

The bill does not have a fiscal impact on state and local government. The bill has an indeterminate impact on the private sector.

The bill provides a contingent effective date of October 1, 2013, if the linked public records bill (HB 823) or similar legislation is adopted in the same legislative session or an extension thereof and becomes law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background: NAIC Accreditation

The National Association of Insurance Commissioners (NAIC) is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and five U.S. territories. The membership consists of the state government officials, who along with their departments and staff, regulate the conduct of insurance companies and agents in their respective state or territory. The mission of the NAIC is to assist state insurance regulators, individually and collectively, in serving the public interest and achieving the following fundamental insurance regulatory goals in a responsive, efficient and cost-effective manner, consistent with the wishes of its members:

- Protect the public interest;
- Promote competitive markets;
- Facilitate the fair and equitable treatment of insurance consumers;
- Promote the reliability, solvency and financial solidity of insurance institutions; and
- Support and improve state regulation of insurance.[1]

As a member of the NAIC, the Office of Insurance Regulation (OIR) is required to participate in the organization's Financial Regulation Standards and Accreditation Program.[2] NAIC accreditation is a certification that legal, regulatory, and organizational oversight standards and practices are being fulfilled by a state insurance department. The accreditation program is designed to allow for interstate cooperation and reduces regulatory redundancies. For example, the OIR's examinations may be recognized by other member states, thereby avoiding the need to have a Florida domestic insurer examined by multiple states. All fifty states, the District of Columbia, and Puerto Rico are accredited by the NAIC. Once accredited, a state is subject to a full accreditation review every five years, as well as interim reviews. The OIR is slated for review by the NAIC Accreditation Team during the fall of 2013.

The NAIC also periodically reviews its solvency standards as set forth in its model acts,[3] and revises accreditation requirements to adapt to evolving industry practices. The OIR has identified elements of several NAIC model acts that are not in the current Insurance Code,[4] and must be implemented in order for the OIR to maintain its accreditation. This bill implements these model act elements, to be discussed in further detail below:

- *Model Holding Company Act & Regulations*[5]
  - Acquisition and controlling stock reporting
  - Registration and regulation of insurance holding companies
  - Enterprise risk reporting
  - Supervisory colleges
- *Risk-Based Capital for Insurers & Health Organizations*
  - Risk-based capital trend test for property and casualty insurers[6]
  - Risk-based capital trend test for life and health insurers[7]

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[1] About the NAIC, http://www.naic.org/index_about.htm (last accessed February 27, 2013).
[2] NAIC Financial Regulation Standards and Accreditation Committee: http://www.naic.org/committees_f.htm
[3] NAIC Model Laws, Regulations and Guidelines: http://www.naic.org/store_model_laws.htm
[4] The Insurance Code consists of chs. 624, 632, 634, 635, 636, 641, 642, 648, and 651, F.S.
[5] The NAIC's 2010 revisions to the Model Holding Company Act have a tentative accreditation date of January 1, 2016. Information on file with the Regulatory Committee staff.
[6] The accreditation effective date for the risk-based trend test for property and casualty insurers is January 1, 2015. Information on file with the Regulatory Affairs Committee staff.
[7] The accreditation effective date for the risk-based trend test for life and health insurers is January 1, 2017. Information on file with the Regulatory Affairs Committee staff.

- *Property & Casualty Actuarial Opinion Model Law*[8]
  - Actuarial opinion summary
  - Confidentiality[9] and privilege
- *Standard Valuation Law*[10]
  - Confidentiality[11] and privilege

In addition, the OIR has identified rulemaking provisions of the Insurance Code that require updating to reflect the new NAIC requirements. The OIR's rulemaking body is the Financial Services Commission.[12]

House Bill 821

The ten substantive sections of the bill implement the four NAIC model laws described above.

1. Model Holding Company Act and Regulations

For years, the OIR's financial oversight authority has included a review of transactions among affiliates and members of insurance holding companies by adopting the NAIC's Model Insurance Holding Company Act.[13]

In response to the recent financial crisis, the NAIC's Solvency Modernization Initiative (SMI)[14] studied key group supervision issues for insurance holding company systems. In light of the 2008 liquidity crisis and collapse of American International Group, Inc., the SMI's efforts focused on the risks and activities of non-insurance entities within insurance holding companies, concluded there was a corresponding regulatory need to obtain affiliates' financial information, such as *enterprise risk*. The NAIC model act defines "enterprise risk" as:

> [A]ny activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer of its insurance company as a whole, including, but not limited to, anything that would cause the insurer's risk-based capital as set forth in [state requirement] or would cause the insurer to be in a hazardous financial condition.[15]

As a result, the NAIC adopted revisions to its *Model Insurance Holding Company System Regulatory Act and Regulations* in December 2010, which states must adopt as an accreditation component.[16] These revisions include:

- expansions to regulators' ability to evaluate any entity within an insurance holding company system;
- enhancements to the regulator's rights to access books and records and to compel production of information;
- establishment of expectation of funding with regard to regulator participation in supervisory colleges;
- enhancements in corporate governance, such as board of directors and senior management responsibilities;
- the inclusion of financial statements as part of an affiliate's registration requirements; and
- enterprise risk reporting requirements.[17]

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[8] It is noted that the NAIC made the Property & Casualty Actuarial Opinion Model Law an accreditation component effective January 1, 2010. Information on file with the Regulatory Affairs Committee staff.
[9] See the linked/public records exemption bill, HB 823.
[10] According to the NAIC, an effective accreditation date for the changes to the Standard Valuation Law has not yet been determined. Information on file with the Regulatory Affairs Committee.
[11] See linked/public records exemption bill, HB 823.
[12] Section 20.121(3)(c), F.S.
[13] Bill analysis by the OIR (received March 9, 2013), on file with the Insurance & Banking Subcommittee.
[14] NAIC Solvency Modernization Initiative Roadmap (Mar. 29, 2012), accessed on http://www.naic.org/committees_e_isftf.htm
[15] Section 1(F) of the NAIC Model Insurance Holding Company System Regulatory Act.
[16] As of November 2012, 11 states have adopted the Model Holding Company law. These states are: California, Connecticut, Illinois, Indiana, Kentucky, Louisiana, Nebraska, Pennsylvania, Rhode Island, Texas, and West Virginia. OIR bill summary (dated January 24, 2013), on file with Insurance & Banking Subcommittee staff.

Sections 1, 5, 6, 7, and 8 of the bill relate to the NAIC's Model Holding Company Act and Regulations.

- **Section 1** of the bill creates a new provision, s. 624.085, F.S., within the Insurance Code to define "affiliate," "affiliated person," and "control" for purposes of reporting acquisition of controlling stock.
  - The bill takes the definition of "affiliated person" currently defined in s. 628.461(12)(a), F.S., and places it in this new provision.

- **Section 5** of the bill amends s. 628.461, F.S. (acquisition of controlling stock), with the following:
  - Currently, an individual or company must file a letter of notification and a statement for the OIR's approval before concluding a tender offer to acquire 5% or more of a domestic stock insurer or of a controlling company. During the pendency of the OIR's review of an acquisition filing, the insurer is not permitted to make a "material change" to its operation or management, unless the OIR has approved or been notified, respectively. A "material change" consists of a disposal or obligation of 5% or more of the insurer's capital and surplus, or a change in management involving a person who has the authority to dispose or obligate 5% of the insurer's capital and surplus.
  - Section 5:
    - Deletes the provision stating in "lieu of filing an acquisition statement, a party acquiring less than 10 % of the outstanding voting securities of an insurer, may file a disclaimer of affiliation and control." Amended language is relocated in a new s. 628.461(12)(a), F.S.
    - Specifies that the acquiring party's statement must include an agreement to file an "annual enterprise risk report," if control exists as described in section 6 of the bill.
    - Adds language that states the person required to file the statement pursuant to s. 628.461(1), F.S. will provide the annual report specified in s. 628.801(2), F.S., if control exists.
    - Adds a provision that the presumption of control may be rebutted by filing a disclaimer of control which will be in effect unless the OIR disallows the disclaimer.
    - Adds a provision that any controlling person of a domestic insurer that seeks to divest its controlling interest in the domestic insurer shall file with the OIR a confidential notice of its proposed divestiture at least 30 days prior to the relinquishment of control.
    - Deletes definitions of "affiliated person" and "controlling company," which are moved to the new s. 624.085, F.S., found in Section 1 of the bill.

- **Section 6** of the bill amends s. 628.801, F.S. (regarding the registration and regulation of insurance holding companies), with the following:
  - Currently, all insurers authorized to do business in Florida, and who are members of insurance holding companies, are required to register with the OIR and be subject to regulation in relation to their holding companies. The Financial Services Commission has rulemaking authority to adopt rules regarding registration, and those rules must include the requirements and standards of certain NAIC model regulations.[18]
  - The bill imposes a statutory requirement that insurers file an annual holding company registration statement, including disclosure of material transaction between affiliates. Additionally, it requires that the controlling person of every insurer file an annual enterprise risk report which identifies material risk within the insurance company holding system that could pose enterprise risk to the insurer. These changes align Florida's oversight structure with those adopted by the NAIC.
  - This section:
    - Requires authorized insurers to file a registration statement on or before April 1 of each year. The bill also states a material transaction between an insurer and its affiliates shall be filed with the Office as provided by rule.

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[17] NAIC Group Supervision, http://www.naic.org/cipr_topics/topic_group_supervision.htm (last accessed February 27, 2013).

[18] A domestic insurer who is fully compliant with the registration laws of its holding company's state of domicile (if NAIC-accredited) may request a waiver from the Florida filing requirements. Section 628.801(1), F.S.

- Adds a provision that requires the ultimate controlling person of every insurer subject to registration file an annual enterprise risk report on or before April 1 and comply with the December 2010 NAIC Insurance Holding Company System Model Regulation and subsequent amendments.
- Defines the term "ultimate controlling person" as a person that is not controlled by any other person.
- Adds a provision that prohibits the waiver of any applicable privilege or claim of confidentiality in the enterprise risk report as a result of disclosures to the Office. Allows the insurer to satisfy the filing requirement by filing the parent corporation's reports that have been filed with the Securities and Exchange Commission if compliant with requirements.
- Defines the term "Enterprise Risk."
- Allows the OIR to examine the financial condition of the insurer and its affiliates pursuant to ch. 624, F.S. and to evaluate enterprise risk.
- Adds a provision that states the failure to file a registration statement or enterprise risk filing report is a violation of s. 628.801, F.S.
- Adds a provision to define criteria under which an insurer may apply for waiver of the requirements contained in s. 628.801, F.S.

- **Section 7** of the bill amends s. 628.803, F.S. (regarding sanctions), with the following:
  - Currently, the Insurance Code states that noncompliant insurance companies (and their directors, officers, employees, and agents) can be subject to a number of sanctions:
    - monetary penalties for failing to file registration statements or certificate,
    - civil forfeitures for knowingly engaging in transactions that have not been properly filed, approved, or in accordance with commission rule,
    - a cease and desist order for engaging in transactions or entering into contracts that violate commission rules, and rescission orders if in the best interests of the policyholders, creditors, or public.
    - Additionally, an officer, director, or employee of an insurance holidng company willfully and knowingly submits a false statement, false report, or false filing with the intent to deceive the OIR,
  - The bill incorporates a model NAIC sanction that specifies that if there are apparent violations of s. 628.461 (i.e., the filing requirements for acquisition of controlling stock described in section 5 of the bill) which prevent "the full understanding of the enterprise risk to the insurer", OIR can disapprove dividends and distributions and place the insurer under an order of supervision per part VI of ch. 624, F.S.

- **Section 8** creates s. 628.805, F.S., regarding supervisory colleges, with the following:
  - According to the Center for Insurance Policy & Research, "a supervisory college is a meeting of insurance regulators or supervisors where the topic of discussion is regulatory oversight of one specific insurance group that is writing significant amounts of insurance in other jurisdictions."[19] Supervisory colleges facilitate oversight of internationally active insurance companies at the group level and promote regulatory information-sharing, subject to applicable confidentiality agreements.[20]
  - The bill:
    - Allows the OIR to participate in supervisory colleges with other regulators and to initiate the establishment of a supervisory college, clarify membership, participation and

[19] "Supervisory Colleges: A Regulatory Tool for Enhancing Supervisory Cooperation and Coordination," http://www.naic.org/cipr_newsletter_archive/vol4_supervisory_colleges.htm (last accessed March 1, 2013).
[20] NAIC on Supervisory Colleges, http://www.naic.org/cipr_topics/topic_supervisory_college.htm (last accessed March 1, 2013). Additionally, the linked/public records bill, HB 823, provides for confidential treatment of regulatory information, including within the context of a supervisory college, that shared between insurance regulators and law enforcement, pursuant to confidentiality agreements.

functions of the role of other regulators, coordinate ongoing activities and establish a crisis management plan.
- Allows the OIR to participate in a supervisory college if the insurance company is registered pursuant to s. 628.801, F.S., for any domestic insurer that is part of a holding company system.
- Allows the OIR to assess a registered insurer for the reasonable expenses to participate in a supervisory college.

2. Risk-Based Capital for Insurers & Health Organizations (#312 and 315); Trend Test Requirements

Risk-based capital (RBC) is a capital adequacy standard that represents the amount of required capital that an insurer must maintain, based on the inherent risks in the insurer's operations. It is determined by a formula that considers various risks depending on the type of insurer (e.g., subsidiary insurance companies, fixed income, equity, credit, reserves, and net written premium). RBC raises a safety net for insurers, is uniform among states, and provides state insurance regulators with authority for timely corrective action.[21] The NAIC's *Risk-Based Capital for Insurers Model Act (#312)* provides that states must require both life and health and property and casualty insurers to submit RBC filings with their regulators. Presently, this requirement is reflected in the Insurance Code, but does not apply to health maintenance organizations (HMOs) and prepaid limited health service organizations.[22] "Prepaid limited health service organizations" provide limited health services (such as dental or vision care) through an exclusive panel of providers in return for a prepayment,[23] and "health maintenance organizations" generally provide a range of health coverage with providers under contract.[24]

In 2010, the NAIC adopted a recommendation to make the *Risk-Based Capital for Health Organizations (#315) Model Act* an accreditation standard.[25] This Model Act defines "health organization" to include health maintenance organizations and limited health service organizations.[26] Accordingly, effective January 1, 2015, member states must require HMOs and prepaid limited health service organizations to submit risk-based capital filings in order to maintain accreditation.

In addition, the NAIC has developed a new "trend test" within RBC calculations for life and health and P/C insurers, as well as for health organizations. The trend test flags companies whose RBC is trending in a negative direction, and companies failing the trend test would trigger a "company action level event" and be required to file a corrective action plan.

Sections 2, 9, and 10 of the bill relate to the NAIC Risk-Based Capital for Health Organizations model act, and Section 2 includes the new trend test requirements.

- **Section 2** amends s. 624.4085, F.S., to expand the definition of "life and health insurer" to include health maintenance organizations and prepaid health service organizations (that are authorized in Florida and one or more other states, jurisdictions, or countries) for purposes of risk-based capital requirements. Section 2:
  - Clarifies the RBC requirements for a life and health insurer that reports using the life and health annual statement instructions and changes a company action level event to total adjusted capital that is greater than or equal to its company action level RBC but less than the product of its authorized control level risk-based capital and 3.0.
  - Defines the RBC requirements for a life and health or property and casualty insurer that reports using the health annual statement instructions and defines a company action level event as total adjusted capital that is greater than or equal to its company action level risk-based capital but

[21] NAIC on Risk-Based Capital, http://www.naic.org/cipr_topics/topic_risk_based_capital.htm (last accessed March 1, 2013).
[22] Section 624.4085, F.S.
[23] Section 636.003(7), F.S.
[24] Section 641.19(12), F.S.
[25] NAIC Financial Regulation Standards and Accreditation Committee, at: http://www.naic.org/committees_f.htm
[26] Section 1(F) of the NAIC Risk-Based Capital for Health Organizations Model Act (#315).

less than the product of its authorized control level RBC and 3.0 and triggers the trend test calculation.
    - Defines the RBC requirements for a property and casualty insurer that reports using the property and casualty annual statement instructions and defines a company action level event as total adjusted capital that is greater than or equal to its company action level RBC but less than the product of its authorized control level risk-based capital and 3.0 and triggers the trend test calculation.
    - Adds HMOs and prepaid limited health service organizations for consideration of regulatory control, if the company's RBC triggers a mandatory control level event.

- **Section 9** amends s. 636.045, F.S. (regarding minimum surplus requirements for prepaid limited health service organizations), with the following:
    - Subjects prepaid limited health service organizations to the risk-based capital requirements of s. 624.4085 (Section 2 of the bill) and the confidentiality provision for risk-based capital information in s. 624.40851, F.S.

- **Section 10** amends s. 641.225, F.S. (surplus requirements for HMOs), with the following:
    - Subjects HMOs that are authorized in Florida and one or more other states, jurisdictions, or countries to the risk-based capital requirements of s. 624.4085 (i.e., Section 2 of this bill) and the confidentiality provision for risk-based capital information in s. 624.40851, F.S.

- **Section 11** amends s. 641.255, F.S. (acquisition, merger, or consolidation) with the following:
    - Subjects HMOs that are members of a holding company system to the acquisition and enterprise risk reporting requirements of s. 628.461, F.S. (i.e., Section 5 of this bill), but not to the acquisition requirements for specialty insurers in s. 628.4615, F.S.

3. Property and Casualty Actuarial Opinion Model Law (#745)

The *NAIC Property and Casualty Actuarial Opinion Model Law (#745)*, adopted in October 2003, specifies that states must require property and casualty insurers to submit a Statement of Actuarial Opinion, which is a public document. The model act also requires the submission of an Actuarial Opinion Summary, an Actuarial Report and workpapers to support each actuarial opinion, which must be treated as confidential and privileged.

Current law requires insurers (except those providing life insurance and title insurance) to provide to OIR an annual statement of its financial condition and a statement of opinion on loss and loss adjustment expense reserves prepared by an actuary or a qualified loss reserve specialists. These insurers are also required to provide supporting workpapers upon the OIR's request.[27] Currently, these materials are not exempt from public records disclosure.

Section 3 of the bill relates to the NAIC's Property & Casualty Actuarial Opinion Model Law. It amends s. 624.424, F.S., to:

- Require insurers to provide *actuarial opinion summaries*, in accordance with NAIC instructions, with their annual statements to the OIR. This section excludes life and health insurers from this requirement.
    - The section also states that "proprietary business information" contained in these summaries are confidential and exempt from public records disclosure (see HB 823). This section also protects the summary and related information from subpoena, discovery, or admissibility in any private civil action.

[27] Section 624.424, F.S.

- Updates the Financial Services Commission's rulemaking authority under this section to specify that rule must be in substantial conformity with the 2006 Annual Financial Reporting Model Regulation adopted by the NAIC.

4. Standard Valuation Law (#820)

Currently, life insurance companies doing business in Florida are required to submit an annual actuarial opinion of reserves, reflecting the valuation of reserve liabilities.[28] Any memoranda or material supporting the opinion is confidential and exempt from s. 119.07(1), F.S., subject to some exceptions.[29] The *NAIC Standard Valuation Law (#820),* adopted in July 2010, provides that this information also should not be subject to subpoena or discovery, and should not be admissible in any civil action in either documentary or testimonial form.

Section 4 of the bill relates to the NAIC's Standard Valuation Law. Section 4 amends s. 625.121, F.S. (relating to standard valuation law for life insurers), with the following:

- Protects memoranda and other material supporting the actuarial opinion of reserves from subpoena, discovery, or admissibility in any private civil action.

B. SECTION DIRECTORY:

Section 1. Creates s. 624.085, F.S., to provide definitions applicable to the Insurance Code.

Section 2. Amends s. 624.4085, F.S. to revise definitions, to provide additional calculations for determining whether an insurer has a company action level event, and to revise provisions relating to mandatory control level events.

Section 3. Amends s. 624.424, F.S., to require an insurer's annual statement to include an actuarial opinion summary and providing criteria for such summary, to provide an exception for life and health insurers, and to update provisions.

Section 4. Amends s. 625.121, F.S., to protect memoranda supporting an insurer's actuarial opinion from subpoena, discovery, or admissibility in a civil action.

Section 5. Amends s. 628.461, F.S., to revise the amount of outstanding voting securities of a domestic stock insurer or a controlling company that a person is prohibited from acquiring unless certain requirements are met; to delete a provision authorizing insurers to file a disclaimer of affiliation of control, to require annual statements to include enterprise risk, to provide for consideration of enterprise risk in an acquisition application, to provide that control is presumed under certain conditions and to specify how control may be rebutted and divested, and to delete definitions.

Section 6. Amends s. 628.801, F.S., to require insurers to file a registration statement every April 1, to revise the NAIC standards for the rules establishing the information and statement form for the registration, to require insurers to file an annual enterprise risk report, to provide that failure to file a registration or report is a violation of the section, to authorize the OIR to examine insurers for enterprise risk, and to provide criteria for a waiver from this section.

Section 7. Amends s. 628.803, F.S., to provide for sanctions for insurance holding companies that violate s. 628.461, F.S., relating to acquisition of controlling stock.

Section 8. Creates s. s. 628.805, F.S., to authorize the OIR to participate in supervisory colleges and to authorize the OIR to assess fees on insurers for participation.

[28] Section 625.121(3)(a)1., F.S.
[29] Section 625.121(3)(a)10., F.S.

Section 9. Amends s. 636.045, F.S., to apply risk-based capital requirements to prepaid limited health service organizations.

Section 10. Amends s. 641.255, F.S., to apply requirements relating to acquisition of controlling stock to health maintenance organizations that are members of insurance holding companies.

Section 11. Provides that the act shall take effect October 1, 2013, if HB 823 (the public records bill) or similar legislation is adopted in the same legislative session or an extension thereof and becomes a law.[30]

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's new regulatory requirements may have an indeterminate impact on the private sector.

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

2. Other:

Incorporation by reference and delegation of legislative authority
Currently, Section 628.801, F.S. gives rulemaking authority to the Financial Services Commission to adopt rules regarding annual registration statements to be filed by insurers within a holding company.

[30] Currently, there is a companion bill (SB 834) pending in the Senate.

Lines 561-563 of the bill specify that the rules must be in accordance with the most recent NAIC Holding Company Model Act (adopted December 2010). The bill also requires the commission to "adopt subsequent amendments thereto *if the methodology remains substantially consistent"* (emphasis added).[31]

As a general rule, a cross-reference to a specific statute incorporates the language of the referenced statute as it existed at the time the reference was enacted, unaffected by any subsequent amendments to or repeal of the incorporated statute.[32] The legislature may adopt provisions of federal statutes and administrative rules made by a federal administrative body "that are in existence and in effect at the time the legislature acts, but it would be an unconstitutional delegation of legislative power for the legislature to adopt in advance any federal act or the ruling of any federal administrative body that Congress or such administrative body might see fit to adopt in the future."[33]

A court would likely apply this same principle in reviewing a statute that incorporates a model act promulgated by an organization, although it is uncertain whether the qualifying language "if the methodology remains substantially consistent" would change a court's conclusion. Accordingly, while the bill may adopt the current NAIC model act in effect, it is possible that a reviewing court would not uphold that part of a statute that adopts any future amendments to that model act.[34]

B. RULE-MAKING AUTHORITY:

The bill updates the Financial Services Commission's rulemaking authority to reflect the current NAIC requirements.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 13, 2013, the Insurance and Banking Subcommittee considered and adopted a strike-all amendment to the bill and an amendment to the strike-all amendment. The strike-all amendment retained the provisions of the bill, and made the following changes:

- Clarified that the threshold for acquisition filing requirements is 10% of outstanding voting securities of a domestic stock insurer or controlling company.
- Eliminated duplicative language regarding the exemption from the enterprise risk report requirement.
- Retained current law's 5% threshold for "material changes," which are transactions that dispose or obligate capital or surplus during the OIR's review of an acquisition filing.
- Clarified the criteria for an exemption from the enterprise risk report requirements and provides that the waivers may be granted for up to two years.
- Clarified the requirements of health maintenance organizations for risk-based capital reporting, acquisition filings, and enterprise risk reporting.

The amendment to the strike-all amendment clarified that the OIR may participate in a supervisory college for any domestic insurer that is part of an insurance holding company system that has international operations.

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[31] It is noted that other provisions in the current Insurance Code gives the Financial Services authority to adopt subsequent amendments to a NAIC model rule. See ss. 624.424(8)(e), F.S. and 625.121(3)(a)4., F.S.

[32] See *Overstreet v. Blum,* 227 So. 2d 197 (Fla. 1969); *Hecht v. Shaw*, 151 So. 333 (1933).

[33] *Florida Industrial Commission v. State*, 155 Fla. 772, 21 So.2d 599 (1945). *See also Freimuth v. State*, 272 So.2d 473 (Fla.1972); *State v. Camil*, 279 So.2d 832 (Fla.1973).

[34] Courts may sever a valid portion of laws from the remainder and continue to enforce the valid portion. *Carter v. Carter Coal Co.*, 298 U.S. 238 (1936); *Florida Hosp. Waterman, Inc. v. Buster,* 984 So.2d 478 (Fla. 2008); *Ray v. Mortham*, 742 So.2d 1276 (Fla. 1999); *Wright v. State*, 351 So.2d 708 (Fla. 1977).

The Insurance and Banking Subcommittee reported the bill favorably as a committee substitute. This analysis is drafted to the committee substitute as passed by the Insurance and Banking Subcommittee.

A bill to be entitled

An act relating to insurer solvency; creating s. 624.085, F.S.; providing definitions applicable to the Florida Insurance Code; amending s. 624.4085, F.S.; revising a definition; providing additional calculations for determining whether an insurer has a company action level event; revising provisions relating to mandatory control level events; amending s. 624.424, F.S.; requiring an insurer's annual statement to include an actuarial opinion summary; providing criteria for such summary; providing an exception for life and health insurers; updating provisions; amending s. 625.121, F.S.; protecting material supporting an insurer's annual actuarial opinion from subpoena, discovery, or admissibility in a civil action; amending s. 628.461, F.S.; revising the amount of outstanding voting securities of a domestic stock insurer or a controlling company that a person is prohibited from acquiring unless certain requirements have been met; deleting a provision authorizing an insurer to file a disclaimer of affiliation and control in lieu of a letter notifying the Office of Insurance Regulation of the Financial Services Commission of the acquisition of the voting securities of a domestic stock company under certain circumstances; requiring the statement notifying the office to include additional information; conforming a provision to changes made by the act; providing that

control is presumed to exist under certain conditions; specifying how control may be rebutted and how a controlling interest may be divested; deleting definitions; amending s. 628.801, F.S.; requiring an insurer to file annually by a specified date a registration statement; revising the requirements and standards for the rules establishing the information and statement form for the registration; requiring an insurer to file an annual enterprise risk report; authorizing the office to conduct examinations to determine the financial condition of registrants; providing that failure to file a registration or report is a violation of the section; providing additional grounds, requirements, and conditions with respect to a waiver from the registration requirements; amending s. 628.803, F.S.; providing for sanctions for persons who violate s. 628.461, F.S., relating to the acquisition of controlling stock; creating s. 628.805, F.S.; authorizing the office to participate in supervisory colleges; authorizing the office to assess fees on insurers for participation; amending ss. 636.045 and 641.225, F.S.; applying certain statutes related to solvency to prepaid limited health service organizations and health maintenance organizations; amending s. 641.255, F.S.; providing for applicability of specified provisions to a health maintenance organization that is a member of a holding company; providing a contingent effective

date.

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

Section 1. Section 624.085, Florida Statutes, is created to read:

624.085 Other definitions.—As used in the Florida Insurance Code, the term:

(1) "Affiliate" means any entity that exercises control over or is controlled by the insurer, directly or indirectly, through:

(a) Equity ownership of voting securities;

(b) Common managerial control; or

(c) Collusive participation by the management of the insurer and affiliate in the management of the insurer or the affiliate.

(2) "Affiliated person" of another person means:

(a) The spouse of such other person;

(b) The parents of such other person and their lineal descendants, or the parents of such other person's spouse and their lineal descendants;

(c) Any person who directly or indirectly owns or controls, or holds with the power to vote, 10 percent or more of the outstanding voting securities of such other person;

(d) Any person 10 percent or more of whose outstanding voting securities are directly or indirectly owned or controlled, or held with power to vote, by such other person;

(e) Any person or group of persons who directly or

indirectly control, are controlled by, or are under common control with such other person;

(f) Any officer, director, partner, copartner, or employee of such other person;

(g) If such other person is an investment company, any investment adviser of such company, or any member of an advisory board of such company;

(h) If such other person is an unincorporated investment company not having a board of directors, the depositor of such company; or

(i) Any person who has entered into an agreement, written or unwritten, to act in concert with such other person in acquiring or limiting the disposition of securities of a domestic stock insurer or controlling company.

(3) "Control," including the terms "controlling," "controlled by," and "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10 percent or more of the voting securities of any other person.

Section 2. Paragraph (g) of subsection (1), paragraph (a) of subsection (3), and paragraph (b) of subsection (6) of section 624.4085, Florida Statutes, are amended to read:

624.4085 Risk-based capital requirements for insurers.—

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

(g) "Life and health insurer" means any insurer authorized or eligible under the Florida Insurance Code to underwrite life or health insurance. The term includes a property and casualty insurer that writes accident and health insurance only; a health maintenance organization that is authorized in this state and one or more other states, jurisdictions, or countries; and a prepaid health service organization that is authorized in this state and one or more other states, jurisdictions, or countries.

(3)(a) A company action level event includes:

1. The filing of a risk-based capital report by an insurer which indicates that:

a. The insurer's total adjusted capital is greater than or equal to its regulatory action level risk-based capital but less than its company action level risk-based capital; ~~or~~

b. If a life and health insurer that reports using the life and health annual statement instructions, the insurer has total adjusted capital that is greater than or equal to its company action level risk-based capital, but is less than the product of its authorized control level risk-based capital and 3.0 ~~2.5~~, and has a negative trend;

c. If a life and health or property and casualty insurer that reports using the health annual statement instructions, the insurer or organization has total adjusted capital that is greater than or equal to its company action level risk-based capital, but is less than the product of its authorized control level risk-based capital and 3.0, and triggers the trend test determined in accordance with the trend test calculation

included in the Risk-Based Capital Forecasting and Instructions, Health, updated annually by the National Association of Insurance Commissioners; or

d. If a property and casualty insurer that reports using the property and casualty annual statement instructions, the insurer has total adjusted capital that is greater than or equal to its company action level risk-based capital, but is less than the product of its authorized control level risk-based capital and 3.0, and triggers the trend test determined in accordance with the trend test calculation included in the Risk-Based Capital Forecasting and Instructions, Property/Casualty, updated annually by the National Association of Insurance Commissioners;

2. The notification by the office to the insurer of an adjusted risk-based capital report that indicates an event in subparagraph 1., unless the insurer challenges the adjusted risk-based capital report under subsection (7); or

3. If, under subsection (7), an insurer challenges an adjusted risk-based capital report that indicates an event in subparagraph 1., the notification by the office to the insurer that the office has, after a hearing, rejected the insurer's challenge.

(6)

(b) If a mandatory control level event occurs:

1. With respect to a life and health insurer, the office shall, after due consideration of s. 624.408, take any action necessary to place the insurer under regulatory control, including any remedy available under chapter 631. A mandatory control level event is sufficient ground for the department to

be appointed as receiver as provided in chapter 631. The office may forego taking action for up to 90 days after the mandatory control level event if the office finds there is a reasonable expectation that the ~~mandatory control level~~ event may be eliminated within the 90-day period.

2. With respect to a property and casualty insurer, the office shall, after due consideration of s. 624.408, s. 641.225 for a health maintenance organization, or s. 636.045 for a prepaid limited health service organization, take any action necessary to place the insurer under regulatory control, including any remedy available under chapter 631, or, in the case of an insurer that is not writing new business, may allow the insurer to continue to operate under the supervision of the office. In either case, the mandatory control level event is sufficient ground for the department to be appointed as receiver as provided in chapter 631. The office may forego taking action for up to 90 days after the mandatory control level event if the office finds there is a reasonable expectation that the ~~mandatory control level~~ event may ~~will~~ be eliminated within the 90-day period.

Section 3. Subsection (1) and paragraph (e) of subsection (8) of section 624.424, Florida Statutes, are amended to read:

624.424 Annual statement and other information.—

(1)(a) Each authorized insurer shall file with the office full and true statements of its financial condition, transactions, and affairs. An annual statement covering the preceding calendar year shall be filed on or before March 1, and quarterly statements covering the periods ending on March 31,

June 30, and September 30 shall be filed within 45 days after each such date. The office may, for good cause, grant an extension of time for filing ~~of~~ an annual or quarterly statement. The statements must ~~shall~~ contain information generally included in insurers' financial statements prepared in accordance with generally accepted insurance accounting principles and practices and in a form generally used ~~utilized~~ by insurers for financial statements, sworn to by at least two executive officers of the insurer or, if a reciprocal insurer, by ~~the~~ oath of the attorney in fact or its like officer if a corporation. To facilitate uniformity in financial statements and to facilitate office analysis, the commission may by rule adopt the form for financial statements approved by the National Association of Insurance Commissioners in 2002, and ~~may adopt~~ subsequent amendments thereto if the methodology remains substantially consistent, and may by rule require each insurer to submit to the office, or such organization as the office may designate, all or part of the information contained in the financial statement in a computer-readable form compatible with the electronic data processing system specified by the office.

(b) Each insurer's annual statement must contain:

1. A statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or by a qualified loss reserve specialist, pursuant to ~~under~~ criteria established by rule of the commission. In adopting the rule, the commission shall ~~must~~ consider any criteria established by the National Association of Insurance Commissioners. The office may require semiannual updates of the

annual statement of opinion for ~~as to~~ a particular insurer if the office has reasonable cause to believe that such reserves are understated to the extent of materially misstating the financial position of the insurer. Workpapers in support of the statement of opinion must be provided to the office upon request. This paragraph does not apply to life insurance, health insurance, or title insurance.

2. An actuarial opinion summary written by the insurer's appointed actuary. The summary must be filed in accordance with the appropriate National Association of Insurance Commissioners property and casualty annual statement instructions. Proprietary business information contained in the summary is confidential and exempt under s. 624.4212, and the summary and related information are not subject to subpoena or discovery or admissible in evidence in any private civil action. Neither the office nor any person who received documents, materials, or any other information while acting under the authority of the office or with whom such information is shared pursuant to s. 624.4212 may testify in a private civil action concerning such confidential information. A waiver of any other applicable claim of confidentiality or privilege may not occur as a result of a disclosure to the office under this section or any other section of the insurance code. This paragraph does not apply to life and health insurers subject to s. 625.121(3).

(c) The commission may by rule require reports or filings required under the insurance code to be submitted by electronic means in a computer-readable form compatible with the electronic data processing equipment specified by the commission.

(8)

(e) The commission shall adopt rules to administer ~~implement~~ this subsection, which rules must be in substantial conformity with the 2006 Annual Financial Reporting Model Regulation ~~1998 Model Rule requiring annual audited financial reports~~ adopted by the National Association of Insurance Commissioners or subsequent amendments, except where inconsistent with the requirements of this subsection. Any exception to, waiver of, or interpretation of accounting requirements of the commission must be in writing and signed by an authorized representative of the office. An ~~No~~ insurer may not raise ~~as a defense in any action,~~ any exception to, waiver of, or interpretation of accounting requirements as a defense in an action, unless previously issued in writing by an authorized representative of the office.

Section 4. Paragraphs (a) and (b) of subsection (3) of section 625.121, Florida Statutes, are amended to read:

625.121 Standard Valuation Law; life insurance.—

(3) ACTUARIAL OPINION OF RESERVES.—

(a)~~1.~~ Each life insurance company doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commission by rule are computed appropriately, are based on assumptions that ~~which~~ satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this state. The commission by rule shall define the specifics of this opinion and add any other items

determined to be necessary to its scope.

1.~~2.~~ The opinion shall be submitted with the annual statement reflecting the valuation of such reserve liabilities ~~for each year ending on or after December 31, 1992~~.

2.~~3.~~ The opinion applies ~~shall apply~~ to all business in force, including individual and group health insurance plans, in the form and substance acceptable to the office as specified by rule of the commission.

3.~~4.~~ The commission may adopt rules providing the standards of the actuarial opinion consistent with standards adopted by the Actuarial Standards Board on December 31, 2002, and subsequent revisions thereto, if ~~provided that~~ the standards remain substantially consistent.

4.~~5. In the case of an opinion required to be submitted by a foreign or alien company,~~ The office may accept an ~~the~~ opinion filed by a foreign or alien ~~that~~ company with the insurance supervisory official of another state if the office determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

5.~~6.~~ As used in ~~For the purposes of~~ this subsection, the term "qualified actuary" means a member in good standing of the American Academy of Actuaries who also meets the requirements specified by rule of the commission.

6.~~7.~~ Disciplinary action by the office against the company or the qualified actuary shall be in accordance with the insurance code and related rules adopted by the commission.

7.~~8.~~ A memorandum in the form and substance specified by rule shall be prepared to support each actuarial opinion.

8.~~9.~~ If the insurance company fails to provide a supporting memorandum at the request of the office within a period specified by rule of the commission, or if the office determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by rule of the commission, the office may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare such supporting memorandum as ~~is~~ required by the office.

9.~~10.~~ Except as otherwise provided in this paragraph, any memorandum or other material in support of the opinion is confidential and exempt from ~~the provisions of~~ s. 119.07(1) and is not subject to subpoena or discovery or admissible in evidence in any private civil action; however, the memorandum or other material may be released by the office with the written consent of the company, or to the American Academy of Actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the office for preserving the confidentiality of the memorandum or other material. If any portion of the confidential memorandum is cited by the company in its marketing, ~~or~~ is cited before any governmental agency other than a state insurance department, or is released by the company to the news media, no portion of the memorandum is confidential. Neither the office nor any person who received documents, materials, or any other information while acting under the authority of the office or with whom such information is shared pursuant to this paragraph may testify in

any private civil action concerning the confidential documents, materials, or information.

(b) In addition to the opinion required by paragraph (a) ~~subparagraph (a)1.~~, the office may, pursuant to commission rule, require an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commission by rule, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including, but not limited to, the investment earnings on the assets and considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including, but not limited to, the benefits under, and expenses associated with, the policies and contracts.

Section 5. Subsections (1), (3), (10), (12), and (13) of section 628.461, Florida Statutes, are amended to read:

628.461 Acquisition of controlling stock.—

(1) A person may not, individually or in conjunction with any affiliated person of such person, acquire directly or indirectly, conclude a tender offer or exchange offer for, enter into any agreement to exchange securities for, or otherwise finally acquire 10 ~~5~~ percent or more of the outstanding voting securities of a domestic stock insurer or of a controlling company, unless:

(a) The person or affiliated person has filed with the office and sent to the insurer and controlling company a letter of notification regarding the transaction or proposed

transaction within ~~no later than~~ 5 days after any form of tender offer or exchange offer is proposed, or within ~~no later than~~ 5 days after the acquisition of the securities if no tender offer or exchange offer is involved. The notification must be provided on forms prescribed by the commission containing information determined necessary to understand the transaction and identify all purchasers and owners involved;

(b) The person or affiliated person has filed with the office the ~~a~~ statement as specified in subsection (3). The statement must be completed and filed within 30 days after:

1. Any definitive acquisition agreement is entered;

2. Any form of tender offer or exchange offer is proposed; or

3. The acquisition of the securities, if no definitive acquisition agreement, tender offer, or exchange offer is involved; and

(c) The office has approved the tender or exchange offer, or acquisition if no tender offer or exchange offer is involved, and approval is in effect.

~~In lieu of a filing as required under this subsection, a party acquiring less than 10 percent of the outstanding voting securities of an insurer may file a disclaimer of affiliation and control. The disclaimer shall fully disclose all material relationships and basis for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation and control. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this~~

~~section which may arise out of the insurer's relationship with the person unless and until the office disallows the disclaimer. The office shall disallow a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance.~~ A filing ~~as~~ required under this subsection must be made for ~~as to~~ any acquisition that equals or exceeds 10 percent of the outstanding voting securities.

(3) The statement to be filed with the office under subsection (1) and furnished to the insurer and controlling company must ~~shall~~ contain all the following information and any additional information that ~~as~~ the office deems necessary to determine the character, experience, ability, and other qualifications of the person or affiliated person of such person for the protection of the policyholders and shareholders of the insurer and the public:

(a) The identity of, and the background information specified in subsection (4) on, each natural person by whom, or on whose behalf, the acquisition is to be made; and, if the acquisition is to be made by, or on behalf of, a corporation, association, or trust, as to the corporation, association, or trust and as to any person who controls, ~~either~~ directly or indirectly, the corporation, association, or trust, the identity of, and the background information specified in subsection (4) on, each director, officer, trustee, or other natural person performing duties similar to those of a director, officer, or trustee for the corporation, association, or trust.~~;~~

(b) The source and amount of the funds or other

consideration used, or to be used, in making the acquisition.~~,~~

(c) Any plans or proposals that ~~which~~ such persons may have made to liquidate such insurer, to sell any of its assets or merge or consolidate it with any person, or to make any other major change in its business or corporate structure or management; and any plans or proposals that ~~which~~ such persons may have made to liquidate any controlling company of such insurer, to sell any of its assets or merge or consolidate it with any person, or to make any other major change in its business or corporate structure or management.~~,~~

(d) The number of shares or other securities that ~~which~~ the person or affiliated person of such person proposes to acquire, the terms of the proposed acquisition, and the manner in which the securities are to be acquired.~~, and~~

(e) Information as to any contract, arrangement, or understanding with any party with respect to any of the securities of the insurer or controlling company, including, but not limited to, information relating to the transfer of any of the securities, option arrangements, puts or calls, or the giving or withholding of proxies, which information names the party with whom the contract, arrangement, or understanding has been entered into and gives the details thereof.

(f) An agreement by the person required to file the statement that the person will provide the annual report specified in s. 628.801(2) if control exists.

(g) An acknowledgement by the person required to file the statement that the person and all subsidiaries within the person's control in the insurance holding company system will

provide, as necessary, information to the office upon request to evaluate enterprise risk to the insurer.

(10) Upon notification to the office by the domestic stock insurer or a controlling company that any person or any affiliated person of such person has acquired 10 ~~5~~ percent or more of the outstanding voting securities of the domestic stock insurer or controlling company without complying with the provisions of this section, the office shall order that the person and any affiliated person of such person cease acquisition of any further securities of the domestic stock insurer or controlling company; however, the person or any affiliated person of such person may request a proceeding, which proceeding shall be convened within 7 days after the rendering of the order for the sole purpose of determining whether the person, individually or in connection with any affiliated person of such person, has acquired 10 ~~5~~ percent or more of the outstanding voting securities of a domestic stock insurer or controlling company. Upon the failure of the person or affiliated person to request a hearing within 7 days, or upon a determination at a hearing convened pursuant to this subsection that the person or affiliated person has acquired voting securities of a domestic stock insurer or controlling company in violation of this section, the office may order the person and affiliated person to divest themselves of any voting securities so acquired.

(12)(a) A presumption of control may be rebutted by filing a disclaimer of control. Any person may file a disclaimer of control with the office. The disclaimer must fully disclose all

material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation. After a disclaimer has been filed, the insurer is relieved of any duty to register or report under this section that may arise out of the insurer's relationship with the person unless the office disallows the disclaimer.

(b) Any controlling person of a domestic insurer who seeks to divest the person's controlling interest in the domestic insurer in any manner shall file with the office, with a copy to the insurer, confidential notice, not subject to public inspection as provided under s. 624.4212, of the person's proposed divestiture at least 30 days before the cessation of control. The office shall determine those instances in which the party seeking to divest or to acquire a controlling interest in an insurer must file for and obtain approval of the transaction. The information remains confidential until the conclusion of the transaction unless the office, in its discretion, determines that confidential treatment interferes with enforcement of this section. If the statement referred to in subsection (1) is otherwise filed, this paragraph does not apply. ~~For the purpose of this section, the term "affiliated person" of another person means:~~

~~1. The spouse of such other person;~~

~~2. The parents of such other person and their lineal descendants and the parents of such other person's spouse and their lineal descendants;~~

~~3. Any person who directly or indirectly owns or controls, or holds with power to vote, 5 percent or more of the~~

~~outstanding voting securities of such other person;~~

~~4. Any person 5 percent or more of the outstanding voting securities of which are directly or indirectly owned or controlled, or held with power to vote, by such other person;~~

~~5. Any person or group of persons who directly or indirectly control, are controlled by, or are under common control with such other person;~~

~~6. Any officer, director, partner, copartner, or employee of such other person;~~

~~7. If such other person is an investment company, any investment adviser of such company or any member of an advisory board of such company;~~

~~8. If such other person is an unincorporated investment company not having a board of directors, the depositor of such company; or~~

~~9. Any person who has entered into an agreement, written or unwritten, to act in concert with such other person in acquiring or limiting the disposition of securities of a domestic stock insurer or controlling company.~~

~~(b) For the purposes of this section, the term "Controlling company" means any corporation, trust, or association owning, directly or indirectly, 25 percent or more of the voting securities of one or more domestic stock insurance companies.~~

(13) The commission may adopt, amend, or repeal rules that are necessary to administer ~~implement the provisions of~~ this section~~, pursuant to chapter 120~~.

Section 6. Section 628.801, Florida Statutes, is amended

to read:

628.801 Insurance holding companies; registration; regulation.—

(1) An ~~Every~~ insurer that is authorized to do business in this state and that is a member of an insurance holding company shall, on or before April 1 of each year, register with the office and file a registration statement and be subject to regulation with respect to its relationship to the holding company as provided by law or rule ~~or statute~~. The commission shall adopt rules establishing the information and statement form required for registration and the manner in which registered insurers and their affiliates are regulated. The rules apply to domestic insurers, foreign insurers, and commercially domiciled insurers, except for a foreign insurer domiciled in states that were ~~are~~ accredited by the National Association of Insurance Commissioners by December 31, 1995. Except to the extent of any conflict with this code, the rules must include all requirements and standards of ss. 4 and 5 of the Insurance Holding Company System Regulatory Act and the Insurance Holding Company System Model Regulation of the National Association of Insurance Commissioners, as adopted on December 2010. The commission may adopt subsequent amendments thereto if the methodology remains substantially consistent. The rules ~~Regulatory Act and the Model Regulation existed on November 30, 2001, and~~ may include a prohibition on oral contracts between affiliated entities. Material transactions between an insurer and its affiliates shall be filed with the office as provided by rule ~~Upon request, the office may waive~~

~~filing requirements under this section for a domestic insurer that is the subsidiary of an insurer that is in full compliance with the insurance holding company registration laws of its state of domicile, which state is accredited by the National Association of Insurance Commissioners~~.

(2) The ultimate controlling person of every insurer subject to registration must also file an annual enterprise risk report on or before April 1. As used in this subsection, the term "ultimate controlling person" means a person who is not controlled by any other person. The report, to the best of the ultimate controlling person's knowledge and belief, must identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state office of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners and is confidential and exempt from public disclosure as provided in s. 624.4212.

(a) A waiver of any applicable privilege or claim of confidentiality in the annual enterprise risk report and related documents may not occur as a result of any disclosure to the office under this section or any other section of the insurance code as authorized under s. 624.4212. Neither the office nor any person who received the report and related documents while acting under the authority of the office or with whom such information is shared pursuant to s. 624.4212 is permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to s.

624.4212. An insurer may satisfy this requirement by providing the office with the most recently filed parent corporation reports that have been filed with the Securities and Exchange Commission which provide the appropriate enterprise risk information.

(b) As used in this section, the term "enterprise risk" means any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a materially adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including anything that would cause the insurer's risk-based capital to fall into company action level as set forth in s. 624.4085 or would cause the insurer to be in hazardous financial condition.

(3) Pursuant to the provisions of chapter 624 relating to the examination of insurers, the office may examine any insurer registered under this section and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party, or by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis.

(4) The failure to file a registration statement, or a summary of the registration statement, or the enterprise risk filing report required by this section within the time specified for filing is a violation of this section.

(5) Upon request, the office may waive the filing requirements of this section:

(a) If the insurer is a domestic insurer that is the subsidiary of an insurer that is in full compliance with the insurance holding company registration laws of its state of domicile, which state is accredited by the National Association of Insurance Commissioners; or

(b) If the insurer is a domestic insurer that writes only in this state and has annual direct written and assumed premium of less than $300 million, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, and demonstrates that compliance with this section would not provide substantial regulatory or consumer benefit. In evaluating a waiver request made under this paragraph, the office may consider various factors including, but not limited to, the type of business entity, the volume of business written, the ownership or organizational structure of the entity, or whether the company is in run-off.

A waiver granted pursuant to this subsection is valid for 2 years unless sooner withdrawn due to a change in the circumstances under which the waiver was granted.

Section 7. Subsection (4) of section 628.803, Florida Statutes, is renumbered as subsection (5), and a new subsection (4) is added to that section to read:

628.803 Sanctions.—

(4) If it appears to the office that any person has committed a violation of s. 628.461 that prevents the full understanding of the enterprise risk to the insurer by affiliates or by the insurance holding company system, the

violation may serve as an independent basis for disapproving dividends or distributions and for placing the insurer under an order of supervision in accordance with part VI of chapter 624.

Section 8. Section 628.805, Florida Statutes, is created to read:

628.805 Supervisory colleges.—In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management, and governance processes, and as part of the examination of individual insurers in accordance with ss. 628.801 and 624.316, the office may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including other state, federal, and international regulatory agencies. In accordance with s. 624.4212 regarding confidential information sharing, the office may enter into agreements that provide the basis for cooperation between the office and the other regulatory agencies and the activities of the supervisory college. This section does not delegate to the supervisory college the office's authority to regulate or supervise the insurer or its affiliates under its jurisdiction.

(1) With respect to participation in a supervisory college, the office may:

(a) Initiate the establishment of a supervisory college.

(b) Clarify the membership and participation of other supervisors in the supervisory college.

(c) Clarify the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor.

(d) Coordinate the ongoing activities of the supervisory college, including planning meetings, supervisory activities, and processes for information sharing.

(e) Establish a crisis management plan.

(2) With respect to an insurer registered under s. 628.801, and in accordance with this section, the office may participate in a supervisory college for any domestic insurer that is part of an insurance holding company system that has international operations in order to determine the insurer's compliance with this chapter.

(3) Each registered insurer subject to this section is liable for and shall pay reasonable expenses for the office's participation in a supervisory college, including reasonable travel expenses. A supervisory college may be convened as a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or its affiliates, and the office may impose a regular assessment on the insurer for the payment of these expenses.

Section 9. Subsection (3) is added to section 636.045, Florida Statutes, to read:

636.045 Minimum surplus requirements.—

(3) A prepaid limited health service organization that is authorized in this state and one or more other states, jurisdictions, or countries is subject to ss. 624.4085 and 624.40851.

Section 10. Subsection (7) is added to section 641.225, Florida Statutes, to read:

641.225 Surplus requirements.—

(7) A health maintenance organization that is authorized in this state and one or more other states, jurisdictions, or countries is subject to ss. 624.4085 and 624.40851.

Section 11. Subsection (3) is added to section 641.255, Florida Statutes, to read:

641.255 Acquisition, merger, or consolidation.—

(3) A health maintenance organization that is a member of a holding company system is subject to s. 628.461 but not s. 628.4615.

Section 12. This act shall take effect October 1, 2013, if HB 823 or similar legislation is adopted in the same legislative session or an extension thereof and becomes law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1067 Pugilistic Exhibitions
SPONSOR(S): Hutson and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1686

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	12 Y, 0 N	Collins	Luczynski
2) Government Operations Appropriations Subcommittee	11 Y, 0 N	Topp	Topp
3) Regulatory Affairs Committee		Collins RC	Hamon K.W.H.

SUMMARY ANALYSIS

The bill amends various provisions of ch. 548, F.S., to make the pugilistic environment safer for both professionals and amateurs.

Specifically, the bill:

- Provides definitions relating to the Florida Boxing Commission (Commission);
- Amends and clarifies the duties and responsibilities to be performed by the executive director of the Commission;
- Eliminates the requirement that the Commission record all of its scheduled proceedings, as the requirement is duplicative;
- Clarifies that the Commission has exclusive jurisdiction over amateur mixed martial arts matches held in the state;
- Creates new exemptions from ch. 548, F.S., and clarifies existing exemptions;
- Provides that the failure or refusal to provide a urine sample, or the positive result of a urine test, results in the immediate suspension of the participant's license;
- Provides that the failure or refusal to provide a urine sample, or the positive result of a urine test, constitutes an "immediate serious danger to the health, safety, and welfare of the participants and the public;"
- Requires the Commission to hold purse forfeiture hearings pursuant to the Administrative Procedure Act;
- Requires that the promoter keep a copy of certain records for a period of seven years;
- Provides that compliance with the requirements outlined in s. 548.06, F.S., is subject to verification by Department or Commission audit and that the Commission has the right to audit a promoter's books and records, upon reasonable notice;
- Directs the Commission to adopt rules to establish a procedure for auditing a promoter's records and for resolving any inconsistencies revealed in the audit;
- Directs the Commission to establish rules for imposing late fees in the event of taxes owed;
- Provides an emergency license suspension procedure; and
- Provides that all hearings held under ch. 548, F.S., be held in accordance with the Administrative Procedure Act.

The bill is not anticipated to have a fiscal impact on state expenditures. However, the bill directs the Commission to adopt a rule imposing a late fee on taxes owed the Commission. The Commission estimates that less than $7,000 in revenue would be collected annually from imposing a late fee.

The bill has an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Generally

The Florida State Boxing Commission (hereinafter "Commission"), within the Department of Business and Professional Regulation (hereinafter "Department"), regulates professional boxing, kickboxing, and mixed martial arts.[1] The mission of the Commission is to provide "customer-focused services related to the boxing industry in Florida in order to protect the health and welfare of boxers and to maintain the integrity of the sport."[2] Specifically, the Commission approves and establishes safety standards for the approval of amateur sanctioning organizations.[3]

The Commission is appointed by the Governor, and consists of five members.[4] It collects revenue via licenses, live event permit fees, and taxation on gross receipts associated with live events in the state.[5]

Definitions

Current Situation

Section 548.002, F.S., sets forth various definitions that apply to ch. 548, F.S. Of these definitions, several are either ambiguous or are outdated in that they do not reflect current industry standards.

Effect of Proposed Change

The bill amends provisions of s. 548.002, F.S., to define or redefine the terms: "boxing," "concessions," "face value," "full contact," "kickboxing," "mixed martial arts," and "physician."

- "Boxing" is defined as the practice of fighting with the fists as a sport.
- "Concessions" is defined as souvenirs, programs, drinks, food, alcohol, clothing, or other tangible objects sold to the general public during matches.
- "Face value" is defined as the dollar value of a ticket which is equal to the dollar amount that a customer is required to pay or, for complimentary tickets, would have been required to pay to purchase a ticket with equivalent seating priority in order to view the event. If the ticket specifies the amount of admission charges attributable to state or federal taxes, such taxes shall not be included in the face value.
- "Full contact" is defined as the use of blows and strikes during a match or bout that: 1) are intended to break the plane of the receiving participant's body, 2) are delivered to the head, face, neck, or body of the receiving participant, and 3) cause the receiving participant to move in response to the blow or strike.
- "Kickboxing" is defined as the practice of fighting with the fists, hands, feet, legs, or any combination thereof as a sport, and includes "punchkick" and other similar competitions.
- "Mixed martial arts" is defined as full contact, unarmed combat involving the use of a combination of two or more techniques, including, but not limited to, wrestling, grappling,

[1] Department of Business and Professional Regulation Internal Audit Report A-1213-BPR-009, dated November 29, 2012, page 1, on file with subcommittee.
[2] Id.
[3] Department of Business and Professional Regulation Agency Analysis, page 2, dated March 7, 2013, on file with subcommittee.
[4] Section 548.003(1), Florida Statutes.
[5] Department of Business and Professional Regulation Internal Audit Report A-1213-BPR-009, dated November 29, 2012, page 2, on file with subcommittee.

kicking, and striking, from different disciplines of the martial arts, including, but not limited to, boxing, kickboxing, muay Thai, and Thai boxing.
- "Physician" is defined as a person licensed as a medical doctor or doctor of osteopathy.

Providing definitions or redefining definitions helps to clarify legislative intent, and to conform the chapter to current industry standards.

Duties of the Executive Director

Current Situation

Currently, s. 548.004(1), F.S., stipulates the duties and responsibilities required to be performed by the executive director of the Commission. Specifically, the executive director must:
- Keep a record of all proceedings of the Commission;
- Preserve all books, papers, and documents pertaining to the business of the Commission;
- Prepare any notices and papers required;
- Appoint judges, referees, and other officials as delegated by the Commission and pursuant to ch. 548, F.S., and the rules of the Commission; and
- Perform any other duties as the Department or Commission directs.

Effect of Proposed Changes

The bill amends s. 548.004(1), F.S., to amend the duties and responsibilities to be performed by the executive director of the Commission, as set forth by the Commission. Pursuant to the provisions of the bill, the executive director must:
- Conduct the functions of the commission office;
- Appoint event and commission officials;
- Approve licenses, permits, matches, and fight cards; and
- Perform other duties as the Department or Commission deems necessary.

This language is meant to revise and clearly set forth the authority by which the executive director may act while conducting the business of the Commission.

Electronic Recording of Commission Proceedings

Current Situation

Currently, s. 548.004(2), F.S., requires that the Commission electronically record all of its scheduled proceedings. This requirement is duplicative, as s. 455.203(7), F.S., requires that all proceedings conducted by the Department be electronically recorded.

Effect of Proposed Changes

The bill amends s. 548.004(2), F.S., to eliminate the requirement that the Commission record all of its scheduled proceedings. As stated above, the requirement is already codified in ch. 455, F.S.

Mixed Martial Arts Matches

Current Situation

Section 548.006(3), F.S., provides the Commission with exclusive jurisdiction over the approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for amateur boxing and kickboxing matches held within the state.

In 2009, ch. 548, F.S., was amended to include amateur mixed martial arts within the Commission's exclusive jurisdiction; however, the reference to "mixed martial arts" was inadvertently omitted from s. 548.006(3), F.S., which defines the scope of the Commission's jurisdiction.

Effect of Proposed Changes

The bill amends 548.006(3), F.S., to clarify that the Commission has exclusive jurisdiction over amateur mixed martial arts matches held in the state. As with boxing and kickboxing, this jurisdiction provides the Commission with oversight over the approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for mixed martial arts matches held in Florida.

Nothing in the bill affects the Commission's exclusive jurisdiction over amateur sanctioning organizations for amateur boxing and kickboxing matches held within the state.

Exemptions from Ch. 548, F.S.

Current Situation

Presently, s. 548.007, F.S., provides that ch. 548, F.S., does not apply to:

- A match conducted or sponsored by a bona fide non-profit school or education program whose primary purpose is instruction in martial arts, boxing, or kickboxing if the match is held in conjunction with the instruction, and is limited to amateur participants who are students of the school or instructional program;
- A match conducted or sponsored by any company or detachment of the Florida National Guard, if the match is limited to participants who are members of the Florida National Guard; or
- A match conducted or sponsored by the Fraternal Order of Police, if the match is limited to amateur participants and is held in conjunction with a charitable event.

Effect of Proposed Changes

The bill amends ss. 548.007(2) and 548.007(3), F.S., to clarify that ch. 548, F.S., does not apply to amateurs in those matches.

In addition, the bill creates new exemptions from ch. 548, F.S. Such new exemptions include:

- A match that does not allow full contact, if the match is limited to amateurs;
- A match conducted by a public post-secondary education institution or school, if the match is limited to amateurs who 1) are students enrolled in the institution or school, and 2) are members of a school-sponsored boxing club or team;
- A match conducted by or between companies or detachments of the U.S. Armed Forces, if the match is limited to amateurs who are members of the U.S. Armed Forces;
- A match conducted by the International Olympic Committee, the International Paralympic Committee, the Special Olympics, or the Junior Olympics, if the match is limited to amateurs who are competing in or attempting to qualify for the Olympics, Paralympics, Special Olympics, or Junior Olympics; or
- A professional or amateur "martial arts activity."

The bill defines "martial arts activity," as it applies in s. 548.007(7), F.S., as one of the traditional forms of self-defense or unarmed combat involving the use of physical skill and coordination that are taught and advanced on a belt system, including, but not limited to, karate, aikido, judo, and kung fu. The term does not include "mixed martial arts."

The bill eliminates the exemption found in s. 548.007(1), F.S., which relates to a bona fide non-profit school or education program whose primary purpose is instruction in the martial arts, boxing, or kickboxing, if the match held, in conjunction with the instruction, is limited to amateur participants who are students of the school or instructional program. Instead, that exemption is replaced by s. 548.007(7), F.S., which encompasses a larger group of businesses and individuals.

Revocation & Suspension Procedures

Current Situation

Section 548.046(3)(c), F.S., provides that the failure or refusal to provide a urine sample, immediately upon request, results in the revocation of the participant's license. There is no process for the aggrieved licensee to petition the Commission for a hearing to review the license revocation.

Article I, Section 9 of the Florida Constitution provides that "[n]o person shall be deprived of life, liberty or property without due process of law..." Specifically, substantive due process protects a person's property from unfair governmental interference, unwarranted encroachment or taking. The test to be applied in determining whether a statute violates due process is whether the statute bears a rational relation to a legitimate legislative purpose in safeguarding the public health, safety, or general welfare, and is not discriminatory, arbitrary or oppressive.[6]

As stated above, this process of license revocation, which is generally considered a form of property, does not require a review or redress process. As a result, a court may find that the licensee is being deprived of his or her property without due process of law- a hearing prior to the revocation. Moreover, it is unclear whether a court would find that the revocation is rationally related to protecting the public's health, safety, or general welfare. As such, the revocation, without a prior hearing, may be a violation of the licensee's constitutional right to due process.

Effect of Proposed Changes

The bill amends 548.046(3)(c), F.S., to provide that the failure or refusal to provide a urine sample, immediately upon request, results in the immediate suspension of the participant's license, rather than a revocation of that license. Moreover, the failure or refusal constitutes grounds for additional disciplinary action. Finally, the failure or refusal constitutes an "immediate serious danger to the health, safety, and welfare of the participants and the public."

Moreover, the bill creates s. 548.046(3)(d), F.S., to provide that a licensee who tests positive for any of the prohibited substances designated by the Commission[7] has committed an "immediate serious danger to the health, safety, and welfare of the participants and the generally public." As such, the positive test results in the immediate suspension of the participant's license, and constitutes grounds for additional disciplinary action.

The bill further amends s. 548.07, F.S., to set forth the procedure to be followed in the event of an immediate license suspension. Specifically, the Commission, any commissioner or his or her designee,

[6] Chicago Title Ins. Co. v. Butler, 770 So. 2d 1210, 1214-15 (Fla. 2000).
[7] See, generally: 61K1-1.0043, Florida Administrative Code.

or the executive director or his or her designee may issue an emergency suspension of license order to any person who is licensed under ch. 548, F.S., and who poses an "immediate serious danger to the health, safety, and welfare of the participants and the general public." The fact that the licensee poses an immediate, serious danger likely necessitates the suspension prior to a hearing, so long as a hearing is promptly provided after the suspension.

The bill provides that the Department's Office of General Counsel is required to review the grounds for each emergency suspension order issued, and must file an administrative complaint against the licensee within twenty-one days after the issuance of the emergency suspension order. Service of the administrative complaint must be pursuant to the procedures set forth in s. 455.275, F.S., which is the standard process used by the Department when processing disciplinary complaints.[8] Following service, the disciplinary process must proceed in accordance with the Administrative Procedure Act.[9]

With this procedure, a court is more likely to find that the emergency suspension procedure is not violative of the licensees' due process right, as the emergency suspension is seemingly rationally related to safeguarding public health, safety, or general welfare, as the use of drugs in one of more of the participants is likely a danger to the health and/or safety of either the drug-using participant or his or her opponent. Moreover, within twenty-one days after the suspension, the licensee is provided a hearing process in order to petition the Commission.

Withholding of Purses

Current Situation

Section 548.054, F.S., provides the procedure to be followed in the event that a prize purse is withheld. Specifically, a member of the Commission, a Commission representative, or the referee may order a promoter to surrender any purse or other funds payable to a participant if it appears that:

- The participant is not competing honestly, or is intentionally not competing to the best of his or her ability and skill in a match represented to be a contest; or
- The participant, his or her manager, or any of the participant's seconds has violated Ch. 548, F.S.[10]

In the event that a purse is withheld, the purse must be delivered to the Commission by the promoter.[11] Within ten days after the match, the person from whom the sum was withheld may apply to the Commission for a hearing, in writing.[12] Upon receipt of the application, the Commission must set the date for a hearing; within ten days after the hearing or after ten days following the match, if no application for a hearing is filed, the Commission is required to meet and determine the disposition to be made off the withheld purse.[13]

If the Commission finds the charges sufficient, it may decide that all or a part of the funds be forfeited.[14] Conversely, if the Commission does not find the charges sufficient, it must distribute the withheld funds immediately.[15]

The Department has indicated that this current language is vague and does not provide appropriate procedure or rulemaking authority to create a procedure that provides appropriate due process rights.[16]

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[8] Department of Business and Professional Regulation Agency Analysis, page 3, dated March 7, 2013, on file with subcommittee.
[9] See, generally: ch. 120, Florida Statutes
[10] Section 548.054(1), Florida Statutes.
[11] Section 548.054(2), Florida Statutes.
[12] Id.
[13] Id.
[14] Id.
[15] Id.
[16] Department of Business and Professional Regulation Agency Analysis, page 2, dated March 7, 2013, on file with subcommittee.

Effect of Proposed Changes

The bill amends s. 548.054, F.S., provide that within ten days after the match, a person who has had a purse withheld is entitled to submit a petition for a hearing to the Commission.

Additionally, the bill requires the Commission to hold the hearing pursuant to ss. 120.569 and 120.57, F.S., of the Administrative Procedure Act. This clarifies and ensures that the purse forfeiture hearing is held pursuant to the licensee's constitutionally-protected right of due process.

Calculation of "Gross Receipts"

Current Situation

Presently, within seventy-two hours after a match, the promoter of that match must file a written report with the Commission.[17] The report must include information about the number of tickets sold, the amount of gross receipts, and any other facts that the Commission requires.[18]

For the purposes of ch. 548, F.S., "gross receipts" is defined as:

- The gross price charged for the sale or lease of broadcasting, television, and motion picture rights without any deductions for commissions, brokerage fees, distribution fees, advertising or other expenses or charges;
- The portion of the receipts from the sale of souvenirs, programs, and other concessions received by the promoter;
- The face value of all tickets sold and complimentary tickets issued, provided, or given; and
- The face value of any seat or seating issued, provided, or given in exchange for advertising sponsorships, or anything of value to the promotion of an event.

The Department has indicated that the current definition has led to some confusion in the industry, as licensees are not sure whether to include state and federal taxes within the face value of a ticket.[19]

Effect of Proposed Changes

The bill amends s. 548.06(1)(c), F.S., to deduct federal and state taxes, if applicable, from the face value of tickets sold and complimentary tickets that were issued or given, for the purpose of calculating gross receipts.

This change is meant to clarify existing law.

Promoter Records

Current Situation

As discussed above, within seventy-two hours after a match, the promoter of that match must file a written report with the Commission, which includes information about the number of tickets sold, the amount of gross receipts, and any other facts that the Commission requires.[20]

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[17] Section 548.06(1), Florida Statutes.
[18] Id.
[19] Department of Business and Professional Regulation Agency Analysis, page 2, dated March 7, 2013, on file with subcommittee.
[20] Section 548.06(1), Florida Statutes.

Nothing in ch. 548, F.S., requires the promoter to retain any records in relation to the filing of that written report.

Effect of Proposed Changes

The bill creates s. 548.06(7), F.S., to require that the promoter keep a copy of certain records for a period of seven years. Such records include:

- Records necessary to justify and support each report submitted to the Commission;
- A copy of each report filed with the Commission, certified by the promoter to be correct;
- Copies of all gross receipts;
- A copy of the independently-prepared ticket manifest; and
- Receipted vouchers for all expenditures and deductions.

The promoter must provide a copy of these records to the Commission, upon request.

Moreover, the bill creates s. 548.06(8), F.S., which provides that compliance with the above requirements, as well as all requirements outlined in s. 548.06, F.S., is subject to verification by Department or Commission audit. The bill gives the Commission the right to audit the promoter's books and records relating to the promoter's operations under ch. 548, F.S., provided that the Commission provides reasonable notice to the promoter of the inspection.

Finally, the bill creates s. 548.06(9), F.S., to direct the Commission to adopt rules establishing a procedure for auditing a promoter's records, and for resolving any inconsistencies revealed in the audit. The Commission must also adopt rules imposing late fees in the event of taxes owed.

These changes are meant to help increase the level of oversight of the Commission over the financial interests of the promoters.

Commission Hearings

Current Situation

Presently, s. 548.073, F.S., provides that any member of the Commission may conduct a hearing. Additionally, before any adjudication is rendered, a majority of the Commission must examine the record and approve the adjudication and order. The Commission is not required to follow the Administrative Procedure Act in this regard.

Because the Commission is not required to follow the Administrative Procedure Act in all hearings, there is a potential for the licensee's right of due process to be violated.

Effect of Proposed Change

The bill amends s. 548.073, F.S., to provide that all hearings held under ch. 548, F.S., must be held in accordance with ch. 120, F.S., the Administrative Procedure Act. This helps to ensure that all hearings held by the Commission are conducted in an open manner, providing due process to licensees.

B. SECTION DIRECTORY:

Section 1: amends s. 548.002, F.S., to provide definitions relating to the Florida Boxing Commission.

Section 2: amends s. 548.004(1), F.S., to amend and clarify the duties and responsibilities to be performed by the executive director of the Commission; and amends s. 548.004(2), F.S., to eliminate the requirement that the Commission record all of its scheduled proceedings, as the requirement is duplicative.

Section 3: amends s. 548.006(3), F.S., to clarify that the Commission has exclusive jurisdiction over mixed martial arts matches held in the state.

Section 4: amends s. 548.007, F.S., to create new exemptions from ch. 548, F.S., and to clarify existing exemptions.

Section 5: amends s. 548.046(3)(c), F.S., and creates s. 548.046(3)(d), F.S., to provide that the failure or refusal to provide a urine sample, or the positive result of a urine test, results in the immediate suspension of the participant's license, and to provide that a violation constitutes an "immediate serious danger to the health, safety, and welfare of the participants and the public."

Section 6: amends s. 548.054, F.S., to change terminology from "application" to "petition;" and to require the Commission to hold purse forfeiture hearings pursuant to ss. 120.569 and 120.57, F.S., of the Administrative Procedure Act.

Section 7: creates s. 548.06(7), F.S., to require that the promoter keep a copy of certain records for a period of seven years; creates s. 548.06(8), F.S., to provide that compliance with the requirements outlined in s. 548.06, F.S., is subject to verification by Department or Commission audit and to provide that the Commission has the right to audit a promoter's books and records; and creates s. 548.06(9), F.S., to direct the Commission to adopt rules establishing a procedure for auditing a promoter's records, and for resolving any inconsistencies revealed in the audit, and to establish rules for imposing late fees in the event of taxes owed.

Section 8: amends s. 548.07, F.S., to provide an emergency license suspension procedure.

Section 9: amends s. 548.073, F.S., to provide that all hearings held under ch. 548, F.S., must be held in accordance with the Administrative Procedure Act.

Section 10: provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill directs the Commission to adopt a rule imposing a late fee on taxes owed the Commission. Any revenue collections based on imposing a late fee on post event taxes are expected to be insignificant.

   The Commission estimates that had a late fee been imposed in FY 2011-12, the fee revenues collected would have been approximately $6,915. The fee revenue estimate is based on total post event taxes collected of $115,258, a 10% penalty imposed, with 60% of estimated tax reports being filed late.[21] The Commission indicates with the recent implementation of new accountability measures the amount of post event tax collections, which are filed late, will likely decline in future years, thereby reducing any late fee revenues from the estimated FY 2011-12 collection amount.

[21] Department of Business and Professional Regulation, estimated post event tax penalties for late fees, correspondence with staff of the Government Operations Appropriations Subcommittee, March 14, 2013, on file with the subcommittee.

2. Expenditures:

The bill is not anticipated to have a fiscal impact on state expenditures.[22]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of sales tax shared with counties or municipalities.

2. Other:

As discussed above, Article I, Section 9 of the Florida Constitution protects a person's property from unfair governmental interference, unwarranted encroachment, or taking. Substantive due process protects a person's property from unfair governmental interference, unwarranted encroachment or taking- the test to be applied in determining whether a statute violates due process is whether the statute bears a rational relation to a legitimate legislative purpose in safeguarding the public health, safety, or general welfare, and is not discriminatory, arbitrary or oppressive.

Section 548.046(3)(c), F.S., currently provides that the failure or refusal to provide a urine sample, immediately upon request, results in the revocation of the participants license. This process of license revocation, which is generally considered a form of property, does not require a review or redress process- there is no process for the aggrieved licensee to petition the Commission for a hearing to review the license revocation. As a result, a court may find that the licensee is being deprived of his or her property without due process of law- a hearing prior to the revocation. Moreover, it is unclear whether a court would find that the revocation is rationally related to protecting the public's health, safety, or general welfare. As such, the revocation, without a prior hearing, may be a violation of the licensee's constitutional right to due process.

The bill amends s. 548.046(3)(c), F.S., to provide that the failure or refusal to provide a urine sample, or the failure of a drug test, results in the immediate suspension of the participant's license and constitutes an "immediate serious danger to the health, safety, and welfare of the participants and the public."

[22] Department of Business and Professional Regulation, Bill Analysis on HB 1067, dated March 7, 2013, on file with the Government Operations Appropriations Subcommittee.

Moreover, the fact that the licensee poses an immediate, serious danger likely necessitates the suspension prior to a hearing, so long as a hearing is promptly provided after the suspension.

The bill further amends s. 548.07, F.S., to set forth the procedure to be followed in the event of an immediate license suspension. Specifically, an emergency suspension order may be issued to any person who is licensed under ch. 548, F.S., and who poses an "immediate serious danger to the health, safety, and welfare of the participants and the general public." The suspension must be reviewed and an administrative complaint must be filed by the Department's Office of General Counsel within twenty-one days of the suspension. Following service of the administrative complaint, pursuant to s. 455.275, F.S., the disciplinary process must proceed in accordance with the Administrative Procedure Act.

Based on these new procedures, a court is more likely to find that the emergency suspension procedure is not violative of the licensees' due process right, as the emergency suspension may be rationally related to safeguarding public health, safety, or general welfare, as the use of drugs in one of more of the participants is likely a danger to the health of either the drug-using participant or his or her opponent. Moreover, within twenty-one days after the suspension, the licensee is provided a hearing process in order to petition the Commission.

B. RULE-MAKING AUTHORITY:

The bill creates s. 548.06(9), F.S., which directs the Commission to adopt rules establishing a procedure for auditing a promoter's records, and for resolving any inconsistencies revealed in the audit.

Additionally, the Commission must also adopt rules imposing late fees in the event of taxes owed.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Inspector General Audit

The Department's Office of Inspector General conducted an audit to evaluate the activities and controls of the Florida State Boxing Commission. On November 29, 2012, the Office of Inspector General issued its audit findings.[23] Specifically, the audit found:

- Commission revenue is under-reported by promoters and not appropriately reconciled by Commission staff, contributing to the Commission's current budget deficit;
- Inadequate controls exist regarding the licensure process of officials, resulting in unlicensed activity;
- Non-compliance with state regulations regarding the protection of personal and confidential information, putting the Department at risk; and
- Procedures are not properly designed or effectively implemented, yielding improper oversight of Commission activities.

Additionally, the audit report made several recommendations to the Department. Such recommendations include that the Commission ensure that:

- All revenue reported and received from live-event permit fees and post-event tax reports is appropriately collected, recorded and reconciled;
- All officials are properly licensed prior to working at Commission-sanctioned events;
- Risks presented by inadequately secured personal and confidential information are identified and remediation steps are taken; and
- Policies, procedures, and oversight practices are amended so that the Commission objectives are achieved and oversight of Commission activities is accomplished.

The bill addresses the financial and promoter oversight issues of the Florida State Boxing Commission, as highlighted by the audit.

[23] See, generally: Department of Business and Professional Regulation Internal Audit Report A-1213-BPR-009, dated November 29, 2012, on file with subcommittee.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to pugilistic exhibitions; amending s. 548.002, F.S.; revising definitions; amending s. 548.004, F.S.; revising the duties and responsibilities of the executive director of the Florida State Boxing Commission; deleting a provision requiring the electronic recording of all scheduled Florida State Boxing Commission proceedings; amending s. 548.006, F.S.; providing the commission exclusive jurisdiction over approval of amateur mixed martial arts matches; amending s. 548.007, F.S.; revising nonapplicability of ch. 548, F.S.; amending s. 548.046, F.S.; providing for immediate license suspension and other disciplinary action if a participant fails or refuses to provide a urine sample or tests positive for specified prohibited substances; amending s. 548.054, F.S.; revising procedure and requirements for requesting a hearing following the withholding of a purse; amending s. 548.06, F.S.; requiring promoters to retain specified documents and records; authorizing the commission and the Department of Business and Professional Regulation to audit specified records retained by a promoter; requiring the commission to adopt rules; amending s. 548.07, F.S.; revising the procedure for suspension of licensure by specified persons; amending s. 548.073, F.S.; revising rules of procedure governing commission hearings; providing an effective date.

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

Section 1. Section 548.002, Florida Statutes, is amended to read:

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

(1) "Amateur" means a person who has never received nor competed for any purse or other article of value, either for the expenses of training or for participating in a match, other than a prize of $50 in value or less.

(2) "Amateur sanctioning organization" means any business entity organized for sanctioning and supervising matches involving amateurs.

(3) "Boxing" means the practice of fighting with the fists as a sport ~~to compete with the fists~~.

(4) "Commission" means the Florida State Boxing Commission.

(5) "Concessionaire" means any person or business entity not licensed as a promoter which receives revenues or other compensation from the sale of tickets or from the sale of souvenirs, programs, broadcast rights, or any other concessions in conjunction with the promotion of a match.

(6) "Concessions" means souvenirs, programs, drinks, food, alcohol, clothing, or other tangible objects sold to the general public during matches.

(7) ~~(6)~~ "Contest" means a boxing, kickboxing, or mixed martial arts engagement in which persons participating strive earnestly to win using, but not necessarily being limited to,

strikes and blows to the head.

(8)~~(7)~~ "Department" means the Department of Business and Professional Regulation.

(9)~~(8)~~ "Event" means one or more matches comprising a show.

(10)~~(9)~~ "Exhibition" means a boxing, kickboxing, or mixed martial arts engagement in which persons participating show or display their skill without necessarily striving to win using, but not necessarily being limited to, strikes and blows to the head.

(11) "Face value" means the dollar value of a ticket which is equal to the dollar amount that a customer is required to pay or, for complimentary tickets, would have been required to pay to purchase a ticket with equivalent seating priority in order to view the event. If the ticket specifies the amount of admission charges attributable to state or federal taxes, such taxes shall not be included in the face value.

(12)~~(10)~~ "Foreign copromoter" means a promoter who has no place of business within this state.

(13) "Full contact" means the use of blows and strikes during a match or bout that:

(a) Are intended to break the plane of the receiving participant's body;

(b) Are delivered to the head, face, neck, or body of the receiving participant; and

(c) Cause the receiving participant to move in response to the blow or strike.

(14)~~(11)~~ "Judge" means a person who has a vote in

determining the winner of any contest.

(15) ~~(12)~~ "Kickboxing" means the practice of fighting ~~to compete~~ with the fists, hands, feet, legs, or any combination thereof as a sport, and includes "punchkick" and other similar competitions.

(16) ~~(13)~~ "Manager" means any person who, directly or indirectly, controls or administers the boxing, kickboxing, or mixed martial arts affairs of any participant.

(17) ~~(14)~~ "Match" means any contest or exhibition.

(18) ~~(15)~~ "Matchmaker" means a person who brings together professionals or arranges matches for professionals.

(19) ~~(16)~~ "Mixed martial arts" means full contact, unarmed combat involving the use~~, subject to any applicable limitations set forth in this chapter,~~ of a combination of two or more techniques, including, but not limited to, wrestling, grappling, kicking, and striking, from different disciplines of the martial arts, including, but not limited to, boxing, kickboxing, muay Thai, and Thai boxing ~~grappling, kicking, and striking~~.

(20) ~~(17)~~ "Participant" means a professional competing in a boxing, kickboxing, or mixed martial arts match.

(21) ~~(18)~~ "Physician" means a person ~~an individual~~ licensed as a medical doctor or doctor of osteopathy ~~to practice medicine and surgery in this state~~.

(22) ~~(19)~~ "Professional" means a person who has received or competed for any purse or other article of a value greater than $50, either for the expenses of training or for participating in any match.

(23) ~~(20)~~ "Promoter" means any person, and includes any

officer, director, employee, or stockholder of a corporate promoter, who produces, arranges, or stages any match involving a professional.

(24) ~~(21)~~ "Purse" means the financial guarantee or other remuneration for which a professional is participating in a match and includes the professional's share of any payment received for radio broadcasting, television, and motion picture rights.

(25) ~~(22)~~ "Second" or "cornerman" means a person who assists the match participant between rounds and maintains the corner of the participant during the match.

(26) ~~(23)~~ "Secretary" means the Secretary of Business and Professional Regulation.

Section 2. Section 548.004, Florida Statutes, is amended to read:

548.004 Executive director; duties, compensation, administrative support.—

(1) The department shall employ an executive director with the approval of the commission. The executive director shall serve at the pleasure of the secretary. The executive director or his or her designee shall perform duties and responsibilities as set forth by the commission, which shall include conducting the functions of the commission office; appointing event and commission officials; approving licenses, permits, matches, and fight cards; and performing any ~~keep a record of all proceedings of the commission; shall preserve all books, papers, and documents pertaining to the business of the commission; shall prepare any notices and papers required; shall appoint judges,~~

~~referees, and other officials as delegated by the commission and pursuant to this chapter and rules of the commission; and shall perform such~~ other duties as the department or commission deems necessary ~~directs~~. The executive director may issue subpoenas and administer oaths.

~~(2) The commission shall require electronic recording of all scheduled proceedings of the commission.~~

(2)~~(3)~~ The department shall provide assistance in budget development and budget submission for state funding requests. The department shall submit an annual balanced legislative budget for the commission which is based upon anticipated revenue. The department shall provide technical assistance and administrative support, if requested or determined necessary ~~needed~~, to the commission and its executive director on issues relating to personnel, contracting, property management, or other issues identified as important to performing the duties of this chapter and to protecting the interests of the state.

Section 3. Subsection (3) of section 548.006, Florida Statutes, is amended to read:

548.006 Power of commission to control professional and amateur pugilistic matches ~~contests and exhibitions~~; certification of competitiveness of professional mixed martial arts and kickboxing matches.—

(3) The commission has exclusive jurisdiction over approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for amateur boxing, ~~and~~ kickboxing, and mixed martial arts matches held in this state.

Section 4. Section 548.007, Florida Statutes, is amended to read:

548.007 Exemptions.—This chapter does ~~Applicability of provisions to amateur matches and certain other matches or events.—Sections 548.001-548.079 do~~ not apply to:

(1) A match that does not allow full contact ~~match conducted or sponsored by a bona fide nonprofit school or education program whose primary purpose is instruction in the martial arts, boxing, or kickboxing~~, if the match ~~held in conjunction with the instruction~~ is limited to amateurs. ~~amateur participants who are students of the school or instructional program;~~

(2) A match conducted or sponsored by any company or detachment of the Florida National Guard, if the match is limited to amateurs ~~participants~~ who are members of the company or detachment of the Florida National Guard.~~; or~~

(3) A match conducted or sponsored by the Fraternal Order of Police, if the match is limited to amateurs ~~amateur participants~~ and is held in conjunction with a charitable event.

(4) A match conducted by a public postsecondary education institution or a public secondary school, if the match is limited to amateurs who are students enrolled in the institution or school and members of a school-sponsored boxing club or team.

(5) A match conducted by or between companies or detachments of the United States Army, Navy, Air Force, Marines, Coast Guard, or National Guard, if the match is limited to amateurs who are members of the United States Armed Forces.

(6) A match conducted by the International Olympic

Committee, the International Paralympic Committee, the Special Olympics, or the Junior Olympics, if the match is limited to amateurs who are competing in or attempting to qualify for the Olympics, Paralympics, Special Olympics, or Junior Olympics.

(7) A professional or amateur martial arts activity. As used in this subsection, the term "martial arts" means any one of the traditional forms of self-defense or unarmed combat involving the use of physical skill and coordination that are taught and advanced on a belt system, including, but not limited to, karate, aikido, judo, and kung fu. The term does not include "mixed martial arts."

Section 5. Paragraph (c) of subsection (3) of section 548.046, Florida Statutes, is amended, and paragraph (d) is added to that subsection, to read:

548.046 Physician's attendance at match; examinations; cancellation of match.—

(3)

(c) Failure or refusal to provide a urine sample immediately upon request constitutes an immediate serious danger to the health, safety, and welfare of the participants and the public and shall result in the immediate suspension ~~revocation~~ of the participant's license and constitute grounds for additional disciplinary action. Any participant who has been adjudged the loser of a match and who subsequently refuses to or is unable to provide a urine sample shall forfeit his or her share of the purse to the commission. Any participant who is adjudged the winner of a match and who subsequently refuses to or is unable to provide a urine sample shall forfeit the win and

shall not be allowed to engage in any future match in the state. A no-decision result shall be entered into the official record as the result of the match. The purse shall be redistributed as though the participant found to be in violation of this subsection had lost the match. If redistribution of the purse is not necessary or after redistribution of the purse is completed, the participant found to be in violation of this subsection shall forfeit his or her share of the purse to the commission.

(d) Testing positive for any of the prohibited substances as set forth by commission rule constitutes an immediate serious danger to the health, safety, and welfare of the participants and the general public and shall result in the immediate suspension of the participant's license and constitute grounds for additional disciplinary action.

Section 6. Subsection (2) of section 548.054, Florida Statutes, is amended to read:

548.054 Withholding of purses; hearing; disposition of withheld purse forfeiture.—

(2) Any purse so withheld shall be delivered by the promoter to the commission upon demand. Within 10 days after the match, the person from whom the sum was withheld may submit a petition for a hearing to the commission ~~apply in writing to the commission for a hearing~~. Upon receipt of the petition ~~application~~, the commission may hold ~~shall fix a date for~~ a hearing pursuant to ss. 120.569 and 120.57. ~~Within 10 days after the hearing or after 10 days following the match,~~ If no petition ~~application~~ for a hearing is filed, the commission shall meet and determine the disposition to be made of the withheld purse.

If the commission finds the charges sufficient, it may declare all or ~~any~~ part of the funds forfeited. If the commission finds the charges not sufficient upon which to base a withholding order, it shall immediately distribute the withheld funds to the persons entitled thereto.

Section 7. Subsection (1) of section 548.06, Florida Statutes, is amended, and subsections (7), (8), and (9) are added to that section, to read:

548.06 Payments to state; exemptions; audit of records.—

(1) A promoter holding a match shall, within 72 hours after the match, file with the commission a written report which includes the number of tickets sold, the amount of gross receipts, and any other facts the commission may require. For the purposes of this chapter, ~~total~~ gross receipts include:

(a) The gross price charged for the sale or lease of broadcasting, television, and motion picture rights without any deductions for commissions, brokerage fees, distribution fees, advertising, or other expenses or charges;

(b) The portion of the receipts from the sale of souvenirs, programs, and other concessions received by the promoter;

(c) The face value of all tickets sold and complimentary tickets issued, provided, or given, less federal and state taxes, if applicable; and

(d) The face value of any seat or seating issued, provided, or given in exchange for advertising, sponsorships, or anything of value to the promotion of an event.

(7) The promoter shall retain a copy of the following

records for a period of 7 years and shall provide a copy of such records to the commission upon request:

(a) Records necessary to justify and support each report submitted to the commission.

(b) A copy of each report filed with the commission, certified by the professional or amateur promoter to be correct.

(c) Copies of all gross receipts.

(d) A copy of the independently prepared ticket manifest.

(e) Receipted vouchers for all expenditures and deductions.

(8) Compliance with the requirements of this section is subject to verification by department or commission audit. The commission shall have the right, upon reasonable notice to the promoter, to audit the promoter's books and records relating to the promoter's operations under this chapter.

(9) The commission shall adopt rules establishing a procedure for auditing a promoter's records and resolving any inconsistencies revealed by an audit, such as excessive taxes paid or taxes owed by the filing promoter, and shall adopt a rule imposing a late fee in the event of taxes owed.

Section 8. Section 548.07, Florida Statutes, is amended to read:

548.07 Suspension of license or permit by commissioner; hearing. ~~Notwithstanding any provision of chapter 120, any member of the commission may, upon her or his own motion or upon the verified written complaint of any person charging a licensee or permittee with violating this chapter, suspend any license or permit until final determination by the commission if such~~

~~action is necessary to protect the public welfare and the best interests of the sport. The commission shall hold a hearing within 10 days after the date on which the license or permit is suspended.~~

(1) The commission, any commissioner, any commission designee, or the executive director or his or her designee may issue an emergency suspension of license order to any person licensed under this chapter who poses an immediate serious danger to the health, safety, and welfare of the participants and the general public.

(2) The department's Office of General Counsel shall review the grounds for each emergency suspension order issued and file an administrative complaint against the licensee within 21 days after the issuance of the emergency suspension order.

(3) Following service of the administrative complaint, pursuant to procedures set forth in s. 455.275, the disciplinary process shall proceed pursuant to chapter 120.

Section 9. Section 548.073, Florida Statutes, is amended to read:

548.073 Commission hearings.—All hearings held under this chapter must be held in accordance with chapter 120 ~~Notwithstanding the provisions of chapter 120, any member of the commission may conduct a hearing. Before any adjudication is rendered, a majority of the members of the commission shall examine the record and approve the adjudication and order~~.

Section 10. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

SUMMARY ANALYSIS

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

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

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

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

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

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Federal Renewable Fuel Standard

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

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

Florida Renewable Fuel Standard Act (Act)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ethanol

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 Month Totals and Percentages

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

Source: Department of Revenue

Effect of Proposed Changes

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

B. SECTION DIRECTORY:

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

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

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

D. FISCAL COMMENTS:

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

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

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

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

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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

A bill to be entitled

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

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

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

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

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

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

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

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4043 Florida Building Code
SPONSOR(S): Raulerson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1702

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	10 Y, 0 N	Collins	Luczynski
2) Regulatory Affairs Committee		Collins RC	Hamon K.W.H.

SUMMARY ANALYSIS

The bill repeals s. 161.56(2), F.S., which was promulgated in the mid-1980s to require the state land planning agency to develop and maintain a coastal building zone construction training program. The program was meant to help local governments implement and enforce the building requirements specified in s. 161.55, F.S.

The training program was not developed or implemented, and became obsolete upon the enactment of the Florida Building Code in 2002. As such, the program is no longer needed by the Department of Economic Opportunity.

The bill has no fiscal impact on state funds.

The bill is effective on July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 161.55, F.S., provides requirements for activities or construction that is conducted within coastal building zones.

Section 161.56(2), F.S., was created in the mid-1980's through section 4 of Ch. 86.191, L.O.F. The statute requires the state land planning agency to develop and maintain a biennial coastal building zone construction training program, in order to assist local governments with the implementation and enforcement of s. 161.55, F.S. Moreover, the statute requires that the state land planning provide an initial training program before April 1, 1987, and that it provides a continuing education program beginning on July 1, 1989.

The Department of Economic Opportunity (hereinafter "Department), oversees offices previously housed in the Department of Community Affairs (hereinafter "DCA"), which was abolished by the Legislature in 2011. According to the Department, DCA never implemented any such training program. Moreover, when the Florida Building Code (hereinafter "Code") was adopted in 2002, the section became obsolete and no longer necessary, as all state coastal construction requirements were incorporated into the Code.[1] As a result, no training program exists or is needed by the Department.

Effect of Proposed Changes

The bill repeals s. 161.56(2), F.S., eliminating the requirement that the state land planning agency develops and maintains a biennial coastal building zone construction training program.

B. SECTION DIRECTORY:

Section 1: repeals s. 161.56(2), F.S., to eliminate the requirement that the state land planning agency develops and maintains a biennial coastal building zone construction training program.

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:

[1] See, generally: s. 553.73(2), Florida Statutes.

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Florida Building Code; repealing s. 161.56(2), F.S., relating to the development and maintenance of a biennial coastal building zone construction training program; providing an effective date.

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

Section 1. Section 161.56, Florida Statutes, is amended to read:

161.56 Establishment of local enforcement.—

~~(1)~~ Nothing in ss. 161.52-161.58 shall be construed to limit or abrogate the right and power of the department to require permits or to adopt and enforce standards pursuant to s. 161.041 or s. 161.053 for construction seaward of the coastal construction control line that are as restrictive as, or more restrictive than, the requirements provided in s. 161.55 or the rights or powers of local governments to enact and enforce setback requirements or zoning or building codes that are as restrictive as, or more restrictive than, the requirements provided in s. 161.55.

~~(2) To assist local governments in the implementation and enforcement of s. 161.55, the state land planning agency shall develop and maintain a biennial coastal building zone construction training program for the local enforcement agencies specified in subsection (1). The state land planning agency shall provide an initial training program not later than April~~

~~1, 1987, and on a recurring biennial basis shall provide a continuing education program beginning July 1, 1989. Registration fees, as determined appropriate by the state land planning agency, may be charged to defray the cost of the program if general revenue funds are not provided for this purpose.~~

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

Regulatory Affairs Committee

Tuesday, March 27, 2013
2:00 PM
404 HOB

AMENDMENT PACKET

Will Weatherford
Speaker

Doug Holder
Chair

REGULATORY AFFAIRS COMMITTEE

CS/HB 665 by Rep. La Rosa
Licensure by the Office of Financial Regulation

AMENDMENT SUMMARY
March 27, 2013

Amendment 1 by Rep. La Rosa (Lines 211-215): Clarifies that certain individuals, such as officers and directors, associated with a licensed money services business must submit fingerprints for live-scan processing, before the licensed business renews its license with the OFR during the next renewal cycle.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 665 (2013)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative La Rosa offered the following:

Amendment

Remove lines 211-215 and insert:

7. Licensees initially approved before October 1, 2013, who are seeking renewal must submit fingerprints for each person listed in subparagraph (a)3. for live-scan processing pursuant to this paragraph. Such fingerprints must be submitted before renewing a license that is scheduled to expire between April 30, 2014 and December 31, 2015.

REGULATORY AFFAIRS COMMITTEE

CS/HB 675 by Rep. Ingram
Health Insurance Marketing Materials

AMENDMENT SUMMARY
March 27, 2013

Amendment 1 by Rep. Ingram (Lines 78-99): Clarifies the review process by OIR regarding advertising materials by long-term care insurers and conforms the House bill to the Senate bill.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative Ingram offered the following:

Amendment (with title amendment)

Remove lines 78-99 and insert:

(2) ADVERTISING.—The commission shall adopt rules establishing ~~setting forth~~ standards for the advertising, marketing, and sale of long-term care insurance policies in order to protect applicants from unfair or deceptive sales or enrollment practices. An insurer shall file with the office any long-term care insurance advertising material intended for use in this state and may immediately begin using such material upon filing, subject to subsequent disapproval by the office. Following receipt of a notice of disapproval or a withdrawal of approval, the insurer must immediately cease use of the disapproved material ~~at least 30 days before the date of use of the advertisement in this state. Within 30 days after the date of receipt of the advertising material, the office shall review the material and shall disapprove any advertisement if, in the~~

~~opinion of the office, such advertisement violates any of the provisions of this part or of part IX of chapter 626 or any rule of the commission~~. The office may also disapprove an advertisement at any time and enter an immediate order requiring that the use of the advertisement be discontinued if it determines that the advertisement violates ~~any of the provisions of~~ this part, ~~or of~~ part IX of chapter 626, or any rule of the commission.

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

Remove lines 7-9 and insert:

review and approval; authorizing a health insurer to immediately begin using long-term care insurance advertising material under certain circumstances; providing an effective date.

REGULATORY AFFAIRS COMMITTEE

CS/HB 821 by Rep. Ingram
Insurer Solvency

AMENDMENT SUMMARY
March 27, 2013

Amendment 1 by Rep. Ingram (Line 338):

- Extends the protection from waiver of confidentiality for the actuarial opinion summary filed by property and casualty insurers to the one filed by life and health insurers.

Amendment 2 by Rep. Nelson (lines 524-528):

- Restores the definition of "controlling company," which was inadvertently deleted.

Amendment 3 by Rep. Ingram (lines 579-615):

- Provides that the exemptions from subpoena, discovery, admission into evidence or testimony by OIR employees in a civil action apply to all filings under Section 628.801, instead of only the enterprise risk report.

Amendment 4 by Rep. Ingram (Lines 641-647):

- Clarifies the basis for the OIR to impose sanctions on insurers.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 821 (2013)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative Ingram offered the following:

Amendment

Remove line 338 and insert:

materials, or information. No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the office under this section or any other section of the insurance code or as a result of sharing as authorized in s. 624.4212.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 821 (2013)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative Nelson offered the following:

Amendment

Remove lines 524-528 and insert:

(b) For the purposes of this section, the term "Controlling company" means any corporation, trust, or association owning directly or indirectly, 25 percent or more of the voting securities of one or more domestic stock insurance companies.

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative Ingram offered the following:

Amendment

Remove lines 579-615 and insert:

(a) An insurer may satisfy this requirement by providing the office with the most recently filed parent corporation reports that have been filed with the Securities and Exchange Commission which provide the appropriate enterprise risk information.

(b) The term "enterprise risk" means any activity, circumstance, event, or series of events involving one or more affiliates of an insurer which, if not remedied promptly, is likely to have a materially adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including anything that would cause the insurer's risk-based capital to fall into company action level as set forth in s. 624.4085 or would cause the insurer to be in hazardous financial condition.

(3) Pursuant to chapter 624 relating to the examination of insurers, the office may examine any insurer registered under this section and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party, or by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis.

(4) The filings and related documents filed pursuant to this section are confidential and exempt as provided in s. 624.4212 and are not subject to subpoena or discovery, or admissible in evidence in any private civil action. No waiver of any applicable privilege or claim of confidentiality in the filings and related documents may occur as a result of any disclosure to the office under this section or any other section of the insurance code as authorized under s. 624.4212. Neither the office nor any person who received the filings and related documents while acting under the authority of the office or with whom such information is shared pursuant to s. 624.4212 is permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to s. 624.4212.

(5) The failure to file a registration statement, or a summary of the registration statement, or the enterprise risk filing report required by this section within the time specified for filing is a violation of this section.

(6) Upon request, the office may waive the filing

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 821 (2013)

Amendment No. 4

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative Ingram offered the following:

Amendment

Remove lines 641-647 and insert:

(4) If the office determines that any person has committed a violation of s. 628.461 or s. 628.801, the violation may serve as an independent basis for disapproving dividends or distributions and for placing the insurer under an order of supervision in accordance with part VI of chapter 624.

REGULATORY AFFAIRS COMMITTEE

HB 509 by Rep. Van Zant
Financial Guaranty Insurance Corporations

AMENDMENT SUMMARY
March 27, 2013

Amendment 1 by Rep. Van Zant (Lines 53-54): Amends provisions relating to mutual insurance holding companies and the definition of corporate distributions to permit certain not-for-profit insurers to reorganize into mutual insurance holding companies.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative Van Zant offered the following:

Amendment (with title amendment)

Between lines 53 and 54, insert:

Section 3. Section 628.703, Florida Statutes, is amended to read:

628.703 Definitions.—For purposes of this part:

(1) "Mutual insurance holding company" means an incorporated entity without permanent capital stock that is organized under this part and whose members are determined in accordance with this part.

(2) "Subsidiary insurance company" means:

(a) a stock insurance company, the majority of the voting shares of the capital stock of which are at all times owned by a mutual insurance holding company. For purposes of this part, "majority of the voting shares of the capital stock" means shares of the capital stock of such company which carry the right to cast a majority of the votes entitled to be cast by all

of the outstanding shares of the capital stock for the election of directors. The ownership of a majority of the voting shares of the capital stock of a former mutual reorganized insurance company which are required by this part to be at all times owned by a mutual insurance holding company includes indirect ownership through one or more intermediate holding companies. However, indirect ownership through one or more intermediate holding companies shall not result in a mutual insurance holding company owning less than the equivalent of a majority of the voting shares of the capital stock of the former mutual reorganized insurance company: or

(b) a not for profit insurance company or not for profit health care plan, the majority of the voting membership interests of which are at all times owned by a mutual insurance holding company, which entitles such mutual insurance holding company to elect the board of directors of the not for profit insurance company or not for profit health care plan and such requirement applies to indirect ownership of the not for profit insurance company or not for profit health care plan through one or more intermediate holding companies. A not for profit insurance company subsidiary resulting from the reorganization of a not for profit mutual insurance company hereunder or subsequently organized as a subsidiary insurance company shall be subject to the provisions of ch. 628 applicable to stock insurers; provided, however, that the provisions of ch. 617 shall apply to the organization of such company.

(3) "Intermediate holding company" means:

(a) a holding company which is a subsidiary of a mutual insurance holding company, and which directly or through a subsidiary intermediate holding company owns a majority of the voting shares of the capital stock of one or more subsidiary insurance companies, or

(b) a holding company which is a not for profit corporation and which is a subsidiary of a mutual insurance holding company, of which a majority of the voting membership interests entitled to elect the board of directors of such corporation shall be owned, directly, or through a subsidiary intermediate holding company, by the mutual insurance holding company.

(4) "Paid premiums" means all premiums paid for insurance by a member of a mutual insurance holding company to a subsidiary insurance company.

(5) "Nonprofit health care plan" means a not for profit domestic or foreign hospital or medical and surgical service plan or corporation, which is licensed in one or more states, that issues no capital stock and is engaged in the business of providing prepaid indemnity or health care benefits.

Section 4. Subsection (5) of section 628.707, Florida statutes, is amended to read:

628.707 Applicability of general corporation statutes.—The applicable statutes of this state relating to the powers and procedures of domestic private corporations formed for profit shall apply to domestic mutual insurance holding companies, except:

(5) In the case of the reorganization of any mutual insurance company organized as a ~~nonprofit~~ not for profit

corporation under chapter 617, a mutual insurance holding company organized under this part shall be deemed to be a ~~nonprofit~~ not for profit corporation.

Section 5. Subsection (1) of section 628.715, Florida Statutes, is amended to read:

628.715 Merger and acquisitions.—Subject to applicable requirements of this chapter, a mutual insurance holding company may:

(1)(a) Merge or consolidate with, or acquire the assets of, a mutual insurance holding company licensed pursuant to this act or any similar entity organization pursuant to laws of any other state;

(b) Either alone or together with one or more intermediate ~~stock~~ holding companies, or other subsidiaries, directly or indirectly acquire the stock of a stock insurance company or a mutual insurance company that reorganizes under this act or the law of its state of organization;

(c) Together with one or more of its ~~stock insurance company~~ subsidiaries, acquire the assets of a stock insurance company or a mutual insurance company, or the membership interests in a not for profit insurance company or not for profit health care plan.

(d) Acquire a stock insurance company through the merger of such stock insurance subsidiary with a stock insurance company or interim stock insurance company subsidiary of the mutual insurance holding company, or acquire a not for profit insurance company or not for profit health care plan through the merger of such not for profit entity with the mutual insurance holding

company, or with a not for profit insurance company subsidiary of the mutual insurance holding company or intermediate holding company.

(e) Acquire the stock or assets of any other person to the same extent as would be permitted for any not-for-profit corporation under chapter 617 or, if the mutual insurance holding company writes insurance, a mutual insurance company;

(f) Jointly, with a domestic or foreign mutual insurance company which redomesticates pursuant to s. 628.520, file an application with the office, pursuant to the provisions of this part, to merge the domestic or foreign mutual insurance company policyholder's membership interests into the mutual insurance holding company. The reorganizing mutual insurance company may merge with the mutual insurance holding company's stock subsidiary or continue its corporate existence as a domestic stock insurance company subsidiary. The members of the foreign mutual insurance company may approve in a contemporaneous vote both the redomestication plan and the agreement for merger and reorganization; or

(g) Merge or consolidate with, or acquire the assets of, a domestic or foreign reciprocal insurance company, a group self-insurance fund, or any other similar entity.

Section 6. Subsection (1) of section 628.727, Florida Statutes, is amended to read:

628.727 Membership.—

(1) Membership in a mutual insurance holding company shall be determined in accordance with the mutual insurance holding company's articles of incorporation and bylaws and shall be

based upon each member holding a policy of insurance with a subsidiary insurance company or a health maintenance contract with a subsidiary health maintenance organization. Group certificateholders may also be members of the mutual insurance holding company if specified in the bylaws. The articles of incorporation and bylaws of a mutual insurance holding company may provide for one or more classes of members, and may restrict the voting or other rights of any class constituting policyholders of a not for profit health care plan to receive distributions pursuant to any provision of ch. 628 where the assets of such not for profit health care plan may not be treated as assets available for such distribution.

Section 7. Section 628.371, Florida Statutes, is amended to add a new subsection (5) to read:

628.371 Dividends to stockholders.—

(5) A dividend or distribution by a not for profit insurance company subsidiary to its mutual insurance holding company, directly or indirectly through one or more intermediate holding companies, pursuant to Part III of this chapter, which meets the requirements of this section imposed on a stock insurer shall be permitted by this section.

Section 8. Subsection (7) of section 617.01401, Florida Statutes, is amended to read:

617.01401 Definitions.—As used in this chapter, the term:

(7) "Distribution" means the payment of a dividend or any part of the income or profit of a corporation to its members, directors, or officers. A donation or transfer of corporate assets or income to or from another not-for-profit corporation

qualified as tax-exempt under s. 501(c) of the Internal Revenue Code or a governmental organization exempt from federal and state income taxes, if such corporation or governmental organization is a member of the corporation making such donation or transfer, is not a distribution for purposes of this chapter. A dividend or distribution by a not for profit insurance company subsidiary to its mutual insurance holding company, organized under ch. 628, directly or indirectly through one or more intermediate holding companies authorized thereunder, shall be deemed not to be a distribution for the purposes of this chapter.

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

Remove line 6 and insert:

amending s. 628.703 F.S.; revising definitions; amending s. 628.707, F.S.; relating to the reorganization of certain mutual insurance companies; amending s. 628.715, F.S.; relating to the authority of mutual insurance holding companies as to mergers and acquisitions; amending s. 628.727, F.S.; relating to mutual insurance holding company membership; amending s. 628.371, F.S.; relating to dividends or distributions by a not for profit insurance company to its mutual insurance holding company; amending s. 617.0401, F.S.; revising definitions; providing an effective date.