Regulatory Affairs Committee

Thursday, March 27, 2014
1:30 PM
404 HOB

Will Weatherford
Speaker

Doug Holder
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Regulatory Affairs Committee

Start Date and Time: Thursday, March 27, 2014 01:30 pm

End Date and Time: Thursday, March 27, 2014 03:30 pm

Location: Sumner Hall (404 HOB)

Duration: 2.00 hrs

Consideration of the following bill(s):

CS/CS/HB 169 Nicotine Products & Nicotine Dispensing Devices by Government Operations Appropriations Subcommittee, Business & Professional Regulation Subcommittee, Artiles, Renuart
HM 281 Keystone XL Pipeline by Hill
HB 283 Malt Beverages by Artiles, Young
CS/HB 357 Water and Wastewater Utility Systems by Finance & Tax Subcommittee, Santiago
CS/CS/HB 415 Pub. Rec./Investigations and Examinations by Office of Financial Regulation by Government Operations Subcommittee, Insurance & Banking Subcommittee, Santiago
CS/HB 623 Money Services Businesses by Insurance & Banking Subcommittee, Roberson, K.
HB 785 Workers' Compensation by Albritton
CS/HB 911 City of Panama City, Bay County by Local & Federal Affairs Committee, Patronis
HB 4017 Cable and Video Services by Rodrigues, R.
HB 7097 Ratification of Rules/Office of Insurance Regulation by Rulemaking Oversight & Repeal Subcommittee, Steube

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., Wednesday, March 26, 2014.

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., Wednesday, March 26, 2014.

NOTICE FINALIZED on 03/25/2014 16:05 by Ellinor.Martha

The Florida House of Representatives

Regulatory Affairs Committee

Will Weatherford
Speaker

Doug Holder
Chair

AGENDA

March 27, 2014
404 HOB
1:30 PM – 3:30 PM

I. Call to Order and Roll Call

II. CS/CS/HB 169 by *Government Operations Appropriation Subcommittee; Business & Professional Regulation Subcommittee; Reps. Artiles; Renuart*
Nicotine Products & Nicotine Dispensing Devices

III. HM 281 by *Rep. Hill*
Keystone XL Pipeline

IV. HB 283 by *Reps. Artiles; Young*
Malt Beverages

V. CS/HB 357 by *Finance & Tax Subcommittee; Rep. Santiago*
Water and Wastewater Utility Systems

VI. CS/CS/HB 415 by *Government Operations Subcommittee; Insurance & Banking Subcommittee; Rep. Santiago*
Pub. Rec./Investigations and Examinations by Office of Financial Regulation

VII. CS/HB 623 by *Insurance & Banking Subcommittee; Rep. K. Roberson*
Money Services Businesses

VIII. HB 785 by *Rep. Albritton*
Workers' Compensation

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

IX. CS/HB 911 by *Local & Federal Affairs Committee; Rep. Patronis*
City of Panama City, Bay County

X. HB 4017 by *Rep. R. Rodrigues*
Cable and Video Services

XI. HB 7097 by *Rulemaking Oversight & Repeal Subcommittee; Rep. Steube*
Ratification of Rules/Office of Insurance Regulation

XII. ADJOURNMENT

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 169 Nicotine Dispensing Devices
SPONSOR(S): Government Operations Appropriations Subcommittee; Business & Professional Regulation Subcommittee; Artiles and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 224

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

SUMMARY ANALYSIS

Electronic cigarettes (e-cigarettes) are devices, usually shaped like cigarettes, cigars or pipes that allow users to inhale vaporized nicotine, flavor, and other chemicals, without fire, smoke, ash, or carbon dioxide.

The Center for Disease Control & Prevention estimates that the number of middle and high school students using e-cigarettes has more than doubled from 2011 to 2012. Several states have passed regulations banning the sale of e-cigarettes to minors under the age of 18. Several counties, universities, and school boards in Florida have also passed regulations on e-cigarettes, similar to those in place for smoking, to restrict their use in public places and on their campuses.

The bill amends the current law to define "nicotine products" to include replacement nicotine cartridges and liquid nicotine, and "nicotine dispensing devices" to include electronic cigarettes, electronic cigars, and other devices that could be used to deliver nicotine to an individual by inhaling vaporized nicotine. The sale or giving of "nicotine products" or "nicotine dispensing devices" to minors under the age of 18 is a violation and is prohibited and is punishable as a second degree misdemeanor. It creates a noncriminal violation for persons under 18 years to possess, purchase, or misrepresent their age or military service to obtain "nicotine products" or "nicotine dispensing devices" in certain circumstances.

The bill preempts to the state regulation of products and activities related to "tobacco products," "nicotine products," and "nicotine dispensing devices." Currently enacted local government laws, ordinances, and regulations would be nullified, and local governments would be restricted from enacting new laws, ordinances or regulations on the "tobacco products," "nicotine products," and "nicotine dispensing devices."

The bill is not anticipated to have a fiscal impact.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Electronic Cigarettes
Electronic cigarettes, also known as e-cigarettes, are electronic products that allow users to inhale vaporized nicotine, flavor, and other chemicals, without fire, smoke, ash, or carbon dioxide. Electronic cigarettes are manufactured to resemble cigarettes, cigars, or pipes, but some are manufactured to resemble pens and USB memory sticks.[1]

E-Cigarette vendors include retailers who also sell tobacco products, retailers who do not sell tobacco products, and Internet retailers. According to the Department of Business and Professional Regulation (DBPR or Department), there are 27,039 tobacco permit holders[2] in Florida; however, the number that also sell e-cigarettes is unknown. Additionally, there is no data on the number of retailers with physical or Internet stores that sell e-cigarettes, but not tobacco products.

Tobacco Regulation in Florida
DBPR licenses and regulates businesses and professionals in Florida. It is structured to include separate divisions and various professional boards responsible for carrying out DBPR's mission to license efficiently and regulate fairly. The Division of Alcoholic Beverage and Tobacco (Division) within DBPR is responsible for the enforcement of ch. 569, F.S., regulating tobacco products.

Smoking is regulated by ss. 386.201 through 386.2125, F.S., titled the Florida Indoor Clean Air Act (FICAA). The FICAA prohibits smoking within an indoor workplace, with certain exceptions, and preempts the regulation of smoking to the state. The current preemption has an exception that allows school districts to further restrict smoking on their property.

Definitions and Licensing
Section 569.002, F.S., states that the terms "dealer" and "retail tobacco products dealer" are synonymous terms that refer to "the holder of a retail tobacco products dealer permit (tobacco permit)."

Section 569.002(6), F.S., defines the term "tobacco products" to include:

> [L]oose tobacco leaves, and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking, sniffing, or chewing.

Section 210.25(11), F.S., relating to the tax on tobacco products other than cigarettes or cigars, defines the term "tobacco products" to mean:

> [L]oose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing; but "tobacco products" does not include cigarettes, as defined by s. 210.01(1)[F.S.], or cigars.

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[1] *Sottera, Inc. v. Food & Drug Admin.*, 627 F.3d 891 (D.C. Cir. 2010); *see also* U.S. Food & Drug Administration, News & Events, What are Electronic Cigarettes?, *available at* http://www.fda.gov/newsevents/publichealthfocus/ucm172906.htm (Last visited January 23, 2014).
[2] Florida Department of Business and Professional Regulation, 2014 Agency Legislative Bill Analysis for SB 224 (Oct. 30, 2013) (on file with the Business & Professional Regulation Subcommittee).

Section 569.003, F.S., requires:

> Each person, firm, association, or corporation that seeks to deal, at retail, in tobacco products within this state, or to allow a tobacco products vending machine to be located on its premises in this state, must obtain a retail tobacco products dealer permit for each place of business or the premises where tobacco products are sold.

Section 569.0075, F.S., prohibits a dealer from giving sample tobacco products to persons under the age of 18.

General Provisions, Prohibitions, and Penalties Related to Minors

Section 569.101, F.S., prohibits the sale, delivery, bartering, furnishing or giving of tobacco products to persons under the age of 18. A violation of this prohibition is a second degree misdemeanor.[3] A second or subsequent violation within one year of the first violation is a first degree misdemeanor.[4]

Section 569.101(3), F.S., provides a complete defense to a person charged with a violation of this section if the buyer or recipient falsely evidenced that he or she was 18 years of age or older, a prudent person would believe the buyer or recipient to be 18 years of age or older, and the buyer or recipient presented false identification[5] upon which the person relied upon in good faith.

Section 569.11, F.S., prohibits persons under the age of 18 from possessing, directly or indirectly, any tobacco products. A first violation of this prohibition is a non-criminal violation with a penalty of 16 hours of community service or a $25 fine, and attendance at a school-approved anti-tobacco program, if locally available. A second violation within 12 weeks of the first violation is punishable with a $25 fine. A third or subsequent violation within 12 weeks of the first violation requires that the person must be punished with the suspension or revocation of his or her driver's license or driving privilege, as provided in s. 322.056, F.S.

In FY 2012-13, the Department of Highway Safety and Motor Vehicles revoked the driver's license for one person and suspended the driver's license for 561 persons for underage possession of tobacco products, and suspended the driver's license for one underage person for misrepresenting the age to purchase tobacco products.[6]

Section 569.14, F.S., requires that dealers must post a clear and conspicuous sign that the sale of tobacco products is prohibited to persons under the age of 18 and that proof of age is required for purchase. The Division is required to make the signs available to retail tobacco products dealers. Retail tobacco products dealers must also have instructional material in the form of a calendar or similar format to assist in determining the age of the person attempting to purchase a tobacco product.

It is not clear whether the tobacco prohibitions for minors in current law include e-cigarettes as tobacco products. In an attempt to restrict minors' access to e-cigarettes, the Division's Internet site advises:

> Electronic cigarettes containing nicotine from tobacco leaves are tobacco products regulated in the state, and that it is unlawful to sell tobacco products, including electronic cigarettes, to a person under 18 years of age.[7]

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[3] Sections 775.082 and 775.083, F.S. (providing penalties for a misdemeanor of the second degree).

[4] *Id.* (providing penalties for a misdemeanor of the first degree).

[5] *See* s. 569.101(2)(c), F.S., (requiring carefully checking the identification presented by the buyer or recipient and acting in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 18 years of age or older).

[6] Florida Department of Highway Safety and Motor Vehicles, 2014 Agency Legislative Analysis for SB 224 (Oct. 4, 2013) (on file with the Business & Professional Regulation Subcommittee).

[7] *See* Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, http://www.myfloridalicense.com/dbpr/abt/index.html (Last visited Jan. 24, 2013).

Currently, the Division's sworn law enforcement officers, as well as the non-sworn inspectors, routinely inspect tobacco permit holders for compliance with ch. 569, F.S. The Division's sworn law enforcement officers also perform what is termed "surveys," which are undercover operations with underage operatives, as a means of enforcing the prohibitions on the sale of tobacco products to persons less than 18 years of age; and the prohibition on possession of tobacco products by persons less than 18 years of age.[8]

According to the Department, for the period of January 1, 2012 through December 28, 2012, the Division performed 2,805 visits of retail tobacco dealers to determine compliance with ch. 569, F.S. These inspections resulted in 270 arrests for selling, delivering, furnishing, or giving tobacco products to persons under the age of 18. These visits also found three violations for failure to hold a valid tobacco permit.

According to the Division, 29 administrative cases were initiated against licensees for selling tobacco products to underage persons and 28 civil penalties were collected. Section 569.008(5), F.S., requires a pattern of three or more violations by the employees of the tobacco permit holder during a 180 period before a permit holder can be sanctioned for sales made by his or her employee. During this same period, the Division also cited 136 persons under the age of 18 for possession of tobacco products.

Federal Regulation of E-Cigarettes

The Federal U.S. Food and Drug Administration (FDA) is a federal agency within the Department of Health and Human Services. The FDA's organization consists of the Office of the Commissioner and four directorates overseeing the core functions of the agency: Medical Products and Tobacco; Foods; Global Regulatory Operations and Policy; and Operations.[9] The Office of Medical Products and Tobacco provides advice and regulatory oversight to the FDA Commissioner through the centers for drug, biologics, medical devices, and tobacco products. The office also oversees the agency's special medical programs.[10]

Electronic cigarettes that are marketed for therapeutic purposes are regulated by the FDA Center for Drug Evaluation and Research (CDER).[11] The FDA Center for Tobacco Products regulates cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco.

The authority of the FDA to regulate e-cigarettes is based on the Family Smoking Prevention and Tobacco Control Act of 2009 (Tobacco Control Act).[12] Enacted on June 22, 2009, this act amended the Federal Food, Drug, and Cosmetic Act (FDCA) to authorize the FDA to regulate "tobacco products." The Tobacco Control Act defines the term "tobacco product," in part, as any product "made or derived from tobacco" that is not a "drug," "device," or combination product under the FDCA.

The Food and Drug Administration initially determined that certain e-cigarettes were both a drug and a device under the FDCA.[13] Products that fall under the authority of the FDCA as drugs or devices must go through a preapproval process before they can be marketed or sold to the consumer. Tobacco products do not have to go through a preapproval process.

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[8] Florida Department of Business and Professional Regulation, 2014 Agency Legislative Bill Analysis for SB 224 (Oct. 30, 2013) (on file with the Business & Professional Regulation Subcommittee).

[9] *See* U.S. Food & Drug Administration, FDA Organization, *available at* http://www.fda.gov/AboutFDA/CentersOffices/default.htm. (Last visited Jan. 24, 2014).

[10] *See* U.S. Food & Drug Administration, Office of Medical Products and Tobacco, *available at* http://www.fda.gov/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/default.htm. (Last visited Jan. 24, 2014).

[11] See U.S. Food & Drug Administration, News & Events, FDA Regulation of e-Cigarettes, *available at* http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm172906.htm (Last visited Jan. 24, 2014).

[12] Federal Food, Drug, and Cosmetic Act, 21 USC s. 351 et seq.

[13] See Department of Health & Human Service, Food and Drug Administration, Letter to Matt Salmon, President of Electronic Cigarette Association, dated September 8, 2010, *available at* http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/UCM225263.pdf (Last visited October 10, 2013).

The regulatory classification of e-cigarettes as tobacco products was resolved by the United States Court of Appeals for the District of Columbia Circuit, in *Sottera, Inc. v. Food & Drug Administration.*[14] The court determined that the FDA has the authority to regulate e-cigarettes as "tobacco products" under the Family Smoking and Tobacco Control Act of 2009[15] not as drugs/devices under the FDCA.

The case involved Sottera, Inc., an importer and distributor of e-cigarettes, whose shipment of e-cigarettes had been denied entry by the FDA because, the FDA asserted, they appeared to be adulterated, misbranded, or unapproved drug-device combinations under the FDCA. The company sought an injunction to bar the FDA from denying their e-cigarettes entry into the United States and from regulating e-cigarettes under the drug-device combinations under the FDCA. The United States District Court for the District of Columbia granted the injunction and agreed that e-cigarettes were subject to regulation as tobacco products and were not subject to regulation as drugs/devices under FDCA.

On appeal, the United States Court of Appeals for the District of Columbia Circuit held that e-cigarettes and other products made or derived from tobacco should be regulated as "tobacco products," and not regulated as drugs/devices unless they are marketed for therapeutic purposes. The FDA did not appeal this decision. The FDA has stated its intent to issue a proposed rule that would extend FDA's tobacco product regulatory authority to products that meet the statutory definition of "tobacco product."[16]

The National Association of Attorneys General issued a letter to the commissioner of the FDA urging the FDA to immediately regulate the sale and advertising of e-cigarettes as "tobacco products." The letter was signed by 42 attorneys general, including Florida Attorney General Pam Bondi. The letter noted that e-cigarettes with fruit and candy flavors that appeal to youth and advertising have led consumers to believe that e-cigarettes are a safe alternative to cigarettes. The letter asserted that e-cigarettes are addictive, and regulatory oversight was needed to ensure the safety of e-cigarette ingredients.[17]

Some e-cigarettes specifically note in their marketing that e-cigarettes have not been evaluated by the Food and Drug Administration, are not intended to help people to stop smoking, and are not intended to treat, prevent or cure any disease or condition. Some retailers also assert that they voluntarily restrict sales to persons who are 18 years of age or older.

The Centers for Disease Control and Prevention reported that the number of middle school and high school students in the United States who used electronic cigarettes doubled in 2012 compared to the previous year. According to the report, nearly 1.78 million students tried e-cigarettes in 2012 nationwide.[18] In Florida, 4.3 percent of middle school students and 12.1 percent of high school students have tried e-cigarettes in 2013. The number of Florida high school students who have tried e-cigarettes has increased from 6 percent in 2011 to 12.1 percent in 2013.[19]

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[14] Sottera, Inc. v. Food & Drug Administration, 627 F.3d 891 (D.C. Cir. 2010).
[15] The Family Smoking and Tobacco Control Act of 2009, Pub.L. 111-31, 123 Stat. 1776.
[16] *See* Department of Health & Human Services, Food & Drug Administration, Unified Entry, "Tobacco Products" Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act, (Dec. 2013) *available at* http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201310&RIN=0910-AG38 (Last visited Jan. 24, 2014).
[17] National Association of Attorneys General, Letter to The Honorable Margaret Hamburg, Commissioner of the U.S. Food and Drug Administration (Oct. 23, 2013) *available at* http://www.naag.org/assets/files/pdf/signons/E Cigarette Final Letter w Florida.pdf (Last visited Jan. 24, 2014).
[18] *See* Centers for Disease Control & Prevention, Press Release, E-cigarette use more than doubles among U.S. middle and high school students from 2011-2012, (Sept. 5, 2012), *available at* http://www.cdc.gov/media/releases/2013/p0905-ecigarette-use.html (Last visited Jan. 24, 2013).
[19] *See* Florida Department of Health, Press Release, New CDC Report: E-Cigarette Use Among Teens in the U.S. Doubles, *available at* http://newsroom.doh.state.fl.us/wp-content/uploads/newsroom/2013/05/090613-E-Cigarette-Use-Among-Teens-Doubles.pdf (Last visited Jan. 24, 2014).

Local Regulation of Electronic Cigarettes

Several counties and cities within Florida have passed local regulations of e-cigarettes. Clay County passed an ordinance in 2013 to regulate the sale, marketing, and restrict the public use of electronic cigarettes within the county where tobacco products are currently banned. Alachua County, Indian River County, and Marion County passed similar ordinances in 2013.

These ordinances banned the sale of electronic cigarettes to minors under the age of 18, required that vendors who sold electronic cigarettes kept the products behind the counter, and limited the use of electronic cigarettes in the same manner that the Florida Clean Indoor Air Act does for tobacco products. Several municipalities have passed similar ordinances, including the City of Green Cove Springs, the City of Sebastian, the City of Vero Beach, the City of Stuart, and the Town of Orange Park.

The University of Florida, Florida State University, the Seminole County School District, and the Bay County School Board, among others, have enacted policies banning the use of e-cigarettes on their campuses and properties.

Effect of the Bill

This bill makes amendments to ch. 569, F.S., and creates s. 877.112, F.S., to prohibit selling or giving of "nicotine products" or "nicotine dispensing devices," which include e-cigarettes, to persons under the age of 18.

Definitions of "Nicotine Dispensing Device" and "Nicotine Product"

The bill creates s. 877.112(1)(a), F.S., to define a "nicotine dispensing device" is as:

> [A]ny product that can be used to deliver nicotine to an individual by inhaling vaporized nicotine from the product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product and any replacement nicotine cartridge for the device or product.

The bill creates s. 877.112(1)(b), F.S., to define a "nicotine product" as:

> [A]ny product that is not a tobacco product defined in ch. 569, F.S., which contains nicotine, including liquid nicotine, which can be used for smoking, sniffing, inhaling, ingesting, or chewing. Nicotine products are only products containing nicotine derived from the tobacco plant, and do not include products that have incidental nicotine in them derived from other natural sources.

Sale of Nicotine Products or Nicotine Dispensing Devices or Samples and Penalties

The bill creates s. 877.112(2), F.S., to make it unlawful to sell, deliver, barter, furnish, or give, directly or indirectly, to any person who is under 18 years of age, any nicotine product or a nicotine dispensing device.

The bill creates s. 877.112(3), F.S., to prohibit a retailer, or employee of a retailer, from gifting a sample nicotine product or nicotine dispensing device to any person under the age of 18.

The bill creates s. 877.112(4), F.S., to provide that a person who violates the above restrictions on selling or gifting nicotine products or nicotine dispensing devices to a person under the age of 18 commits a second degree misdemeanor. The bill increases the penalties of second or subsequent violations within one year of the first violation to a misdemeanor of the first degree.

The bill creates s. 877.112(5), F.S., to allow a person who is charged with a violation of the above restrictions a complete affirmative defense if, at the time the nicotine product or nicotine dispensing

device is sold, delivered, bartered, furnished, or given, the buyer falsely evidenced he or she was 18 years of age or older, a prudent person would believe the buyer was 18 years of age or older, and such person being charged with a violation carefully checked the buyer's acceptable identification.

Minor's Possession of Nicotine Products, Nicotine Dispensing Device and Misrepresentation of Age
The bill creates s. 877.112(6) and (7), F.S., to prohibit minors under the age of 18 from possessing a nicotine product or a nicotine dispensing device, and makes it unlawful for a minor to misrepresent his or her age to a retailer in order to induce the retailer, or an agent or employee of the retailer, into selling the minor a nicotine product or nicotine dispensing device.

The bill creates s. 877.112(8), F.S., to provide for the administration of the noncriminal penalties for minors that violate subsections (6) and (7). A minor charged with a violation of subsections (6) and (7) shall comply with the requirements of this subsection, appear before the county court, must attend a school-approved anti-tobacco and nicotine program, and pay any fines found by the county court.

The bill creates s. 877.112(9), F.S., to provide that 80 percent of all civil penalties received for violations of s. 877.112(6) and (7), F.S., by county courts shall be remitted to the Department of Revenue for transfer to the Department of Education to be used to provide for teacher training and for research and evaluation to reduce and prevent the use of tobacco products, nicotine products, or nicotine dispensing devices by children. The remaining 20 percent shall remain with the clerk of the county court to cover administrative costs.

Posting Signs
The bill creates s. 877.112(10), F.S., to require all retailers that sell "nicotine products" or "nicotine dispensing devices" to post a sign substantially stating the following:

> THE SALE OF NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

The bill also requires retailers to provide point of sale materials to assist in determining whether a person is of legal age to purchase nicotine products or nicotine dispensing devices that state:

> IF YOU WERE NOT BORN BEFORE THIS DATE
> (insert date and applicable year)
> YOU CANNOT BUY NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES.

The bill amends s. 569.14, F.S., to allow retailers that sell both tobacco products and nicotine products or nicotine dispensing devices to meet the requirements of both ss. 569.14 and 877.112(10), F.S., if they post a sign which substantially states the following:

> THE SALE OF TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

The bill also allows DBPR to make available this alternative sign to dealers of tobacco products instead of other signs that are required by s. 569.14(1), F.S.

Preemption to the State of all regulation of Tobacco Products, Nicotine Products, Nicotine Dispensing Devices, and all other Miscellaneous Crimes
The bill amends s. 569.14, F.S., and creates s. 877.112(11), F.S., to preempt regulation of products and activities, covered by ch. 569,[20] and s. 877.112, F.S., to the state and to supersede any municipal

[20] *See* Drafting Issues or Other Comments, regarding a drafting error.

or county ordinance on these subjects. The preemptions would invalidate existing local laws regulating tobacco and nicotine products covered by ch. 569, F.S., or s. 877.112, F.S., and prevent local governments or school boards from enacting new regulations on these subjects.

To the extent that there may be overlap with the Florida Clean Indoor Air Act, which preempts the regulation of smoking to the state, there could be confusion related to the effect of the two preemptions. In particular, the impact of the exception within the smoking preemption that allows school districts to restrict smoking on their property greater than is required by state law is unclear.

These preemptions would also appear to invalidate some or all of the restrictions created by Alachua County, Clay County, Indian River County, and Marion County to regulate the use of "nicotine products" or "nicotine dispensing devices." These preemptions would also appear to invalidate the restrictions on the use of "nicotine products" or "nicotine dispensing devices" on school property, such as the restrictions passed by the University of Florida, Florida State University, the Bay County School Board, or any other school board in Florida with similar restrictions.

B. SECTION DIRECTORY:

Section 1 amends s. 569.14, F.S., allowing retailers that sell tobacco products and nicotine products or nicotine dispensing devices to use signs that would meet the requirements of both this section and s. 877.112(10), F.S.; creates a state preemption for the regulation of all products and activities covered by ch. 569, F.S.

Section 2 creates s. 877.112, F.S., defining the terms "nicotine dispensing devices" and "nicotine products"; prohibiting the selling, delivering, bartering, furnishing, or giving of nicotine products or nicotine dispensing devices to persons under 18 years of age; prohibiting the gift of sample nicotine products or nicotine dispensing devices to persons under 18 years of age; providing penalties; prohibiting a person under 18 years of age from possessing, purchasing, or misrepresenting his or her age or military service to purchase nicotine products or nicotine dispensing devices; requiring certain signage where a retailer sells nicotine products or nicotine dispensing devices; creates a state preemption for the regulation of all products or activities covered by s. 877.112, F.S.

Section 3 provides an effective date of July 1, 2014.

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:

Indeterminate. Retailers of nicotine products and nicotine dispensing devices will be required to purchase or create signs that meet the requirements of s. 877.112(10), F.S.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

Single Subject Requirement

This bill may be challenged as violating Florida's constitutional single subject requirement which states that "[e]very law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title."[21] In determining whether an act violates the single subject rule, the Florida Supreme Court has examined whether the provisions of an act have a "natural or logical connection".[22]

It is unclear whether the preemption of tobacco products has a natural or logical connection to the regulation of nicotine products or nicotine dispensing devices.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The placement of the preemption to the state of the regulation of all tobacco products in s. 569.14, F.S., is inconsistent with the subject matter, signage requirements, of that section. The preemption would be more appropriately placed in a new section of ch. 569, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 18, 2014, the Business & Professional Regulation Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute.

The strike-all amendment made the following changes to the filed version of the bill:

- Changed references from "alternative nicotine products" to "nicotine dispensing devices."
- Removed the definition of "electronic cigarette," and merged the products it covered into "nicotine dispensing devices."
- Requires DBPR provide the number of violations of the bill in its annual report.

On March 11, 2014, the Government Operations Appropriations Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute.

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[21] Art. III, § 6, Fla. Const.

[22] *State v. Thompson*, 750 So.2d 643, 647 (Fla. 1999); *Florida Dept. of Highway Safety and Motor Vehicles v. Critchfield*, 842 So.2d 782 (Fla.2003)(holding that section of chapter law involving assigning bad check debt to a private debt collector had no natural or logical connection to the law's subject matter of driver's licenses, operation of motor vehicles, and vehicle registrations)

The strike-all amendment made the following changes to the bill:

- Moved most of the substantive changes of the bill out of the Tobacco Products Section (ch. 569, F.S.) and to the Miscellaneous Crimes Section (ch. 877, F.S.).
- Adjusted the signage requirements for tobacco products so that DBPR may produce a sign that would meet the requirements of both s. 569.14, F.S., and the newly created s. 877.112, F.S.
- Created a preemption of all regulation for products or activities covered by Tobacco Products of ch. 569, F.S., within s. 569.14, F.S., and all products or activities covered by s. 877.112, F.S.

The staff analysis is drafted to reflect the committee substitute.

A bill to be entitled

An act relating to nicotine products and nicotine dispensing devices; amending s. 569.14, F.S.; allowing alternate signage requirements where a dealer that sells tobacco products also sells nicotine products or nicotine dispensing devices; preempting regulation of certain products and activities to the state; creating s. 877.112, F.S.; defining the terms "nicotine dispensing device" and "nicotine product"; prohibiting the selling, delivering, bartering, furnishing, or giving of nicotine products or nicotine dispensing devices to persons under 18 years of age; prohibiting the gift of sample nicotine products or nicotine dispensing devices to persons under 18 years of age; providing penalties; providing affirmative defenses for a person charged with certain violations; prohibiting a person under 18 years of age from possessing, purchasing, or misrepresenting his or her age or military service to purchase nicotine products or nicotine dispensing devices; providing for use of civil fines; requiring certain signage where a retailer sells nicotine products or nicotine dispensing devices; preempting regulation of certain products and activities to the state; providing an effective date.

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

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

Section 1. Section 569.14, Florida Statutes, is amended to read:

569.14 Posting of a sign stating that the sale of tobacco products to persons under 18 years of age is unlawful; enforcement; penalty; preemption.—

(1) A ~~Any~~ dealer that sells tobacco products shall post a clear and conspicuous sign in each place of business where such products are sold which substantially states the following: THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

(2) A dealer that sells tobacco products and nicotine products or nicotine dispensing devices, as defined in s. 877.112, may use a sign that substantially states the following: THE SALE OF TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.
A dealer that uses a sign as described in this subsection meets the signage requirements of ss. 569.14(1) and 877.112.

(3)~~(2)~~ The division shall make available to dealers of tobacco products signs that meet the requirements of subsection (1) or subsection (2).

(4)~~(3)~~ Any dealer that sells tobacco products shall provide at the checkout counter in a location clearly visible to the dealer, the dealer's agent or employee, instructional

material in a calendar format or similar format to assist in determining whether a person is of legal age to purchase tobacco products. This point of sale material must contain substantially the following language:

IF YOU WERE NOT BORN BEFORE THIS DATE

(insert date and applicable year)

YOU CANNOT BUY TOBACCO PRODUCTS.

Upon approval by the division, in lieu of a calendar a dealer may use card readers, scanners, or other electronic or automated systems that can verify whether a person is of legal age to purchase tobacco products. Failure to comply with the provisions contained in this subsection shall result in imposition of administrative penalties as provided in s. 569.006.

(5) ~~(4)~~ The division, through its agents and inspectors, shall enforce this section.

(6) ~~(5)~~ Any person who fails to comply with subsection (1) is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(7) This subsection expressly preempts to the state the regulation of products and activities under this chapter and supersedes any municipal or county ordinance on the subject.

Section 2. Section 877.112, Florida Statutes, is created to read:

877.112 Nicotine products and nicotine dispensing devices; prohibitions for minors; penalties; civil fines; signage requirements; preemption.-

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

(a) "Nicotine dispensing device" means any product that can be used to deliver nicotine to an individual by inhaling vaporized nicotine from the product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product and any replacement nicotine cartridge for the device or product.

(b) "Nicotine product" means any product that is not a tobacco product, as defined in chapter 569, that contains nicotine, including liquid nicotine, and that can be used for smoking, sniffing, inhaling, ingesting, or chewing. The term "nicotine product" includes only products containing nicotine derived from the tobacco plant. The term does not include products containing incidental nicotine derived from other natural sources.

(2) PROHIBITIONS ON SALE TO MINORS.—It is unlawful to sell, deliver, barter, furnish, or give, directly or indirectly, to any person who is under 18 years of age, any nicotine product or a nicotine dispensing device.

(3) PROHIBITIONS ON GIFTING SAMPLES TO MINORS.—The gift of a sample nicotine product or nicotine dispensing device to any person under the age of 18 by a retailer of nicotine products or nicotine dispensing devices, or by an employee of such retailer, is prohibited.

(4) PENALTIES.—Any person who violates subsection (2) or

(3) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. However, any person who violates subsection (2) or (3) for a second or subsequent time within 1 year of the first violation, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(5) AFFIRMATIVE DEFENSES.—A person charged with a violation of subsection (2) or (3) has a complete defense if, at the time the nicotine product or nicotine dispensing device was sold, delivered, bartered, furnished, or given:

(a) The buyer or recipient falsely evidenced that she or he was 18 years of age or older;

(b) The appearance of the buyer or recipient was such that a prudent person would believe the buyer or recipient to be 18 years of age or older; and

(c) Such person carefully checked a driver license or an identification card issued by this state or another state of the United States, a passport, or a United States armed services identification card presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 18 years of age or older.

(6) PROHIBITIONS ON POSSESSION OF NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES BY MINORS.—It is unlawful for any person under 18 years of age to knowingly possess any nicotine product or a nicotine dispensing device. Any person under 18

years of age who violates this subsection commits a noncriminal violation as defined in s. 775.08(3), punishable by:

(a) For a first violation, 16 hours of community service or, instead of community service, a $25 fine. In addition, the person must attend a school-approved anti-tobacco and nicotine program, if locally available;

(b) For a second violation within 12 weeks of the first violation, a $25 fine; or

(c) For a third or subsequent violation within 12 weeks of the first violation, the court must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend or revoke the person's driver license or driving privilege, as provided in s. 322.056.

Any second or subsequent violation not within the 12-week time period after the first violation is punishable as provided for a first violation.

(7) PROHIBITION ON MISREPRESENTING AGE.—It is unlawful for any person under 18 years of age to misrepresent his or her age or military service for the purpose of inducing a retailer of nicotine products or nicotine dispensing devices or an agent or employee of such retailer to sell, give, barter, furnish, or deliver any nicotine product or nicotine dispensing device, or to purchase, or attempt to purchase, any nicotine product or nicotine dispensing device from a person or a vending machine. Any person under 18 years of age who violates this subsection

commits a noncriminal violation as defined in s. 775.08(3), punishable by:

(a) For a first violation, 16 hours of community service or, instead of community service, a $25 fine and, in addition, the person must attend a school-approved anti-tobacco and nicotine program, if available;

(b) For a second violation within 12 weeks of the first violation, a $25 fine; or

(c) For a third or subsequent violation within 12 weeks of the first violation, the court must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend or revoke the person's driver license or driving privilege, as provided in s. 322.056.

Any second or subsequent violation not within the 12-week time period after the first violation is punishable as provided for a first violation.

(8) PENALTIES FOR MINORS.—

(a) A person under 18 years of age cited for committing a noncriminal violation under this section must sign and accept a civil citation indicating a promise to appear before the county court or comply with the requirement for paying the fine and must attend a school-approved anti-tobacco and nicotine program, if locally available. If a fine is assessed for a violation of this section, the fine must be paid within 30 days after the date of the citation or, if a court appearance is mandatory,

within 30 days after the date of the hearing.

(b) A person charged with a noncriminal violation under this section must appear before the county court or comply with the requirement for paying the fine. The court, after a hearing, shall make a determination as to whether the noncriminal violation was committed. If the court finds the violation was committed, it shall impose an appropriate penalty as specified in subsection (6) or subsection (7). A person who participates in community service shall be considered an employee of the state for the purpose of chapter 440, for the duration of such service.

(c) If a person under 18 years of age is found by the court to have committed a noncriminal violation under this section and that person has failed to complete community service, pay the fine as required by paragraph (6)(a) or paragraph (7)(a), or attend a school-approved anti-tobacco and nicotine program, if locally available, the court must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for 30 consecutive days.

(d) If a person under 18 years of age is found by the court to have committed a noncriminal violation under this section and that person has failed to pay the applicable fine as required by paragraph (6)(b) or paragraph (7)(b), the court must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving

privilege of that person for 45 consecutive days.

(9) DISTRIBUTION OF CIVIL FINES.—Eighty percent of all civil penalties received by a county court pursuant to subsections (6) and (7) shall be remitted by the clerk of the court to the Department of Revenue for transfer to the Department of Education to provide for teacher training and for research and evaluation to reduce and prevent the use of tobacco products, nicotine products, or nicotine dispensing devices by children. The remaining 20 percent of civil penalties received by a county court pursuant to this section shall remain with the clerk of the county court to cover administrative costs.

(10) SIGNAGE REQUIREMENTS FOR RETAILERS OF NICOTINE PRODUCTS AND NICOTINE DISPENSING DEVICES.—

(a) Any retailer that sells nicotine products or nicotine dispensing devices shall post a clear and conspicuous sign in each place of business where such products are sold which substantially states the following:

THE SALE OF NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

(b) A retailer that sells nicotine products or nicotine dispensing devices shall provide at the checkout counter in a location clearly visible to the retailer, the retailer's agent or employee, instructional material in a calendar format or

similar format to assist in determining whether a person is of legal age to purchase nicotine products or nicotine dispensing devices. This point of sale material must contain substantially the following language:

IF YOU WERE NOT BORN BEFORE THIS DATE
(insert date and applicable year)
YOU CANNOT BUY NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES.

In lieu of a calendar a retailer may use card readers, scanners, or other electronic or automated systems that can verify whether a person is of legal age to purchase nicotine products or nicotine dispensing devices.

(11) PREEMPTION.—This subsection expressly preempts to the state the regulation of products and activities under this section and supersedes any municipal or county ordinance on the subject.

Section 3. This act shall take effect July 1, 2014.

REGULATORY AFFAIRS COMMITTEE

CS/CS/HB 169 by Artiles
Nicotine Products & Nicotine Dispensing Devices

AMENDMENT SUMMARY
March 27, 2014

Amendment 1 by Rep. Artiles (Strike-All):

The strike-all amendment:

- Reduces the preemption to the state of the regulation of tobacco products and makes a technical correction on the statutory placement of the preemption. Instead of a total preemption, the preemption is limited to "regulation of the sale of products".
- Clarifies the definition of Nicotine Products and Nicotine Dispensing Devices to include all intended products, devices and substances.
- Requires retailers of nicotine products or nicotine dispensing devices to maintain direct control over the products or devices.
- Reduces the preemption to the state of the regulation of nicotine products and nicotine dispensing devices. Instead of a total preemption, the preemption is limited to "regulation of the sale of products".
- Modifies the title to reflect the substance of the strike-all.

Amendment a1 to Amendment 1 by Rep. Waldman (Lines 49-54): Removes the preemption to the state of the regulation of the sale of tobacco products from the bill.

Amendment a2 to Amendment 1 by Rep. Waldman (Lines 263-265): Removes the preemption to the state of the sale of nicotine products and nicotine dispensing devices from the bill.

Amendment 2 by Rep. Waldman (Lines 71-73): Removes the preemption to the state of the regulation of tobacco products and activities from the bill.

Amendment 3 by Rep. Waldman (Lines 248-251): Removes the preemption to the state of the regulation of nicotine products and nicotine dispensing devices and activities from the bill.

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 Artiles offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 569.14, Florida Statutes, is amended to read:

569.14 Posting of a sign stating that the sale of tobacco products to persons under 18 years of age is unlawful; enforcement; penalty.—

(1) A ~~Any~~ dealer that sells tobacco products shall post a clear and conspicuous sign in each place of business where such products are sold which substantially states the following: THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

(2) A dealer that sells tobacco products and nicotine

products or nicotine dispensing devices, as defined in s. 877.112, may use a sign that substantially states the following: THE SALE OF TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

A dealer that uses a sign as described in this subsection meets the signage requirements of ss. 569.14(1) and 877.112.

(3) ~~(2)~~ The division shall make available to dealers of tobacco products signs that meet the requirements of subsection (1) or subsection (2).

(4) ~~(3)~~ Any dealer that sells tobacco products shall provide at the checkout counter in a location clearly visible to the dealer, the dealer's agent or employee, instructional material in a calendar format or similar format to assist in determining whether a person is of legal age to purchase tobacco products. This point of sale material must contain substantially the following language:

IF YOU WERE NOT BORN BEFORE THIS DATE
(insert date and applicable year)
YOU CANNOT BUY TOBACCO PRODUCTS.

Upon approval by the division, in lieu of a calendar a dealer may use card readers, scanners, or other electronic or automated systems that can verify whether a person is of legal age to purchase tobacco products. Failure to comply with the provisions contained in this subsection shall result in imposition of administrative penalties as provided in s. 569.006.

(5) ~~(4)~~ The division, through its agents and inspectors, shall enforce this section.

(6) ~~(5)~~ Any person who fails to comply with subsection (1) is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. Section 569.24, Florida Statutes, is created to read:

569.24 Preemption of Tobacco Products.- This section expressly preempts to the state the regulation of the sale of products under this chapter and supersedes any municipal or county ordinance on the subject.

Section 3. Section 877.112, Florida Statutes, is created to read:

877.112 Nicotine products and nicotine dispensing devices; prohibitions for minors; penalties; civil fines; signage requirements; preemption.-

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

(a) "Nicotine Dispensing Device" means any product that employs an electronic, chemical or mechanical means to produce vapor from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.

(b) "Nicotine product" means any product that contains nicotine, including liquid nicotine, that is intended for human consumption, whether inhaled, chewed, absorbed, dissolved or ingested by any means, but does not include a:

1. Tobacco product, as defined in s. 569.002;

2. Product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Food, Drug and Cosmetic Act; or,

3. Product that contains incidental nicotine.

(2) PROHIBITIONS ON SALE TO MINORS.—It is unlawful to sell, deliver, barter, furnish, or give, directly or indirectly, to any person who is under 18 years of age, any nicotine product or a nicotine dispensing device.

(3) PROHIBITIONS ON GIFTING SAMPLES TO MINORS.—The gift of a sample nicotine product or nicotine dispensing device to any person under the age of 18 by a retailer of nicotine products or nicotine dispensing devices, or by an employee of such retailer, is prohibited.

(4) PENALTIES.—Any person who violates subsection (2) or (3) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. However, any person who violates subsection (2) or (3) for a second or subsequent time within 1 year of the first violation, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(5) AFFIRMATIVE DEFENSES.—A person charged with a

violation of subsection (2) or (3) has a complete defense if, at the time the nicotine product or nicotine dispensing device was sold, delivered, bartered, furnished, or given:

(a) The buyer or recipient falsely evidenced that she or he was 18 years of age or older;

(b) The appearance of the buyer or recipient was such that a prudent person would believe the buyer or recipient to be 18 years of age or older; and

(c) Such person carefully checked a driver license or an identification card issued by this state or another state of the United States, a passport, or a United States armed services identification card presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 18 years of age or older.

(6) PROHIBITIONS ON POSSESSION OF NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES BY MINORS.—It is unlawful for any person under 18 years of age to knowingly possess any nicotine product or a nicotine dispensing device. Any person under 18 years of age who violates this subsection commits a noncriminal violation as defined in s. 775.08(3), punishable by:

(a) For a first violation, 16 hours of community service or, instead of community service, a $25 fine. In addition, the person must attend a school-approved anti-tobacco and nicotine program, if locally available;

(b) For a second violation within 12 weeks of the first

violation, a $25 fine; or

(c) For a third or subsequent violation within 12 weeks of the first violation, the court must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend or revoke the person's driver license or driving privilege, as provided in s. 322.056.

Any second or subsequent violation not within the 12-week time period after the first violation is punishable as provided for a first violation.

(7) PROHIBITION ON MISREPRESENTING AGE.—It is unlawful for any person under 18 years of age to misrepresent his or her age or military service for the purpose of inducing a retailer of nicotine products or nicotine dispensing devices or an agent or employee of such retailer to sell, give, barter, furnish, or deliver any nicotine product or nicotine dispensing device, or to purchase, or attempt to purchase, any nicotine product or nicotine dispensing device from a person or a vending machine. Any person under 18 years of age who violates this subsection commits a noncriminal violation as defined in s. 775.08(3), punishable by:

(a) For a first violation, 16 hours of community service or, instead of community service, a $25 fine and, in addition, the person must attend a school-approved anti-tobacco and nicotine program, if available;

(b) For a second violation within 12 weeks of the first

violation, a $25 fine; or

(c) For a third or subsequent violation within 12 weeks of the first violation, the court must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend or revoke the person's driver license or driving privilege, as provided in s. 322.056.

Any second or subsequent violation not within the 12-week time period after the first violation is punishable as provided for a first violation.

(8) PENALTIES FOR MINORS.—

(a) A person under 18 years of age cited for committing a noncriminal violation under this section must sign and accept a civil citation indicating a promise to appear before the county court or comply with the requirement for paying the fine and must attend a school-approved anti-tobacco and nicotine program, if locally available. If a fine is assessed for a violation of this section, the fine must be paid within 30 days after the date of the citation or, if a court appearance is mandatory, within 30 days after the date of the hearing.

(b) A person charged with a noncriminal violation under this section must appear before the county court or comply with the requirement for paying the fine. The court, after a hearing, shall make a determination as to whether the noncriminal violation was committed. If the court finds the violation was committed, it shall impose an appropriate penalty as specified

in subsection (6) or subsection (7). A person who participates in community service shall be considered an employee of the state for the purpose of chapter 440, for the duration of such service.

(c) If a person under 18 years of age is found by the court to have committed a noncriminal violation under this section and that person has failed to complete community service, pay the fine as required by paragraph (6)(a) or paragraph (7)(a), or attend a school-approved anti-tobacco and nicotine program, if locally available, the court must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for 30 consecutive days.

(d) If a person under 18 years of age is found by the court to have committed a noncriminal violation under this section and that person has failed to pay the applicable fine as required by paragraph (6)(b) or paragraph (7)(b), the court must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for 45 consecutive days.

(9) DISTRIBUTION OF CIVIL FINES.—Eighty percent of all civil penalties received by a county court pursuant to subsections (6) and (7) shall be remitted by the clerk of the court to the Department of Revenue for transfer to the Department of Education to provide for teacher training and for research and evaluation to reduce and prevent the use of tobacco

products, nicotine products, or nicotine dispensing devices by children. The remaining 20 percent of civil penalties received by a county court pursuant to this section shall remain with the clerk of the county court to cover administrative costs.

(10) SIGNAGE REQUIREMENTS FOR RETAILERS OF NICOTINE PRODUCTS AND NICOTINE DISPENSING DEVICES.—

(a) Any retailer that sells nicotine products or nicotine dispensing devices shall post a clear and conspicuous sign in each place of business where such products are sold which substantially states the following:

THE SALE OF NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

(b) A retailer that sells nicotine products or nicotine dispensing devices shall provide at the checkout counter in a location clearly visible to the retailer, the retailer's agent or employee, instructional material in a calendar format or similar format to assist in determining whether a person is of legal age to purchase nicotine products or nicotine dispensing devices. This point of sale material must contain substantially the following language:

IF YOU WERE NOT BORN BEFORE THIS DATE
(insert date and applicable year)

YOU CANNOT BUY NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES.

In lieu of a calendar a retailer may use card readers, scanners, or other electronic or automated systems that can verify whether a person is of legal age to purchase nicotine products or nicotine dispensing devices.

(11) RESTRICTIONS ON SALE OR DELIVERY OF NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES.—

(a) In order to prevent persons under 18 years of age from purchasing or receiving nicotine products or nicotine dispensing devices, the sale or delivery of nicotine products or nicotine dispensing devices is prohibited, except:

1. When under the direct control, or line of sight where effective control may be reasonably maintained, of the retailer of nicotine products or nicotine dispensing devices or such retailer's agent or employee; or

2. Sales from a vending machine are prohibited under the provisions of subparagraph (a)1. and are only permissible from a machine that is equipped with an operational lockout device which is under the control of the retailer of nicotine products or nicotine dispensing devices or such retailer's agent or employee who directly regulates the sale of items through the machine by triggering the lockout device to allow the dispensing of one nicotine product or nicotine dispensing device. The lockout device must include a mechanism to prevent the machine from functioning if the power source for the lockout device

fails or if the lockout device is disabled, and a mechanism to ensure that only one nicotine product or nicotine dispensing device is dispensed at a time.

(b) The provisions of paragraph (a) shall not apply to an establishment that prohibits persons under 18 years of age on the premises.

(c) A retailer of nicotine products or nicotine dispensing devices or such retailer's agent or employee may require proof of age of a purchaser of a nicotine products or nicotine dispensing devices before selling the product or device to that person.

(12) PREEMPTION.—This subsection expressly preempts to the state the regulation of the sale of products under this section and supersedes any municipal or county ordinance on the subject.

Section 4. This act shall take effect July 1, 2014.

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to tobacco and nicotine product regulation; amending s. 569.14, F.S.; allowing alternate signage requirements where a dealer that sells tobacco products also sells nicotine products or nicotine dispensing devices; creating s. 569.24, F.S.; preempting regulation of the sale of tobacco

products to the state; creating s. 877.112, F.S.; defining the terms "nicotine dispensing device" and "nicotine product"; prohibiting the selling, delivering, bartering, furnishing, or giving of nicotine products or nicotine dispensing devices to persons under 18 years of age; prohibiting the gift of sample nicotine products or nicotine dispensing devices to persons under 18 years of age; providing penalties; providing affirmative defenses for a person charged with certain violations; prohibiting a person under 18 years of age from possessing, purchasing, or misrepresenting his or her age or military service to purchase nicotine products or nicotine dispensing devices; providing for use of civil fines; requiring certain signage where a retailer sells nicotine products or nicotine dispensing devices; requiring direct control or line of sight of products by retailer; preempting regulation of the sale of nicotine products and nicotine dispensing devices to the state; providing an effective date.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 169 (2014)

Amendment No. a1

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 Waldman offered the following:

Amendment to Amendment (974615) by Representative Artiles (with title amendment)

Remove lines 49-54 of the amendment

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

Remove lines 277-278 of the amendment and insert:

s. 877.112, F.S.; defining the

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 Waldman offered the following:

Amendment to Amendment (974615) by Representative Artiles (with directory and title amendments)

Remove lines 263-265 of the amendment

D I R E C T O R Y A M E N D M E N T

Remove line 59 of the amendment and insert:

requirements.-

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

Remove lines 292-294 of the amendment and insert:
sight of products by retailer; providing an effective date.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 169 (2014)

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 Waldman offered the following:

Amendment (with directory and title amendments)

Remove lines 71-73

D I R E C T O R Y A M E N D M E N T

Remove line 33 and insert:

enforcement; penalty.—

Amendment No. 2

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

Remove lines 6-7 and insert:

nicotine dispensing devices; creating

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 169 (2014)

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 Waldman offered the following:

Amendment (with directory and title amendments)

Remove lines 248-251

D I R E C T O R Y A M E N D M E N T

Remove line 78 and insert:

requirements.-

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

Remove lines 23-24 and insert:

dispensing devices; providing an

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 281 Keystone XL Pipeline
SPONSOR(S): Hill and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	11 Y, 6 N	Kelly	Rojas
2) Regulatory Affairs Committee		Whittier	Hamon

SUMMARY ANALYSIS

HM 281 urges the President to issue final approval of the Keystone XL Pipeline Project (Project). The proposed Project involves the construction of an 875-mile pipeline between Morgan, Montana, and Steele City, Nebraska. The Project would also cross the U.S.-Canadian border at Morgan, Montana. The construction of the Project is the fourth and final phase of the larger Keystone Pipeline (Pipeline), a pipeline infrastructure that would have the capacity to deliver roughly 830,000 barrels per day of crude oil from oil sands in Canada to the Gulf Coast of Texas.

Supporters of the Keystone XL Pipeline state that obtaining crude oil via the Pipeline from Canada would reduce the necessity to rely on foreign oil companies in more unstable regions and would create more U.S. jobs. Supporters also claim that the Pipeline is convenient and is the safest way to transport hazardous substances such as oil.

Opponents of the Keystone XL Pipeline assert that the potential environmental impacts outweigh the economic benefits. In Florida, the opposition is concerned about the atmospheric carbon pollution and its related impacts that are associated with emissions from burning fossil fuels.

All proposed petroleum pipelines that cross international borders of the U.S. must go through the Presidential Permit process per Executive Order 13337. As part of the Presidential Permit process, in January 2014 the Department of State (Department) completed and published its Final Supplemental Environmental Impact Statement (FSEIS) of the Project. The published FSEIS triggered a 90-day window in which the Department must obtain comment on the FSEIS from various agencies identified in Executive Order 13337. Beginning on February 5, 2014, the Department also began a 30-day public comment period. This window does not impact the President's unspecified timeline for making a decision on the Project's application.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the U.S. Congress to act on a particular subject. This memorial does not have a fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Construction of all proposed petroleum pipelines that cross international borders of the U.S. must go through the Presidential Permit process per Executive Order 13337.[1] In this process, the President must first issue an Executive Order which directs the Department of State (Department) to determine whether a particular project serves a national interest.[2] In this determination, the Department considers factors consistent with the National Environmental Policy Act and prepares a Final Supplemental Environmental Impact Statement (FSEIS) which determines if the project does or does not serve a national interest.[3] Upon publishing the FSEIS, the Department has 90 days to consult with eight federal agencies including the Departments of Energy, Defense, Transportation, Homeland Security, Justice, and Commerce, and the Environmental Protection Agency. The Department must also consider public comment on the proposed project. This window does not impact the President's unspecified timeline[4] for making a decision on the Project's application. At any point after this Presidential Permit process, the President may issue a National Interest Determination and then either approve or deny the Project's application.[5]

The Keystone XL Pipeline Project (Project) is the fourth and final phase of the larger Keystone Pipeline (Pipeline), a pipeline infrastructure built to transport crude oil from Canada to the U.S. The Pipeline will ultimately connect Canada to the Gulf Coast of Texas. The first three phases have been constructed and are operating.

Phase I: Runs from Hardisty, Alberta, to Steele City, Nebraska; Wood River, Illinois; and Patoka, Illinois.

Phase II: Runs through Steele City, Nebraska, to Cushing, Oklahoma.

Phase III: Runs between Cushing, Oklahoma, and Nederland, Texas.[6]

In 2008, TransCanada Keystone Pipeline, LP (TransCanada), a Canadian company that is financially backing the entire pipeline, submitted its first application for the Project.[7] The pipeline infrastructure in the first application was 1,384 miles, approximately 1.5 times the length of the current proposal. More so, the pipeline would have crossed 90 miles of the Sand Hills Region in Nebraska, a region the Nebraska Department of Environmental Quality identified as environmentally-sensitive. The

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[1] FSEIS Exec. Summ. at 1.
[2] *Issuance of Permits With Respect to Certain Energy-Related Facilities and Land Transportation Crossings on the International Boundaries of the United States*, 69 FR 25299; 3 U.S.C.A. § 301 (West).
[3] 42 U.S.C.A. § 4332 (West).
[4] According to the U.S. Department of State (in *Remarks on the Release of the Final Supplemental Environmental Impact Statement for the Proposed Keystone Pipeline*, Jan. 31, 2014, *available at* http://www.state.gov/e/oes/rls/remarks/2014/221129.htm), "the only specific timeline that's given in the executive order is that the consulting agencies have up to 90 days to get their views in."
[5] 42 U.S.C.A. § 4332 (West); U.S. Department of State, *Remarks on the Release of the Final Supplemental Environmental Impact Statement for the Proposed Keystone Pipeline*, (Jan. 31, 2014), *available at* http://www.state.gov/e/oes/rls/remarks/2014/221129.htm.
[6] FSEIS Exec. Summ. at 3.
[7] United States Department of State Bureau of Oceans and International Environmental and Scientific Affairs, *Final Supplemental Impact Statement for the Keystone XL Project (FSEIS)* (January 2014), *available at* http://keystonepipeline-xl.state.gov/documents/organization/221135.pdf.

Department published the FSEIS for this proposal in 2011, but the President subsequently denied the permit due to the controversial path the Project took across the Sand Hills Region.

On May 4, 2012, TransCanada filed a new Presidential Permit application, proposing a new route which avoids the Sand Hills Region. Under the new application, the Project consists of an 875-mile pipeline between Morgan, Montana, and Steele City, Nebraska. This portion of the Project is estimated to cost TransCanada approximately $3.3 billion. Upon authorization of the Presidential Permit, the Project will also cross the U.S.-Canadian border at Morgan, Montana.[8] The Project is estimated to take two years to complete construction. Along with the three previous phases of the Pipeline, the Project will have the capacity to deliver roughly 830,000 barrels per day of crude oil from oil sands in Canada to the Gulf Coast of Texas.[9]

For its review of the application, the Department selected the consulting firm, Environmental Resources Management as a third-party to prepare the Supplemental Environmental Impact Statement. In preparing the FSEIS, the Department took into consideration over 1.5 million public comment submissions.[10] The Department issued the FSEIS in January 2014, triggering a 90-day period for the Department to solicit comment from the appropriate U.S. agencies per Executive Order 13337.

The FSEIS states the Project will not significantly add to greenhouse emissions.[11] Specifically, the FSEIS states that assuming the Project occurs within the next few years, the climate conditions will not substantially differ from the current conditions.[12] The FSEIS also states that the potential for certain spills have been mitigated by implementation of the PHSMA prevention plan.[13] Finally, the FSEIS states the Project will support approximately 42,100 jobs either indirectly, directly, or induced by the Project. Approximately 3,900 of these jobs are construction jobs located through Montana, South Dakota, Nebraska, and Kansas. Overall, per the FSEIS, approximately 2 billion dollars in earnings throughout the United States would result from the Project.[14]

Supporters of the Keystone XL Pipeline state the Project supports market demand for crude oil refineries in closer proximity to the U.S. More so, obtaining crude oil from Canada would reduce the necessity to rely on foreign oil companies in unstable regions.[15] Likewise, according to the U.S. Department of Transportation Pipeline and Hazardous Material Safety Administration PHMSA, pipelines are one of the safest and most cost-effective ways to transport oil and other hazardous liquid products to the U.S.[16] Using less risky means to transport oil will reduce the potential for spills and other related disasters.

Specifically in Florida, supporters of the Pipeline claim that quick and easy access to oil is important to Florida because Floridians consume approximately 9.5 billion gallons of gasoline and diesel fuel annually.[17] Likewise, various Florida industries such as fertilizer, agrochemical, and plastic rely heavily on the access and use of oil products. Because Florida has no crude oil refineries, much of its

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[2] FSEIS Exec. Summ. at 9.
[9] FSEIS Exec. Summ. at 6.
[10] U.S. Department of State, *Keystone XL Pipeline Evaluation Process Fact Sheet*, *available at* Keystonepipeline-xl.state.gov/draftseis/205549.htm.
[11] FSEIS Exec. Summ. at 15, 34.
[12] FSEIS Exec. Summ. at 17.
[13] FSEIS Exec. Summ. at 19.
[14] *Id.*
[15] Nancy Smith, *Enough Stalling on the Keystone XL Pipeline*, SUNSHINE STATE NEWS (October 19, 2013), *available at* http://www.sunshinestatenews.com/story/enough-stalling-keystone-xl-pipeline-already.
[16] U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration, Safe Pipeline FAQs, *available at* http://phmsa.dot.gov/portal/site/PHMSA/menuitem.ebdc7a8a7e39f2e55cf2031050248a0c/?vgnextoid=2c6924cc45ea4110VgnVCM1000009ed07898RCRD&vgnextchannel=f7280665b91ac010VgnVCM1000008049a8c0RCRD&vgnextfmt=print.
[17] Federal Highway Administration, Motor-Fuel Use 2012, *available at* http://www.fhwa.dot.gov/policyinformation/statistics/2012/pdf/mf21.pdf.

petroleum products must be delivered to cities such as Jacksonville, Miami, and Tampa, and ports such as Port Canaveral, Port Manatee, and Port Everglades.[18] Supporters state that the Pipeline would reinforce our strong relationship with Canada and ensures America's energy security. [19]

Opponents of the Keystone XL Pipeline assert that the potential environmental impacts outweigh the economic benefits. In Florida, the opposition appears to center around atmospheric carbon pollution that is associated with emissions from burning fossil fuels.[20] Specifically, the opposition claims the completion of the Pipeline will increase the rate of greenhouse emissions because the method of extracting tar sand oil employed in the Project will produce more gasses than traditional oil. These emissions cause potential risks including economic loss, biodiversity loss, food and water shortages, health issues, extreme weather, storms, and sea level rise.[21] Finally, the opposition states that because Florida's environmental and economic industries, like tourism, rely on clean shorelines and water, increasing pollution via fossil fuel emissions could hinder these kinds of industries.[22]

In early 2013, 53 Senators including 44 Republicans and 9 Democrats signed and sent a letter to the President urging him to approve the Project.[23] At least one poll has shown approximately two-thirds of Americans support the construction of the Project.[24]

Effect of Proposed Changes

HM 281 urges the President to issue final approval of the Project. Upon approval, TransCanada will begin construction on the Project, completing the entire Pipeline within two years. At completion of the Pipeline, TransCanada will have the capacity to deliver roughly 830,000 barrels per day of crude oil from oil sands in Canada to the Gulf Coast of Texas.[25]

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the U.S. Congress to act on a particular subject. This memorial does not have a fiscal impact.

B. SECTION DIRECTORY:

Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

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[18] U.S. Energy Information Administration, Florida State Profile and Energy Estimates, *available at* http://www.eia.gov/state/analysis.cfm?sid=FL.
[19] Kevin Doyle, *Keystone Pipeline Important to Florida*, StAugustine.com (June 26, 2013), *available at* http://staugustine.com/opinions/2013-06-26/guest-column-keystone-xl-pipeline-important-florida#.UvKBWvldW9U.
[20] CREDO Action, Sign the Keystone XL Pledge of Resistance, *available at* http://act.credoaction.com/sign/kxl_pledge.
[21] Keystone XL Pipeline, available at http://florida.sierraclub.org/northeast/issues/articles/XLPipeline.html.
[22] *Id.*
[23] Matt Daly, *53 Senators Urge Approval of Keystone XL Pipeline*, USA Today (Jan. 23, 2013), *available at* http://www.usatoday.com/story/news/politics/2013/01/23/senators-urge-approval-keystone-pipeline/1860003/.
[24] Pew Research Center, Continued Support for Keystone XL Pipeline (Sept. 26, 2013), available at http://www.people-press.org/2013/09/26/continued-support-for-keystone-xl-pipeline/.
[25] FSEIS Exec. Summ. at 6.

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

House Memorial

A memorial to the President of the United States, urging the President to issue final approval for construction and completion of the Keystone XL pipeline project.

WHEREAS, Floridians consume approximately 26 million gallons of gasoline and diesel fuel daily and approximately 9.5 billion gallons of gasoline and diesel fuel annually, and

WHEREAS, across party lines, Floridians have long recognized the dependence of the state's tourism and agricultural economy on access to reliable and affordable petroleum products, and

WHEREAS, many other Florida industries, including fertilizer, agrochemical, plastic, manufacturing, bakeries, juice processing, pulp and paper, road construction, metals, restaurants, and grocery stores, are heavily dependent on access to reliable and affordable petroleum products to transport goods, and

WHEREAS, Gulf state refineries produce the vast majority of the gasoline and diesel fuel crude oil delivered and consumed in Florida, and

WHEREAS, the Keystone XL pipeline will be capable of transporting more than 800,000 barrels of crude oil per day to 57 Gulf state refineries, and

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

WHEREAS, the crude oil transported through the Keystone XL pipeline could replace oil from unstable regions of the world with oil from Canada, a friendly and historically reliable neighbor and our principal source of imported crude oil, and

WHEREAS, according to the United States Department of Transportation Pipeline and Hazardous Material Safety Administration, pipelines are one of the safest and most cost-effective means to transport petroleum products, and

WHEREAS, the Keystone XL pipeline could reduce the large numbers of tankers and barges carrying crude oil through the Straits of Florida and across the Gulf of Mexico, and

WHEREAS, the Keystone XL pipeline will not encounter the disruptions experienced by tankers and barges delivering crude oil to Gulf state refineries during hurricanes in the Gulf of Mexico, thus enhancing Florida's energy security during emergencies, and

WHEREAS, the southern portion of the Keystone XL pipeline has already been approved and construction is proceeding, and

WHEREAS, according to the United States Department of State, construction of the United States portion of the Keystone XL pipeline is a $3.3 billion project that will create thousands of American jobs, and

WHEREAS, the Keystone XL pipeline project has been subject to the most thorough public consultation process of any proposed United States pipeline, and

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

WHEREAS, according to the Supplementary Environmental Impact Statement issued by the United States Department of State, multiple environmental impact statements and studies have concluded that the Keystone XL pipeline poses the least impact to the environment and is much safer than other modes of transporting crude oil, and

WHEREAS, the Keystone XL pipeline project has received bipartisan support in the United States Congress, including a letter to the President signed by 53 Senators urging the President to support the pipeline, and

WHEREAS, a recent Pew Research Center survey has found that two-thirds of Americans support the Keystone XL pipeline project, NOW, THEREFORE,

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

That the President of the United States is strongly urged to issue final approval for construction and completion of the Keystone XL pipeline project.

BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 283 Malt Beverages
SPONSOR(S): Artiles; Young
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 406

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	12 Y, 0 N	Brown-Blake	Luczynski
2) Regulatory Affairs Committee		Brown-Blake	Hamon K.W.H.

SUMMARY ANALYSIS

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

Current law permits manufacturers to package malt beverages that are offered for sale by vendors in individual containers containing no more than 32 ounces. However, malt beverages may be packaged in bulk or in kegs or in barrels or in any individual container containing one gallon or more of malt beverages regardless of individual container type.

The bill permits manufacturers to package malt beverages in individual containers of any size. Furthermore, the bill requires that containers include information specifying the manufacturer and brand of the malt beverage it contains, and that it must have an unbroken seal or be incapable of being immediately consumed.

Additionally, current law prohibits manufacturers or distributors from conducting tastings of malt beverages at a vendor's premises and prohibits a licensed manufacturer or distributor from assisting any vendor by any gifts or loans of money or property of any description or by the giving of any rebates of any kind whatsoever. A vendor is not prohibited from conducting tastings on its licensed premises of malt beverages it has purchased.

The bill authorizes manufacturers, distributors, and vendors to conduct malt beverages tastings upon a vendor's licensed premises, subject to the following requirements:

- The malt beverage tasting must be limited to a vendor's premises authorized to sell alcoholic beverages by package or for consumption on the premises.
- The malt beverage tasting must be limited to patrons 21 years of age or older.

The bill is expected to have a minimal impact on the Department of Business and Professional Regulation which can be absorbed with existing resources. The bill is expected to have no impact on local government.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Alcoholic Beverages Regulation Generally

The Division of Alcoholic Beverages and Tobacco (Division) in the Department of Business and Professional Regulation (Department) is responsible for regulating the conduct, management, and operation of the manufacturing, packaging, distribution, and sale within the state of alcoholic beverages. Florida's alcoholic beverage law provides for a structured three-tiered distribution system: manufacturer, distributor, and vendor. The vendor makes the ultimate sale to the consumer. Generally, alcoholic beverage excise taxes are collected at the wholesale level based on inventory depletions and the state "sales tax" is collected at the retail level.

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

Container Sizes

Standard Containers

Currently, s. 563.06(6), F.S., requires that all malt beverages that are offered for sale by vendors be packaged in individual containers containing no more than 32 ounces. However, malt beverages may be packaged in bulk or in kegs or in barrels or in any individual container containing one gallon or more of malt beverages regardless of individual container type. The industry developed bottles, cans, kegs, half kegs, and other containers based on industry standard sizes, which meet the statutory requirements. Distributors have created a distribution system both state and nationwide with the capacity to transport industry standard sized containers.[1]

Growlers

Some states permit vendors to sell malt beverages in containers known as growlers, which typically are reusable containers of between 32 ounces and two liters that the consumer can take to a vendor for a vendor to fill with malt beverage for consumption off the licensed premises.[2] The standard size for a growler is 64 ounces.[3] Florida malt beverage law does not specifically address growlers.

Florida malt beverage law does not permit the use of a 64 ounce containers or any other container size between 32 ounces and one gallon. As a result, growlers are prohibited in any sizes other than 32 ounces or less, and one gallon.

[1] Testimony of industry members, Workshop on Craft Brewers Business Development Regulatory Issues, Business and Professional Regulation Subcommittee, January 9, 2014.
[2] Beeradvocate, *The Growler: Beer-To-Go!* available at http://beeradvocate.com/articles/384/ (last viewed February 1, 2014).
[3] Brew-Tek, What is a Growler? available at http://www.brew-tek.com/products/growlers/what-is-a-growler/ (last viewed at February 3, 2014).

Tied House Evil Gifts and Tastings

Manufacturers and distributors are prohibited from providing malt beverages for tastings at a vendor's licensed premises, as it would be a violation of the Tied-House Evil provisions of the Beverage Law.[4] Section 561.42(14)(e), F.S., prohibits sampling activities that include the tasting of beer at a vendor's premises that is licensed for off-premises sales only.

Additionally, section 561.42(1), F.S., prohibits a licensed manufacturer or distributor from assisting any vendor by any gifts or loans of money or property of any description or by the giving of any rebates of any kind whatsoever. Specifically, s. 561.42(1), F.S., provides in part:

> No licensed vendor shall accept, directly or indirectly, any gift or loan of money or property of any description or any rebates from any such manufacturer, distributor...; provided, however, that this does not apply to any bottles, barrels, or other containers necessary for the legitimate transportation of such beverages or to advertising materials and does not apply to the extension of credit, for liquors sold, made strictly in compliance with the provisions of this section.

Vendors are not prohibited from providing alcoholic beverages directly to consumers if the alcoholic beverages are paid for by the vendor. Therefore, vendors are currently permitted to conduct malt beverage tastings using malt beverages that the vendor owns.

Effect of the Bill

Container Sizes and Growler Requirements

The bill removes all container size limitations on individual containers. The removal of size limits will permit manufacturers and other authorized licensees to fill any size individual container, including a 64 ounce container used as a growler. In addition, manufacturers will be permitted to package malt beverages in any size container to be sold through the three-tier system.

Furthermore, the bill requires that containers include information specifying the manufacturer and brand of the malt beverage it contains, and that it must have an unbroken seal or be incapable of being immediately consumed.

Tied House Evil Gifts and Tastings

The bill creates s. 563.09, F.S., to permit manufacturers, distributors, and vendors to conduct malt beverages tastings upon a vendor's licensed premises. The language codifies the vendor's ability to conduct malt beverage tastings upon a licensed vendor premises. The tastings are subject to the following requirements:

- The malt beverage tasting must be limited to a vendor's premises authorized to sell alcoholic beverages by package or for consumption on the premises.
- The malt beverage tasting must be limited to patrons 21 years of age or older.

B. SECTION DIRECTORY:

Section 1 amends s. 563.06(6), F.S., to authorize containers of malt beverages to be sold or offered for sale by a vendor at a retail in any size and provides requirements for malt beverage containers.

Section 2 creates s. 563.09, F.S., to authorize manufacturers, distributors, and vendors to conduct malt beverages tastings on certain vendor's licensed premises.

[4] Section 561.42, F.S.

Section 3 provides that the bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None. The Department of Business and Professional Services anticipates using existing resources to investigate alleged violations of the provisions of this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will permit manufacturers to utilize containers of any size for individual servings of malt beverages. This will permit licensees who fill growlers to use and fill 64 ounce growlers. In addition, this will permit manufacturers to package malt beverages other than growlers in containers of any size for distribution. Distributors and vendors may incur indeterminate expenditures to accommodate the potential changes in container sizes.

Additionally, the bill will permit manufacturers and distributors to hold tastings at a vendor's premises, which could increase costs for distributors and have an indeterminate impact on manufacturers', distributors', and vendors' revenue.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not delete s. 561.42(14)(e), F.S., which generally prohibits manufacturers and distributors from conducting sampling activities, including tastings, at a vendor's premises licensed for off-premises sales only.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to malt beverages; amending s. 563.06, F.S.; authorizing containers of malt beverages to be sold or offered for sale by a vendor at retail in any size; providing requirements for malt beverage containers; creating s. 563.09, F.S.; authorizing malt beverage tastings upon certain licensed premises under certain circumstances; providing an effective date.

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

Section 1. Subsection (6) of section 563.06, Florida Statutes, is amended to read:

563.06 Malt beverages; imprint on individual container; size of containers; exemptions.—

(6) All malt beverages packaged in individual containers that are sold or offered for sale by a vendor ~~vendors~~ at retail in this state may ~~shall~~ be in individual containers of any size. Such containers shall include information specifying the manufacturer and brand of the malt beverage and must have an unbroken seal or be incapable of being immediately consumed. ~~containing no more than 32 ounces of such malt beverages; provided, however, that nothing contained in~~ This section does not ~~shall~~ affect malt beverages packaged in bulk, ~~or~~ in kegs, or in barrels ~~or in any individual container containing 1 gallon or more of such malt beverage regardless of individual container~~

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

~~type~~.

Section 2. Section 563.09, Florida Statutes, is created to read:

563.09 Malt beverage tastings by manufacturers and vendors.—Notwithstanding any other provision of the Beverage Law, a licensed manufacturer or distributor of malt beverages or a vendor may conduct a malt beverage tasting upon a licensed premises authorized to sell alcoholic beverages by package or for consumption on the premises. Such manufacturer, distributor, or vendor does not violate s. 561.42 if the conduct of the malt beverage tasting is limited to and directed toward members of the general public who are of the age of legal consumption.

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

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

REGULATORY AFFAIRS COMMITTEE
CS/HB 283 by Rep. Artiles/Rep. Young
Malt Beverages

AMENDMENT SUMMARY
March 27, 2014

Amendment 1 by Rep. Young (strike-all):

- Authorizes distributors and manufacturers to conduct malt beverages tastings on vendor premises, with certain exceptions.
- Sets requirements on sample size and method of delivery.
- Permits the manufacturer or distributor to purchase the malt beverages from the vendor at no more than retail price.
- Requires the manufacturer or distributor to:
  - Provide the malt beverages used in the tasting, the total volume not exceeding 576 ounces.
  - Properly dispose of any remaining beverages or return any unconsumed malt beverages to the manufacturer's or distributor's inventory.
  - Pay applicable excise taxes.
  - Not pay for advertising which names a vendor under the guise of advertising a tasting or pay a fee or provide any compensation to the vendor in exchange for authorizing a tasting.
- Permits more than one tasting to be held on the licensed premises each day, but only one manufacturer, distributor, importer, or contracted third-party agent, at any one time.
- Removes all container size limitations on individual containers for malt beverages, permitting authorized licensees to fill any size container, which will permit the filling and sale of any size growler.

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 Young offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (14) of section 561.42, Florida Statutes, is amended to read:

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

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

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

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

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

(c) If a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any ~~broker,~~ sales agent~~,~~ or sales person thereof, provides a vendor with consumer advertising specialties such as ashtrays, T-shirts, bottle openers, shopping bags, and the like, such items may ~~shall~~ be sold only at a price not less than the actual cost to the

industry member who initially purchased them, and ~~but~~ may be sold without limitation in total value of such items sold to a vendor.

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

(e)1. A manufacturer, distributor, or importer of malt beverages, or any contracted third-party agent thereof, may ~~Manufacturers, distributors, importers, brand owners, or brand registrants of beer, and any broker, sales agent, or sales person thereof, shall not~~ conduct any sampling activities that include the tasting of malt beverage products on:

a. The licensed premises of any vendor authorized to sell alcoholic beverages by the drink for consumption on premises; or

b. The licensed premises of any vendor authorized to sell alcoholic beverages only in sealed containers for consumption off premises if:

(I) The licensed premises is at an establishment with at least 10,000 square feet of interior floor space exclusive of storage space not open to the general public; or

(II) The licensed premises is a package store licensed under s. 565.02(1)(a) ~~their product at a vendor's premises licensed for off premises sales only~~.

2. A malt beverage tasting conducted under this paragraph

must be limited to and directed toward the general public of the age of legal consumption.

3. For a malt beverage tasting conducted under this paragraph on the licensed premises of a vendor authorized to sell alcoholic beverages for consumption on premises, each serving of a malt beverage to be tasted must be provided to the consumer by the drink in a tasting cup, glass, or other open container and may not be provided by the package in an unopened can or bottle or in any other sealed container.

4. For a malt beverage tasting conducted under this paragraph on the licensed premises of a vendor authorized to sell alcoholic beverages only in sealed containers for consumption off premises, the tasting must be conducted in the interior of the building constituting the vendor's licensed premises and each serving of a malt beverage to be tasted must be provided to the consumer in a tasting cup having a capacity of 3.5 ounces or less.

5. A manufacturer, distributor, or importer, or any contracted third-party agent thereof, may not pay a vendor, and a vendor may not accept, a fee or compensation of any kind, including the provision of any malt beverage at no cost or at a reduced cost, to authorize the conduct of a malt beverage tasting under this paragraph.

6.a. A manufacturer, distributor, or importer, or any contracted third-party agent thereof, conducting a malt beverage tasting under this paragraph, must provide all of the beverages

to be tasted, the total volume of which per tasting may not exceed 576 ounces; must have paid all excise taxes on those beverages which are required of the manufacturer or distributor; and must return to the manufacturer's or distributor's inventory all of the malt beverages provided for the tasting that remain unconsumed after the tasting. More than one tasting may be held on the licensed premises each day, but only one manufacturer, distributor, importer, or contracted third-party agent thereof, may conduct a tasting on the premises at any one time.

b. Any samples of malt beverages provided to a vendor by a manufacturer, distributor, or importer, or any contracted third-party agent thereof, in conjunction with or at the time of a tasting conducted under this paragraph on the licensed premises of such vendor are subject to the volume limit for such premises set forth under sub-subparagraph a.

c. This subparagraph does not preclude a manufacturer, distributor, or importer, or any contracted third-party agent thereof, from buying the malt beverages it provides for the tasting from a vendor at no more than the retail price, but all of the malt beverages so purchased and provided for the tasting which remain unconsumed after the tasting must be removed from the premises of the tasting and properly disposed of.

7. A manufacturer, distributor, or importer of malt beverages that contracts with a third-party agent to conduct a malt beverage tasting under this paragraph on its behalf is responsible for any violation of this section by such agent.

8. This paragraph does not preclude a vendor from conducting a malt beverage tasting on its licensed premises using malt beverages from its own inventory.

9. This paragraph is supplemental to and does not supersede any special act or ordinance.

10. The division may, pursuant to ss. 561.08 and 561.11, adopt rules to implement, administer, and enforce this paragraph.

(f) A manufacturer ~~Manufacturers~~, distributor ~~distributors~~, importer ~~importers~~, brand owner ~~owners~~, or brand registrant ~~registrants~~ of malt beverages ~~beer~~, and any ~~broker,~~ sales agent~~,~~ or sales person thereof or contracted third-party agent under paragraph (e), may ~~shall~~ not engage in cooperative advertising with a vendor and may not name a vendor in any advertising for a malt beverage tasting authorized under paragraph (e) ~~vendors~~.

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

washers, gaskets, tail pieces, hoses, hose connections, clamps, plungers, and tap markers.

Section 2. Subsection (6) of section 563.06, Florida Statutes, is amended to read:

563.06 Malt beverages; imprint on individual container; size of containers; exemptions.—

(6) All malt beverages packaged in individual containers that are sold or offered for sale by a vendor ~~vendors~~ at retail in this state may ~~shall~~ be in individual containers of any size. Such containers shall include information specifying the manufacturer and brand of the malt beverage and must have an unbroken seal or be incapable of being immediately consumed. ~~containing no more than 32 ounces of such malt beverages; provided, however, that nothing contained in~~ This section does not ~~shall~~ affect malt beverages packaged in bulk, ~~or~~ in kegs, or in barrels ~~or in any individual container containing 1 gallon or more of such malt beverage regardless of individual container type~~.

Section 3. This act shall take effect July 1, 2014.

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

Remove everything before the enacting clause and insert:

A bill to be entitled

Amendment No. 1

An act relating to malt beverages; amending s. 561.42, F.S.; removing the prohibition on beer samplings at the premises of vendors licensed for off-premises sales only; authorizing malt beverage tastings on the licensed premises of certain vendors, subject to certain requirements, limitations, liabilities, and penalties; providing construction with respect to special acts and ordinances; authorizing rulemaking; revising the prohibition on cooperative advertising with a vendor and prohibiting certain persons from naming vendors in advertising for a malt beverage tasting; making conforming and editorial changes; amending s. 563.06, F.S.; authorizing containers of malt beverages to be sold or offered for sale by a vendor at retail in any size; providing requirements for malt beverage containers; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 357 Water and Wastewater Utility Systems
SPONSOR(S): Finance & Tax Subcommittee; Santiago
TIED BILLS: **IDEN./SIM. BILLS:** SB 1050

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	11 Y, 2 N	Keating	Keating
2) Finance & Tax Subcommittee	15 Y, 3 N, As CS	Flieger	Langston
3) Regulatory Affairs Committee		Keating CK	Hamon K.W.H.

SUMMARY ANALYSIS

Chapter 2012-187, Laws of Florida, created the Study Committee on Investor-Owned Water and Wastewater Utility Systems (Study Committee) to "identify issues of concern of investor-owned water and wastewater utility systems, particularly small systems, and their customers" and to research possible solutions. Consistent with the law, the Study Committee submitted a report containing its recommendations to the Speaker of the House, the President of the Senate, and the Governor, on February 15, 2013.

CS/HB 357 adopts several of the Study Committee's recommendations for legislative action. In particular, the bill:

- Expands the availability of low-interest loans through the State Revolving Fund (SRF) to all for-profit water utilities.
- Directs the Division of Bond Finance to review the allocation of private activity bonds (PABs) in Florida with respect to water and wastewater projects.
- Creates an exemption from Public Service Commission (PSC) regulation for persons who resell water service to individually-metered end-users at a price that does not exceed the purchase price of water plus 9 percent or the purchase price of water plus actual costs of meter reading and billing.
- Authorizes the PSC, during a rate case, to create an individual IOU reserve fund to be used for projects identified in an IOU's capital improvement plan, with disbursement subject to approval by the PSC.
- Identifies specific types of expenses eligible for "pass-through" treatment in IOU rates and authorizes the PSC, by rule, to identify additional types of expenses eligible for such treatment, provided the expenses are beyond the utility's control.
- Provides a mechanism, within a rate case, for the identification and potential resolution of issues involving secondary drinking water standards (e.g., standards related to odor, taste, and corrosiveness) and wastewater operational requirements related to odor, noise, aerosol drift, and lighting.

In addition to the above, the bill provides that IOUs may recover certain costs and expenses related to compliance with secondary water standards through a rate case, separate proceeding, or tariffs establishing a surcharge.

The bill has no fiscal impact.

The effective date of the bill is July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Background

Water and Wastewater Industry Overview

In various areas throughout Florida, water and wastewater services are provided through privately-owned and operated water and/or wastewater companies. These privately-owned companies are referred to as "investor-owned utilities," or "IOUs." IOUs can range in size from very small systems, owned by individuals as sole proprietorships and serving only a few dozen customers in a small neighborhood, to systems owned by large interstate corporations which serve tens of thousands of customers in multiple Florida counties.

For IOUs operating within a single Florida county, the county has the option to regulate rates and service or allow the Public Service Commission (PSC) to regulate those utilities.[1] Regardless of whether the county has opted to regulate IOUs, the PSC has jurisdiction over all water and wastewater utility systems whose service transverses county boundaries, except for systems owned and regulated by intergovernmental authorities.[2] The PSC currently has jurisdiction over water and wastewater IOUs in 37 of 67 counties in Florida, accounting for approximately 120,567 water customers and 74,317 wastewater customers.[3] The remaining water and wastewater customers in the state are served either by IOUs in non-jurisdictional counties, by statutorily exempt utilities (such as municipal utilities, cooperatives, and non-profits), by wells and septic tanks, or by systems owned, operated, managed, or controlled by governmental authorities.[4]

For regulatory purposes, the PSC classifies an IOU into one of three categories based on annual operating revenues:[5]

Class A – Operating revenues of $1,000,000 or more
Class B – Operating revenues of $200,000 or more but less than $1,000,000
Class C – Operating revenues less than $200,000

As of 2012, there were 14 Class A utilities, 33 Class B utilities, and 93 Class C utilities under the PSC's jurisdiction.

Study Committee on Investor-Owned Water and Wastewater Utility Systems

Chapter 2012-187, Laws of Florida, created the Study Committee on Investor-Owned Water and Wastewater Utility Systems (Study Committee)[6] to "identify issues of concern of investor-owned water

[1] Section 367.171, F.S. If a county chooses to allow regulation by the PSC, it may rescind this election only after 10 continuous years of PSC regulation.
[2] *Id.*
[3] *Facts and Figures of the Florida Utility Industry*, Florida Public Service Commission, April 2013.
[4] Section 367.022(2), F.S.
[5] Rules 25-30.110(4) and 25-30.115, F.A.C. As noted in these rules, this classification system is used by the National Association of Regulatory Utility Commissioners for publishing its system of accounts.
[6] As required by the law, the Study Committee was comprised of 18 members, including three non-voting members and 15 voting members. The three non-voting members included Commissioner Julie I. Brown (representing the PSC as the Study Committee Chair), a representative of the Florida Department of Environmental Protection, and the Public Counsel. The 15 voting members included State Senator Alan Hays (appointed by the President of the Senate), State Representative Ray Pilon (appointed by the Speaker of the House), and representatives of the following entities, as appointed by the Governor: a county commission that

and wastewater utility systems, particularly small systems, and their customers" and to research possible solutions.[7] Specifically, the Study Committee was required to consider:

- The ability of a small IOU to achieve economies of scale when purchasing equipment, commodities, or services;
- The availability of low interest loans to a small, privately owned water or wastewater utility;
- Any tax incentives or exemptions, temporary or permanent, which are available to a small water or wastewater utility;
- The impact on customer rates if a utility purchases an existing water or wastewater utility system;
- The impact on customer rates of a utility providing service through the use of a reseller; and
- Other issues that the Study Committee identifies during its investigation.[8]

The Study Committee conducted 12 public meetings at which it heard public comment on these issues, identified additional issues for consideration and research (and heard public comment on the additional issues), and discussed and debated solutions to the issues.[9] Consistent with the law, the Study Committee submitted a report containing its recommendations to the Speaker of the House, the President of the Senate, and the Governor, on February 15, 2013.

The Study Committee's report included recommendations for legislative action, agency rulemaking, and other agency action. Based on the issues that it was required to consider, the Study Committee recommended legislative action to do the following:

- Increase the availability of low-interest loans to small, privately owned water and wastewater utilities by:
    - Expanding availability of low-interest loans through the State Revolving Fund (SRF) to all for-profit water utilities;
    - Allowing IOUs to apply "pass-through" treatment for loan service fees or loan origination fees for eligible projects as identified by the PSC; and
    - Directing the Division of Bond Finance to review the allocation of private activity bonds (PABs) in Florida with respect to water and wastewater projects.
- Provide a sales tax exemption for sales or leases to an IOU owned or operated by a Florida corporation.
- Create an exemption from PSC regulation for persons who resell service to individually-metered end-users at a price that does not exceed actual purchase price of water plus actual costs of meter reading and billing not to exceed 9%.

Based on additional issues that it identified and considered, the Study Committee recommended legislative action to do the following:

- Authorize the PSC, during a rate case, to create individual utility reserve funds to be used for projects identified in an IOU's capital improvement plan, with disbursement subject to approval by the PSC, as a means of reducing borrowing costs and making funds more readily available.
- Identify specific types of expenses eligible for "pass-through" treatment in utility rates, and/or authorize the PSC to adopt rules identifying such expenses, provided the expenses are beyond the utility's control, to help minimize the need for costly rate case proceedings.

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regulates investor-owned water/wastewater utilities; a governmental authority created under Chapter 163, F.S.; a water management district; a county health department; two Class A utilities; a Class B utility; a Class C utility; a utility owned or operated by a municipal or county government; customers of a Class A utility; customers of a Class B or C utility; the Florida Section of the American Water Works Association; and the Florida Rural Water Association.

[7] Chapter 2012-187, Laws of Florida, Section 2.

[8] *Id.*

[9] See Sections II and III, *Report of the Study Committee on Investor-Owned Water and Wastewater Utility Systems*, dated February 15, 2013 (*Study Committee Report).*

- Reduce the impact of rate case expense on customer rates by prohibiting the recovery of rate case expense in certain circumstances.
- Provide a mechanism for the resolution of issues involving secondary water standards (e.g., odor, taste, corrosiveness, etc.) and wastewater operational requirements.

Drinking Water State Revolving Fund

Sections 403.8532 and 403.8533, F.S., establish the SRF. The SRF, which is administered by the Department of Environmental Protection (DEP), provides low-interest loans to eligible entities for planning, designing, and constructing public water facilities. Eligible entities include, among others, investor-owned public water systems that are legally responsible for public water services and which serve no more than 1,500 connections.[10] Projects eligible for SRF loans include new construction and improvements of public water systems, inclusive of storage, transmission, treatment, disinfection, and distribution facilities.[11] Loan funding is based on a priority system which takes into account public health considerations, compliance, and affordability.[12]

Based on data gathered from IOU's 2011 annual reports filed with the PSC, the Study Committee determined that all Class C water IOUs and almost all (28 out of 33) Class B water IOUs serve no more than 1,500 connections and are therefore eligible for the SRF program.[13] The remaining PSC-regulated Class B and Class A water IOUs are, presumably, not eligible to use the SRF program.

Private Activity Bonds

Qualified private activity bonds are tax-exempt bonds issued by a state or local government, the proceeds of which are used for a defined qualified purpose by an entity other than the government issuing the bonds. For a private activity bond to be tax-exempt, 95% or more of the net bond proceeds must be used for one of the qualified purposes listed in sections 142 through 145, and 1394 of the Internal Revenue Code (the Code). These qualified purposes include facilities used to furnish water or sewer services. The Code limits an issuing authority (such as a state) to a maximum amount of tax-exempt bonds that can be issued to finance a particular qualified purpose during a calendar year. Facilities used to furnish water or sewer services are subject to a volume cap.[14]

Private activity bonds are administered in Florida by the Division of Bond Finance of the State Board of Administration (the Division) under sections 159.801-159.816, F.S. Each year, the Division determines the amount of private activity bonds permitted to be issued in Florida under the Code.[15] This amount is allocated on January 1 of each year as follows:[16]

- An initial amount is allocated to manufacturing facility projects.
- 50 percent of the amount remaining after the initial allocation is allocated to individual counties and groups of counties[17] on a per capita basis for any permitted purpose, which may include water and sewer projects.
- 25 percent of the amount remaining after the initial allocation is allocated to the Florida Housing Finance Corporation for use in connection with the issuance of housing bonds.
- 5 percent of the amount remaining after the initial allocation is allocated to the state allocation pool and applied to "priority projects," which may include water and sewer projects.

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[10] Section 403.8532(3), F.S. An investor-owned public water system that serves more than 1,500 connections may qualify for a loan only if the proposed project will result in the consolidation of two or more public water systems.
[11] http://www.dep.state.fl.us/water/wff/dwsrf/ellocgov.htm (most recently accessed on January 31, 2014)
[12] Section 403.8532(9)(a), F.S.
[13] *Study Committee Report*, pp. 36-37. The report notes that this data does not include water IOUs that are regulated by counties.
[14] *Tax-Exempt Private Activity Bonds, Compliance Guide*, Internal Revenue Service Publication 4078, Version 09-2005.
[15] Section 159.804, F.S.
[16] *Id.*
[17] These individual counties and groups of counties are identified in section 159.804(2)(b), F.S.

- 20 percent of the amount remaining after the initial allocation is allocated to the Florida First Business allocation pool for projects certified by the Department of Economic Opportunity.

The Study Committee was unable to determine the amount of private activity bonds ultimately utilized for water and sewer projects in Florida.[18]

Resellers of Water Service

As noted above, the PSC currently has jurisdiction to regulate the rates and service of water and wastewater utilities in 37 of 67 counties in Florida. For purposes of the PSC's jurisdiction, "utility" is defined as every person owning, operating, managing, or controlling a system, who is providing water or wastewater service to the public for compensation.[19] However, certain entities that meet this definition are exempt from PSC regulation as utilities.[20] Included among these exemptions are persons who resell water or wastewater service at a rate or charge which does not exceed the actual purchase price of the water or wastewater.[21] If the reseller includes any additional costs in the rate or charge to the retail customer, the reseller is considered a utility subject to PSC regulation.

Reseller utilities that are regulated by the PSC generally have significant investment in distribution and collection lines and other utility equipment. Examples include mobile home parks and subdivisions. In a rate proceeding, the PSC determines the utility's investment and expenses related to the facilities it owns and operates, then it sets rates accordingly. The cost of the water and/or wastewater service purchased from a wholesale provider, which is often a significant portion of the customers' bills, is allowed to be passed through to the customers pursuant to Section 367.081(4)(b), F.S. Resellers that choose not to pass along costs beyond their cost to purchase water or wastewater (and therefore remain exempt from PSC regulation) generally have very little investment in equipment or lines needed to provide the service. Examples include apartment complexes, condominium buildings and small master-metered shopping centers.[22]

In its report, the Study Committee noted that a metered charge for water sends an appropriate price signal to end users and is a means of discouraging indiscriminate use of this resource. However, if a reseller wishes to install sub-meters for its users and bill those users for their actual water use, it will be unable recover those metering and billing costs from its customers without becoming regulated and incurring the costs of regulation.[23]

Reserve Funds for Water and Wastewater Utilities

As noted above, the Study Committee was required to consider, among other things, the availability of low interest loans to a small, privately owned water or wastewater utility. In its report, the Study Committee noted the following:

> Affordable, accessible financing is an ongoing issue for the water and wastewater industry and is a particularly acute need for smaller systems. Smaller utilities ... have difficulty securing low-cost, long-term financing because the characteristics and track record of the industry make smaller systems more risky in the view of lending institutions. Timing is also an issue, particularly when critical system failures occur and small utilities do not have the cash reserves to address such short-term needs. In addition, regulatory policy frequently does not provide sufficient cash flow to fully service the debt over the term of the loan. The establishment of individual utility reserve funding

[18] *Study Committee Report*, p. 43.
[19] Section 367.021(12), F.S.
[20] *See* Section 367.022, F.S.
[21] Section 367.022(8), F.S.
[22] *Study Committee Report*, p. 61.
[23] *Id.*, pp. 61-62.

and/or establishment of a broader statewide reserve fund could reduce borrowing costs and make funding more readily available.[24]

Section 367.081, F.S., establishes the rate-setting procedures for water and wastewater IOUs regulated by the PSC. None of these procedures provides explicit statutory authority for the PSC to establish reserve funds for water and wastewater IOUs during the rate-setting process.

Pass-Through Costs

Outside of a rate case, PSC-regulated water and wastewater IOUs are entitled to "pass through" specific types of expenses without the requirement of a PSC hearing.[25] This mechanism provides quick rate relief to a utility when it experiences an increase in one of these types of costs and may help defer the need for a full rate case. Currently, the types of expenses eligible for pass-through treatment are limited by statute to the following:[26]

- Purchased water or wastewater service.
- Electric power.
- Ad valorem taxes.
- Regulatory Assessment Fees.
- DEP fees for the National Pollutant Discharge Elimination System Program.
- Water quality or wastewater quality testing required by DEP.

Prior to changing rates using this mechanism, the IOU must file, under oath, an affirmation as to the accuracy of the figures and calculations upon which the change in rates is based and a statement that the change will not cause the utility to exceed the rate of return on equity last approved by the PSC.[27]

Quality of Service / Secondary Standards

DEP is the state agency with primary authority to implement and enforce federal and state drinking water and wastewater standards. The focus of DEP's permitting, monitoring, and enforcement of water and wastewater systems is to ensure compliance with primary drinking water standards and wastewater operational requirements to protect the health and safety of the public and the environment.[28]

With respect to drinking water, DEP has also adopted secondary standards for contaminants related to color, corrosion, and odor.[29] Testing for these secondary standards is required on a regular basis, though DEP generally requires corrective action only if users (i.e., water customers) voice significant complaints or if a primary contaminant level has also been exceeded.

With respect to wastewater, DEP requires that new treatment plants and modifications to existing plants be designed and sited to minimize adverse effects on neighboring residential and commercial areas resulting from odors, noise, aerosol drift, and lighting.[30] Permittees must give reasonable assurance that such effects will not be potentially harmful to human health or welfare or unreasonably interfere with the enjoyment of life or property.[31] Likewise, if existing facilities fail to function as intended and create such adverse effects, the permittee must take corrective action, or DEP may require corrective

[24] *Id.*, p. 67.
[25] Section 367.081(4)(b), F.S.
[26] *Id.*
[27] Section 367.081(4)(c), F.S.
[28] See Chapter 403, F.S., and Chapters 62-550, 555, 602, and 699, F.A.C., for drinking water regulations, and Chapters 62-600, 604, 610, 620, 621, and 640, F.A.C., for wastewater regulations.
[29] Rule 62-550.320, F.A.C.
[30] Rule 62-600.400(2)(a), F.A.C.
[31] *Id.*

action.[32] DEP generally requires corrective action only in response to significant complaints or if a primary contaminant level has also been exceeded.[33]

As previously noted, the PSC considers an IOU's quality of service in rate cases. In doing so, the PSC evaluates the quality of the product, the operating condition of the IOU's plant and facilities, and the IOU's efforts to address customer satisfaction.[34] Sanitary surveys, outstanding citations, violations and consent orders on file with DEP and county health departments are also considered. In addition, DEP and county health department officials' testimony and customer testimony concerning quality of service is considered.[35] In most cases, the emphasis of this evaluation is compliance with standards related to health and safety of the public and the environment.[36] If the PSC finds that an IOU has failed to provide its customers with water or wastewater service that meets the standards set by DEP or the water management districts, the PSC may reduce the IOU's return on equity until the standards are met.[37]

Effect of Proposed Changes

CS/HB 357 adopts several of the Study Committee's recommendations for legislative action. In particular, the bill:

- Expands the availability of low-interest loans through the SRF to all for-profit water utilities.
- Directs the Division of Bond Finance to review the allocation of PABs in Florida with respect to water and wastewater projects.
- Creates an exemption from PSC regulation for persons who resell water service to individually-metered end-users at a price that does not exceed the purchase price of water plus 9 percent or the purchase price of water plus actual costs of meter reading and billing.
- Authorizes the PSC, during a rate case, to create an individual IOU reserve fund to be used for projects identified in an IOU's capital improvement plan, with disbursement subject to approval by the PSC.
- Identifies specific types of expenses eligible for "pass-through" treatment in IOU rates and authorizes the PSC, by rule, to identify additional types of expenses eligible for such treatment, provided the expenses are beyond the utility's control.
- Provides a mechanism, within a rate case, for the identification and potential resolution of issues involving secondary drinking water standards (e.g., standards related to odor, taste, and corrosiveness) and wastewater operational requirements related to odor, noise, aerosol drift, and lighting.

In addition to the above, the bill provides that IOUs may recover certain costs and expenses related to compliance with secondary water standards through a rate case, separate proceeding, or by filing tariffs establishing a surcharge.

Drinking Water State Revolving Fund

The bill removes the current size restrictions on water IOUs eligible to utilize the SRF. Water IOUs of any size will be eligible to seek low-interest loans through the SRF for planning, designing, and constructing public water facilities, including storage, transmission, treatment, disinfection, and distribution facilities.

[32] Rule 62-600.410, F.A.C.
[33] *Study Committee Report*, p. 105.
[34] Rule 25-30.433(1), F.A.C.
[35] *Id.*
[36] *Study Committee Report*, p. 106.
[37] Section 367.111(2), F.S.

Private Activity Bonds

The bill directs the Division of Bond Finance of the State Board of Administration to review the allocation of PABs to determine the availability of additional allocation or reallocation of PABs for facilities used to furnish water or sewer services.

Resellers of Water Service

The bill creates an exemption from PSC regulation for a person who resells water service to his or her tenants or to individually metered residents for a fee that does not exceed the reseller's actual purchase price of the water plus: (1) up to 9 percent of the actual purchase price; or (2) the actual cost of meter reading and billing.

Absent this exemption, a water reseller who charges more than the actual purchase price of the water would be subject to PSC regulation and would incur the costs and obligations of such regulation. While the costs would be recoverable from the reseller's customers through PSC-approved rates, a reseller may not wish to incur the additional regulatory obligations.

This provision may encourage resellers to utilize individual metering more often for their tenants. Through individual metering, water users can be charged more accurately for the water they consume. Thus, customers of resellers who utilize individual metering may be more likely to use water more efficiently.

Reserve Funds for Water and Wastewater IOUs

The bill authorizes the PSC, in a rate case proceeding, to create a reserve fund for a water or wastewater IOU. The bill directs the PSC to adopt rules to govern such a fund. These rules must include, but are not limited to:

- Provisions related to the expenses for which the fund may be used.
- Segregation of the reserve fund accounts.
- Requirements for the IOU to maintain a capital improvement plan.
- Requirements for PSC authorization prior to disbursements from the fund.

The establishment of individual reserve funds may reduce borrowing costs and make funding more readily available for PSC-regulated water and wastewater IOUs. IOUs may be able to avoid the need to access capital markets to finance certain projects and repairs and/or to request a rate increase to cover the costs of the projects and repairs.

Pass-Through Costs

The bill expands the types of expenses eligible for "pass-through" treatment in IOU rates by adding the following expense items:

- Fees charged for wastewater sludge removal.
- A loan service fee or loan origination fee associated with a loan related to an eligible project, as specified by PSC rule, provided that the project is associated with new infrastructure or improvements to existing infrastructure needed to achieve or maintain compliance with primary or secondary drinking water standards or wastewater treatment standards that relate to:
    - The provision of water of wastewater service for existing customers;
    - The violation of prevention of a violation of primary or secondary health standards;
    - The replacement or upgrade of again water or wastewater infrastructure if needed to achieve or maintain compliance with primary or secondary regulations; or
    - Projects consistent with the most recent long-range plan of the IOU on file with PSC, except for projects primarily intended to serve future growth.

- Costs incurred for a tank inspection required by DEP or a local government authority.
- Operator and distribution license fees required by DEP or a local government authority.
- Water or wastewater operating permit fees charged by DEP or a local government authority.
- Consumptive or water use permit fees charged by a water management district.

The bill continues the current requirement that an IOU wishing to change its rates to reflect a change in any of these costs must provide verified notice to the PSC 45 days before implementing a change in its rates. The bill provides that the new rates must reflect, on an amortized or annual basis, as appropriate, the cost or amount of change in the cost of the specified expense item. Further, the bill provides that the new rates may not reflect the costs of any specific expense item already included in the IOU's rates. The bill also continues the current prohibition on use of the pass-through mechanism for increases or decreases in a specific expense item that occurred more than 12 months before the IOU's filing.

The bill authorizes the PSC, by rule, to establish additional specific expense items eligible for pas-through treatment. To be eligible for such treatment, an additional expense item must be imposed by a local, state, or federal law, rule, order, or notice and must be outside the control of the utility. If the PSC uses this authority, it must review its rule at least once every 5 years to determine if each specific expense item should remain eligible for pass-through treatment or if any additional expense items should become eligible.

Quality of Service / Secondary Standards

The bill creates a mechanism, within the context of a rate case, for the identification and potential resolution of issues involving secondary drinking water standards (e.g., standards related to odor, taste, and corrosiveness) and wastewater operational requirements related to odor, noise, aerosol drift, and lighting.

The bill requires the PSC, in determining the value and quality of water service provided by an IOU, to consider the extent to which the IOU meets secondary drinking water standards established by DEP and the local government. In making this determination, the PSC must consider: testimony and evidence provided by customers and the utility; relevant complaints filed during the previous 5 years with the PSC, DEP, county health departments, or the local government; results of past tests required by DEP or county health departments to measure compliance with secondary standards; and results of other tests that the PSC deems necessary.

The bill also requires the PSC, in determining the value and quality of wastewater service provided by an IOU, to consider the extent to which the IOU provides service in a manner that does not cause odor, noise, aerosol drift, or lighting that adversely affects customers. In making this determination, the PSC must consider: testimony and evidence provided by customers and the utility; and relevant complaints filed during the previous 5 years with the PSC, DEP, county health departments, or the local government.

If, as a result of these analyses, the PSC determines that the IOU's water service does not meet secondary drinking water standards or that the IOU's wastewater service adversely affects customers due to odor, noise, aerosol drift, or lighting, the IOU must take the following steps:

- Provide estimates of the costs and benefits of various solutions to the problems;
- Meet with its customers to discuss the costs and benefits of the various solutions; and
- Report the conclusions of these customer meetings to the PSC.

The bill requires the PSC to adopt rules necessary to assess and enforce the IOU's compliance with these provisions. These rules must prescribe penalties, including fines and reduction of return on equity of up to 100 basis points, if an IOU "fails to adequately address of offer solutions to the water or wastewater problems."

The bill does not explicitly require that the IOU take any action, such as repairs or improvements, to remedy the problem. Thus, the circumstances in which an IOU could be penalized for failure to "adequately address" a particular problem are unclear. Further, given the somewhat subjective nature of some of these issues (e.g., what is an acceptable odor, taste, or noise level) and the possibility for localized problems on an IOU's system, there may not be consensus among all customers as to whether a problem has been adequately addressed.

Cost Recovery for Secondary Water Standard Compliance

The bill provides that a utility may recover its prudently incurred costs and expenses to resolve deficiencies found by the PSC or the DEP regarding secondary drinking water standards related to taste, odor, color, or corrosiveness or regarding wastewater service issues related to odor, noise, aerosol drift, or lighting. These costs will be recoverable either through a rate case or through a separate proceeding initiated by petition of the utility.

The bill also authorizes a water utility to file a tariff establishing a surcharge by which the utility may recover prudently incurred fixed costs of a system improvement project completed and placed in service between rate cases. To qualify, the purpose of the project must be to achieve or maintain compliance with secondary drinking water standards related to taste, odor, color, or corrosiveness. The bill requires PSC approval of a project as a condition of cost recovery through the surcharge.

B. SECTION DIRECTORY:

Section 1. Creates s. 159.8105, F.S., requiring the Division of Bond Finance to review the allocation of private activity bonds.

Section 2. Amends s. 367.022, F.S., relating to exemptions to regulation by the Public Service Commission.

Section 3. Amends s. 367.081, F.S., relating to the procedure for fixing and changing rates.

Section 4. Amends s. 367.0814, F.S., conforming a cross-reference.

Section 5. Amends s. 403.8532, F.S., relating to use of the drinking water state revolving loan fund.

Section 6. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None. The PSC has not identified an impact on agency expenditures; however, it may be required to expend resources to complete rulemaking as required by the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Drinking Water State Revolving Fund

The expanded availability of low-interest financing through the State Revolving Fund to additional water IOUs may encourage more of these utilities to make investments in water infrastructure in the state at a lower cost to ratepayers than would otherwise result from such expenditures.

Private Activity Bonds

To the extent that additional private activity bonds are made available for eligible projects, more water and wastewater IOUs may be encouraged to make investments in water and wastewater infrastructure in the state at a lower cost to ratepayers than would otherwise result from such expenditures.

Resellers of Water Service

The creation of a regulatory exemption for water resellers who add no more than the costs of meter reading and billing or, alternatively, up to a 9 percent charge to their purchase price for water, will remove the costs and obligations of regulation for these resellers and may encourage them to invest in individual metering apparatus.

Reserve Funds for Water and Wastewater IOUs

The establishment of individual reserve funds may reduce borrowing costs and make funding more readily available for PSC-regulated water and wastewater IOUs to make needed improvements and repairs. In some instances, the availability of these reserve funds may allow IOUs to avoid or defer the need for a rate case, the expense of which ultimately would be borne by ratepayers.

Pass-Through Costs

The expanded availability of "pass-through" treatment for new expense items may, in some instances, allow IOUs to avoid or defer the need for a rate case, the expense of which ultimately would be borne by ratepayers.

Quality of Service / Secondary Standards

Depending on the PSC's application of the mechanism established to identify and potentially resolve secondary drinking water quality issues and wastewater operational issues, IOUs may be compelled to incur additional costs to resolve these issues. To the extent that an IOU is compelled to incur additional costs, these costs will likely be recovered from ratepayers through the mechanisms provided by the bill.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill requires the PSC to adopt rules:

- To assess and enforce compliance with the provisions that create a mechanism for the identification and potential resolution of issues involving secondary drinking water standards and wastewater operational requirements, including the prescription of penalties if an IOU fails to adequately address or offer solutions to the issues identified.
- To govern the operation of individual utility reserve funds created by the PSC.
- To govern the determination of projects for which loan service fees or loan origination fees are eligible for pass-through treatment in IOU rates.

The bill authorizes the PSC to adopt rules establishing additional specific expense items eligible for pass-through treatment in IOU rates.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides a list of specified expense items eligible for pass-through treatment in IOU rates but indicates that the list is not exclusive. Thus, the bill is ambiguous as to what types of other expense items might also be eligible for pass-through treatment.

With respect to the mechanism established to identify and address issues involving secondary drinking water standards and wastewater operational requirements, the bill does not require that the IOU make repairs or improvements to resolve an identified issue but requires the PSC to establish, by rule, penalties for an IOU's failure to "adequately address" the problem. Thus, it is unclear what is required of a utility to "adequately address" a problem.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

The Finance and Tax Subcommittee adopted four amendments on March 13, 2014. These amendments:

- Removed a proposed sales tax exemption.
- Allowed utilities to recover costs incurred to resolve deficiencies found by the PSC or DEP with respect to secondary drinking water standards or certain wastewater service issues.
- Authorized water utilities to establish a surcharge to recover fixed costs of system improvements intended to maintain or achieve compliance with secondary drinking water standards.
- Removed proposed limits on rate case expense recovery.

This analysis is drafted to the committee substitute that incorporates the amendments.

A bill to be entitled

An act relating to water and wastewater utility systems; creating s. 159.8105, F.S.; requiring the Division of Bond Finance of the State Board of Administration to review the allocation of private activity bonds to determine the availability of additional allocation or reallocation of bonds for water facilities or sewage facilities; amending s. 367.022, F.S.; exempting from regulation by the Florida Public Service Commission a person who resells water service to certain tenants or residents up to a specified cost; amending s. 367.081, F.S.; establishing criteria for determining the quality of water and wastewater services provided by a utility; establishing a procedure for the commission to follow if it determines that a utility has failed to provide water and wastewater services that meet certain standards; authorizing the commission to adopt rules that include fines; providing for recovery of costs prudently incurred by a utility to address certain findings of the commission or the Department of Environmental Protection; authorizing the commission to create a utility reserve fund to establish rates for a utility; providing for the automatic increase or decrease of approved rates under certain circumstances; establishing criteria for adjusted

rates; specifying expense items that permit an automatic increase or decrease in utility rates; providing standards to allow the commission to establish, by rule, additional specified expense items that cause an automatic increase or decrease of utility rates; deleting certain requirements for approved utility rates that are automatically increased or decreased, upon notice to the commission; deleting a prohibition to conform to changes made by the act; authorizing a water utility to establish a surcharge or other mechanism to recover the prudently incurred fixed costs of certain system improvement projects approved by the commission; prohibiting the commission from awarding rate case expense under certain circumstances; amending s. 367.0814, F.S.; conforming a cross-reference to changes made by the act; amending s. 403.8532, F.S.; allowing the Department of Environmental Protection to make, or to request that the Florida Water Pollution Control Financing Corporation make, loans, grants, and deposits to for-profit privately owned or investor-owned systems, and deleting current restrictions on such activity; providing an effective date.

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

Section 1. Section 159.8105, Florida Statutes, is created to read:

159.8105 Allocation of bonds for water and wastewater infrastructure projects.—The division shall review the allocation of private activity bonds to determine the availability of additional allocation or reallocation of bonds for water facilities and sewage facilities.

Section 2. Present subsections (9) through (12) of section 367.022, Florida Statutes, are renumbered as subsections (10) through (13), respectively, and a new subsection (9) is added to that section, to read:

367.022 Exemptions.—The following are not subject to regulation by the commission as a utility nor are they subject to the provisions of this chapter, except as expressly provided:

(9) A person who resells water service to his or her tenants or to individually metered residents for a fee that does not exceed the actual purchase price plus:

(a) Up to 9 percent of the actual purchase price; or

(b) The actual cost of meter reading and billing.

Section 3. Subsections (2), (4), and (7) of section 367.081, Florida Statutes, are amended to read:

367.081 Rates; procedure for fixing and changing.—

(2)(a)~~1.~~ The commission shall, ~~either~~ upon request or upon its own motion, fix rates that ~~which~~ are just, reasonable, compensatory, and not unfairly discriminatory.

1. In each ~~every~~ such proceeding, the commission shall

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consider the value and quality of the service and the cost of providing the service, which must ~~shall~~ include, but need not be limited to, debt interest; the requirements of the utility for working capital; maintenance, depreciation, tax, and operating expenses incurred in the operation of all property used and useful in the public service; and a fair return on the investment of the utility in property used and useful in the public service. However, the commission shall not allow the inclusion of contributions-in-aid-of-construction in the rate base of a ~~any~~ utility during a rate proceeding~~,~~ or ~~nor shall the commission~~ impute prospective future contributions-in-aid-of-construction against the utility's investment in property used and useful in the public service.~~; and~~ Accumulated depreciation on such contributions-in-aid-of-construction shall not be used to reduce the rate base, and ~~nor shall~~ depreciation on such contributed assets shall not be considered a cost of providing utility service.

2. For purposes of such proceedings, the commission shall consider utility property, including land acquired or facilities constructed or to be constructed within a reasonable time in the future, up to ~~not to exceed~~ 24 months after the end of the historic base year used to set final rates unless a longer period is approved by the commission, to be used and useful in the public service, if:

a. Such property is needed to serve current customers;

b. Such property is needed to serve customers 5 years

after the end of the test year used in the commission's final order on a rate request as provided in subsection (6) at a growth rate for equivalent residential connections up to ~~not to exceed~~ 5 percent per year; or

c. Such property is needed to serve customers more than 5 full years after the end of the test year used in the commission's final order on a rate request as provided in subsection (6) only to the extent that the utility presents clear and convincing evidence to justify such consideration.

3. In determining the value and quality of water service provided by a utility and whether such utility has satisfied its obligation to provide water service to its customers, the commission shall consider the extent to which the utility meets secondary drinking water standards regarding taste, odor, color, or corrosiveness adopted by the Department of Environmental Protection and the local government. In making its determination, the commission shall consider:

a. Testimony and evidence provided by customers and the utility.

b. Complaints that relate to the secondary drinking water standards which customers have filed during the past 5 years with the commission, the Department of Environmental Protection, the county health departments, or the applicable local government.

c. The results of past tests required by the Department of Environmental Protection or county health departments which

measure the utility's compliance with the applicable secondary drinking water standards.

d. The results of other tests, if deemed necessary by the commission.

4. In determining the value and quality of wastewater service provided by a utility, the commission shall consider the extent to which the utility provides wastewater service to its customers which does not cause odor, noise, aerosol drift, or lighting that adversely affects customers. In making its determination, the commission shall consider:

a. Testimony and evidence provided by customers and the utility.

b. Complaints related to the alleged odor, noise, aerosol drift, or lighting problem which customers have filed over the past 5 years with any of the following:

(I) The commission;

(II) The Department of Environmental Protection;

(III) The county health departments; or

(IV) The local government.

5. If the commission determines that a utility provides water service that does not meet the secondary water quality standards of the Department of Environmental Protection and the local government regarding taste, odor, color, or corrosiveness, or that a utility provides wastewater service that adversely affects customers due to odor, noise, aerosol drift, or lighting, the utility shall provide estimates of the costs and

benefits of various solutions to the problems. The utility shall meet with its customers to discuss the costs and benefits of the various solutions and report to the commission the conclusions of the meetings. The commission shall adopt rules necessary to assess and enforce the utility's compliance with this subparagraph. The rules shall prescribe penalties, including fines and reduction of return on equity of up to 100 basis points, if a utility fails to adequately address or offer solutions to the water or wastewater problems.

6. A utility may recover its prudently incurred costs and expenses to resolve deficiencies found by the commission pursuant to this subsection or found by the Department of Environmental Protection in a proceeding under chapter 403, related to noncompliance with secondary drinking water standards regarding taste, odor, color, or corrosiveness, or concerning wastewater service issues related to odor, noise, aerosol drift, or lighting. Such costs shall be recoverable through a rate case filed pursuant to s. 367.081 or through a separate proceeding initiated by petition of the utility. In its filing, the utility shall describe the activities and costs projected or incurred to resolve the deficiencies found by the commission or the department. Such costs may be a result of action agreed upon by the utility and the commission or the department or as a consequence of a consent order.

Notwithstanding ~~the provisions of~~ this paragraph, the commission

shall approve rates for service which allow a utility to recover from customers the full amount of environmental compliance costs. Such rates may not include charges for allowances for funds prudently invested or similar charges. For purposes of this requirement, the term "environmental compliance costs" includes all reasonable expenses and fair return on any prudent investment incurred by a utility in complying with the requirements or conditions contained in any permitting, enforcement, or similar decisions of the United States Environmental Protection Agency, the Department of Environmental Protection, a water management district, or any other governmental entity with similar regulatory jurisdiction.

(b) In establishing initial rates for a utility, the commission may project the financial and operational data as set out in paragraph (a) to a point in time when the utility is expected to be operating at a reasonable level of capacity.

(c) In establishing rates for a utility, the commission may authorize the creation of a utility reserve fund. The commission shall adopt rules to govern the fund, including, but not limited to, rules relating to expenses for which the fund may be used, segregation of reserve account funds, requirements for a capital improvement plan, and requirements for commission authorization before disbursements are made from the reserve fund.

(4)(a) On or before March 31 of each year, the commission by order shall establish a price increase or decrease index for

major categories of operating costs incurred by utilities subject to its jurisdiction reflecting the percentage of increase or decrease in such costs from the most recent 12-month historical data available. The commission by rule shall establish the procedure to be used in determining such indices and a procedure by which a utility, without further action by the commission, or the commission on its own motion, may implement an increase or decrease in its rates based upon the application of the indices to the amount of the major categories of operating costs incurred by the utility during the immediately preceding calendar year, except to the extent of any disallowances or adjustments for those expenses of that utility in its most recent rate proceeding before the commission. The rules shall provide that, upon a finding of good cause, including inadequate service, the commission may order a utility to refrain from implementing a rate increase hereunder unless implemented under a bond or corporate undertaking in the same manner as interim rates may be implemented under s. 367.082. A utility may not use this procedure between the official filing date of the rate proceeding and 1 year thereafter, unless the case is completed or terminated at an earlier date. A utility may not use this procedure to increase any operating cost for which an adjustment has been or could be made under paragraph (b), or to increase its rates by application of a price index other than the most recent price index authorized by the commission at the time of filing.

(b) Upon verified notice to the commission 45 days before implementation of the increase or decrease, and without a hearing, the approved rates of a utility shall automatically increase or decrease. Such notice shall inform the commission that the utility's costs for a specified expense item have changed.

1. The new rates shall reflect, on an amortized or annual basis, as appropriate, the cost or amount of change in the cost of the specified expense item. The new rates may not reflect the costs of a specified expense item already included in the rates of a utility. Specified expense items eligible for automatic increase or decrease of a utility's rates include, but are not limited to:

a. The rates charged by a governmental authority or other water or wastewater utility regulated by the commission which provides utility service to the utility.

b. The rates or fees that the utility is charged for electric power.

c. The amount of ad valorem taxes assessed against the utility's used and useful property.

d. The fees charged by the Department of Environmental Protection in connection with the National Pollutant Discharge Elimination System Program permit.

e. The regulatory assessment fees imposed upon the utility by the commission.

f. Costs incurred for water quality or wastewater quality

testing required by the Department of Environmental Protection.

g. The fees charged for wastewater sludge disposal.

h. A loan service fee or loan origination fee associated with a loan related to an eligible project. The commission shall adopt rules governing the determination of eligible projects, which shall be limited to those projects associated with new infrastructure or improvements to existing infrastructure needed to achieve or maintain compliance with federal, state, and local governmental primary or secondary drinking water standards or wastewater treatment standards that relate to:

(I) The provision of water or wastewater service for existing customers;

(II) The remediation or prevention of a violation of federal, state, and local governmental primary or secondary health standards;

(III) The replacement or upgrade of aging water or wastewater infrastructure if needed to achieve or maintain compliance with federal, state, and local governmental primary or secondary drinking water regulations; or

(IV) Projects consistent with the most recent long-range plan of the utility on file with the commission. Eligible projects do not include projects primarily intended to serve future growth.

i. Costs incurred for a tank inspection required by the Department of Environmental Protection or a local governmental authority.

j. Operator and distribution license fees required by the Department of Environmental Protection or a local governmental authority.

k. Water or wastewater operating permit fees charged by the Department of Environmental Protection or a local governmental authority.

l. Consumptive or water use permit fees charged by a water management district.

2. A utility may not use the procedure under this paragraph to increase or decrease its rates as a result of an increase or decrease in a specific expense item which occurred more than 12 months before the filing by the utility.

3. The commission may establish by rule additional specific expense items that cause an automatic increase or decrease in a utility's rates as provided in this paragraph. To be eligible for such treatment, an additional expense item shall be imposed upon the utility by a federal, state, or local law, rule, order, or notice and shall be outside the control of the utility. If the commission exercises its authority to establish such rule, the commission shall, at least once every 5 years, review the rule and determine if each expense item should continue to be cause for the automatic increase or decrease of a utility's rates, or if any additional items should become cause for the automatic increase or decrease of a utility's rates as provided in this paragraph ~~The approved rates of any utility which receives all or any portion of its utility service from a~~

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~~governmental authority or from a water or wastewater utility regulated by the commission and which redistributes that service to its utility customers shall be automatically increased or decreased without hearing, upon verified notice to the commission 45 days prior to its implementation of the increase or decrease that the rates charged by the governmental authority or other utility have changed. The approved rates of any utility which is subject to an increase or decrease in the rates or fees that it is charged for electric power, the amount of ad valorem taxes assessed against its used and useful property, the fees charged by the Department of Environmental Protection in connection with the National Pollutant Discharge Elimination System Program, or the regulatory assessment fees imposed upon it by the commission shall be increased or decreased by the utility, without action by the commission, upon verified notice to the commission 45 days prior to its implementation of the increase or decrease that the rates charged by the supplier of the electric power or the taxes imposed by the governmental authority, or the regulatory assessment fees imposed upon it by the commission have changed. The new rates authorized shall reflect the amount of the change of the ad valorem taxes or rates imposed upon the utility by the governmental authority, other utility, or supplier of electric power, or the regulatory assessment fees imposed upon it by the commission. The approved rates of any utility shall be automatically increased, without hearing, upon verified notice to the commission 45 days prior to~~

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~~implementation of the increase that costs have been incurred for water quality or wastewater quality testing required by the Department of Environmental Protection. The new rates authorized shall reflect, on an amortized basis, the cost of, or the amount of change in the cost of, required water quality or wastewater quality testing performed by laboratories approved by the Department of Environmental Protection for that purpose. The new rates, however, shall not reflect the costs of any required water quality or wastewater quality testing already included in a utility's rates. A utility may not use this procedure to increase its rates as a result of water quality or wastewater quality testing or an increase in the cost of purchased water services, sewer services, or electric power or in assessed ad valorem taxes, which increase was initiated more than 12 months before the filing by the utility.~~

4. ~~The provisions of~~ This subsection does ~~do~~ not prevent a utility from seeking a change in rates under ~~pursuant to the provisions of~~ subsection (2).

(c) Before implementing a change in rates under this subsection, the utility must ~~shall~~ file an affirmation under oath as to the accuracy of the figures and calculations upon which the change in rates is based, stating that the change will not cause the utility to exceed the range of its last authorized rate of return on equity. A person who ~~Whoever~~ makes a false statement in the affirmation required under this subsection ~~hereunder~~, which statement he or she does not believe to be true

in regard to any material matter, commits ~~is guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) If, within 15 months after the filing of a utility's annual report required by s. 367.121, the commission finds that the utility exceeded the range of its last authorized rate of return on equity after an adjustment in rates as authorized by this subsection was implemented within the year for which the report was filed or was implemented in the preceding year, the commission may order the utility to refund, with interest, the difference to the ratepayers and adjust rates accordingly. This provision does ~~shall~~ not ~~be construed to~~ require a bond or corporate undertaking not otherwise required.

(e) Notwithstanding anything in this section ~~herein~~ to the contrary, a utility may not adjust its rates under this subsection more than two times in any 12-month period. For the purpose of this paragraph, a combined application or simultaneously filed applications that were filed under the provisions of paragraphs (a) and (b) are ~~shall be~~ considered one rate adjustment.

(f) At least annually, the commission shall ~~may regularly, not less often than once each year,~~ establish by order a leverage formula or formulae that reasonably reflect the range of returns on common equity for an average water or wastewater utility and which, for purposes of this section, are ~~shall be~~ used to calculate the last authorized rate of return on equity

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for a ~~any~~ utility which otherwise would not have an ~~no~~ established rate of return on equity. In any other proceeding in which an authorized rate of return on equity is to be established, a utility, in lieu of presenting evidence on its rate of return on common equity, may move the commission to adopt the range of rates of return on common equity which is ~~that has been~~ established under this paragraph.

(7) A water utility may file tariffs establishing a surcharge, or other method for the automatic adjustment of its rates, which shall provide for recovery of the prudently incurred fixed costs comprised of depreciation and pretax returns of certain system improvement projects, as approved by the commission, that are completed and placed in service between base rate proceedings. Such projects shall be for the specific purpose of achieving compliance with secondary drinking water quality standards regarding taste, odor, color, or corrosiveness. With respect to each tariff filed, the commission shall prescribe the specific procedures to be followed in establishing the sliding scale or other automatic adjustment method.

(8) ~~(7)~~ The commission shall determine the reasonableness of rate case expenses and shall disallow all rate case expenses determined to be unreasonable. A ~~No~~ rate case expense determined to be unreasonable may not be ~~shall be~~ paid by a consumer. In determining the reasonable level of rate case expense, the commission shall consider the extent to which a utility has used

~~utilized~~ or failed to use ~~utilize~~ the provisions of paragraph (4)(a) or paragraph (4)(b) and such other criteria as it may establish by rule.

Section 4. Subsection (3) of section 367.0814, Florida Statutes, is amended to read:

367.0814 Staff assistance in changing rates and charges; interim rates.—

(3) The provisions of s. 367.081(1), (2)(a), (2)(c), ~~and~~ (3), and (7) ~~shall~~ apply in determining the utility's rates and charges.

Section 5. Subsection (3) of section 403.8532, Florida Statutes, is amended to read:

403.8532 Drinking water state revolving loan fund; use; rules.—

(3) The department may make, or request that the corporation make, loans, grants, and deposits to community water systems, for-profit privately owned or investor-owned water systems, nonprofit transient noncommunity water systems, and nonprofit nontransient noncommunity water systems to assist them in planning, designing, and constructing public water systems~~, unless such public water systems are for-profit privately owned or investor-owned systems that regularly serve 1,500 service connections or more within a single certified or franchised area~~. ~~However, a for-profit privately owned or investor-owned public water system that regularly serves 1,500 service connections or more within a single certified or franchised area~~

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~~may qualify for a loan only if the proposed project will result in the consolidation of two or more public water systems.~~ The department may provide loan guarantees, purchase loan insurance, and refinance local debt through the issue of new loans for projects approved by the department. Public water systems may borrow funds made available pursuant to this section and may pledge any revenues or other adequate security available to them to repay any funds borrowed.

(a) The department shall administer loans so that amounts credited to the Drinking Water Revolving Loan Trust Fund in any fiscal year are reserved for the following purposes:

1. At least 15 percent for qualifying small public water systems.

2. Up to 15 percent for qualifying financially disadvantaged communities.

(b) If an insufficient number of the projects for which funds are reserved under this subsection have been submitted to the department at the time the funding priority list authorized under this section is adopted, the reservation of these funds no longer applies. The department may award the unreserved funds as otherwise provided in this section.

Section 6. This act shall take effect July 1, 2014.

REGULATORY AFFAIRS COMMITTEE

CS/HB 357 by Rep. Santiago
Water and Wastewater Utility Systems

AMENDMENT SUMMARY
March 27, 2014

Amendment 1 (Strike-All Amendment) by Rep. Santiago –

- Creates a procedure by which a minimum of 65% of the customers of a water utility may petition the Public Service Commission (PSC), based on water quality issues, to revoke the utility's certificate of authorization to provide water service. The PSC must resolve the petition in one of the following ways:
    - Dismiss the petition, if supported by clear and convincing evidence;
    - Require the utility to take corrective action and establish progress benchmarks; or
    - Revoke the utility's certificate, in which case a receiver is appointed until the utility is sold.

- Modifies a procedure established in CS/HB 357 by which the PSC, in the context of setting rates for a water utility, must consider the utility's compliance with secondary drinking water quality standards established by the Department of Environmental Protection. Specifically, the amendment modifies the procedure established in CS/HB 357 by:
    - Removing the requirement that wastewater service issues be reviewed by the PSC under this procedure;
    - Adding express authorization for the PSC to require the utility, for each issue identified by the PSC, to implement a solution that it finds to be in the customers' best interest;
    - Adding a prohibition on the filing of a customer petition for revocation during a proceeding under chapter 367, F.S.; and
    - Identifying additional penalties that the PSC may prescribe for a utility's failure to adequately resolve each issue as required.

- Provides an appropriation to the PSC from the General Revenue Fund for purposes of implementation.

Amendment 2 (line 199) by Rep. Beshears –

- Removes a provision authorizing the PSC to approve creation of a utility reserve fund, and replaces it with a provision requiring the PSC to allow a utility to establish a storm cost reserve fund and to recognize that amounts accrued in the fund are legitimate operating expenses if the fund balance does not exceed the reasonable needs of the utility.

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 Santiago offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 367.072, Florida Statutes, is created to read:

367.072 Petition to revoke certificate of authorization.—The Legislature finds that it is in the public interest that water service be of good quality and consistent with the standards set forth in this chapter. Therefore, a utility's certificate of authorization to provide water service may be revoked if, after its customers file a petition with the commission, the commission finds that revocation is in the best interest of the customers in accordance with this section. As used in this section, the term "customer" means an individual

whose property is serviced by a single meter or a person whose name appears on the bill for a master meter.

(1) If the commission receives a letter from the customers of a utility stating their intent to file a petition, the utility is prohibited from filing a rate case until the petition is acted upon by the commission.

(a) Within 10 days after receipt of the letter, commission staff shall notify the utility of the customers' intent to file a petition and that the utility may not file for a rate increase until the petition is acted upon by the commission.

(b) Commission staff shall send to the customers instructions regarding the information required on the petition and the subsequent process the commission will follow. The petition must be filed within 90 days after the receipt of the instruction. Commission staff shall review the petition and notify the customers within 10 days after receipt of the petition that the petition is sufficient for the commission to act or that additional information is necessary. The customers must file a cured petition within 30 days after receipt of the notice to cure and provide a copy of the petition to the utility. If the customers fail to file or refile a petition within the allotted time, the commission shall dismiss the petition with prejudice, and the customers may not file another petition for 1 year after the dismissal.

(2) A petition must:

(a) State with specificity each issue that customers have with the quality of water service, each time the problem was reported to the utility, and how long each issue has existed; and

(b) Be signed by at least 65 percent of the customers of the service area covered under the certificate of authorization. A person whose name appears on the bill for a master meter may sign a petition if at least 65 percent of the customers, tenants, or unit owners served by the master meter support the petition, in which case documentation of such support must be included with the petition.

(3) If the petition is in compliance with this section and the issues identified within the petition support a reasonable likelihood that the utility is failing to provide quality of water service, a docket shall be opened. The utility shall use the following criteria in preparing a response to the commission, addressing the issues identified within the petition and defending the quality of its water service:

(a) Federal and state primary water quality standards or secondary water quality standards pursuant to s. 367.0812; and

(b) The relationship between the utility and its customers, including each complaint received regarding the quality of water service, the length of time each customer has been complaining about the service, the resolution of each complaint, and the time it has taken to address such complaints.

(4) The commission shall evaluate the issues identified in the petition, the utility's response as to whether it is providing quality of water service, and any other factor the commission deems relevant.

(5) Based upon its evaluation, the commission shall:

(a) Dismiss the petition, in which case the decision must be supported by clear and convincing evidence and is subject to ss. 120.569 and 120.57;

(b) Require the utility to take the necessary steps to correct the quality of water service issues identified in the petition. The commission shall set benchmarks within a timeframe, not to exceed 3 years, and may require the utility to provide interim reports describing its progress in meeting such benchmarks. The commission may extend the term 3 years for circumstances that delay the project which are not in the control of the utility, such as natural disasters and obtaining permits necessary for meeting such benchmarks; or

(c) Notwithstanding s. 367.045, revoke the utility's certificate of authorization, in which case a receiver must be appointed pursuant to s. 367.165 until a sale of the utility system has been approved pursuant to s. 367.071.

(6) The commission shall adopt by rule the format of and requirements for a petition and may adopt other rules to administer this section.

Section 2. Section 367.0812, Florida Statutes, is created to read:

367.0812 Rate fixing; quality of water service as criterion.—

(1) In fixing rates that are just, reasonable, compensatory, and not unfairly discriminatory, the commission shall consider the extent to which the utility provides water service that meets secondary water quality standards as established by the Department of Environmental Protection. In determining whether a utility has satisfied its obligation to provide quality of water service that meets these standards, the commission shall consider:

(a) Testimony and evidence provided by customers and the utility;

(b) The results of past tests required by a county health department or the Department of Environmental Protection which measure the utility's compliance with the applicable secondary water quality standards;

(c) Complaints regarding the applicable secondary water quality standards filed by customers with the commission, the Department of Environmental Protection, the respective local governmental entity, or a county health department during the past 5 years; and

(d) If the commission deems necessary, the results of any updated test.

(2)(a) In determining the quality of water service, the commission shall consider a finding by the Department of Environmental Protection as to whether the utility has failed to

provide water service that meets the secondary water quality standards of the department.

(b) The utility shall create an estimate of the costs and benefits of a plausible solution to each issue identified by the commission.

(c) The utility shall meet with its customers within a time prescribed by the commission to discuss the estimated costs and benefits of and time necessary for implementing a plausible solution for each quality of water service issue identified, and the utility shall report the results of such meetings to the commission.

(d) The utility shall inform the commission, if:

1. The customers and the utility agree on a solution for each quality of water service issue identified, of each agreed on solution and the cost of each solution; or

2. The customers and the utility prefer a different solution to at least one of the quality of water service issues identified, of the preferred solutions by each and the cost of each solution.

(e) The commission may require the utility to implement a solution that is in the best interest of the customers for each quality of water service issue. The utility may recover its costs in implementing the solutions ordered by the commission. The commission may establish the necessary benchmarks that a utility must meet for each solution and require the utility to report periodically until each solution is completed.

(3) Notwithstanding s. 367.072, customers may not petition the commission to revoke the certificate of authorization of a utility if it is the subject of a proceeding under this chapter.

(4) The commission may prescribe penalties for a utility's failure to adequately resolve each quality of water service issue as required. Penalties may include penalties as provided in s. 367.161, a reduction of return on equity of up to 100 basis points, the denial of all or part of a rate increase for a utility's system or part of a system if it determines that the quality of water service is less than satisfactory until the quality of water is found to be satisfactory, or revocation of the certificate of authorization pursuant to s. 367.072.

(5) The commission shall adopt rules to assess and enforce compliance with this section.

Section 3. For the 2014-2015 fiscal year, the sums of $212,521 in recurring funds and $12,012 in nonrecurring funds from the General Revenue Fund and three full-time equivalent positions with an associated salary rate of 131,235 are appropriated to the Florida Public Service Commission to implement the provisions of this act related to the regulation of the quality of water service.

Section 4. This act shall take effect July 1, 2014.

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to water utilities; creating s. 367.072, F.S.; providing legislative findings; defining the term "customer"; authorizing the Florida Public Service Commission to revoke a certificate of authorization upon receipt of a petition; providing criteria for such petition; authorizing the commission to adopt rules; creating s. 367.0812, F.S.; requiring the commission to consider the quality of water service when fixing rates; providing criteria that the commission must consider in making its determination; requiring the utility to meet with its customers to discuss the costs and benefits of plausible solutions if the commission finds that the utility has failed to meet certain quality of water standards; prohibiting a customer from petitioning the commission to revoke the certificate of authorization of a utility under certain circumstances; authorizing the commission to prescribe penalties for certain failures of the utility; requiring the commission to adopt rules; providing an appropriation; providing an effective date.

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 Beshears offered the following:

Amendment (with title amendment)

Remove lines 199-206 and insert:

(c) In establishing rates for a utility, the commission shall permit a utility to establish a storm cost reserve fund and shall recognize that amounts accrued for the reserve in anticipation of future casualty losses from tropical storms, hurricanes, tornadoes, and other severe weather events are legitimate operating expenses so long as the reserve balance does not exceed the reasonable needs of the utility. The commission may adopt rules to govern the fund, including, but not limited to, rules relating to expenses for which the fund may be used, segregation of reserve account funds, and

requirements for commission authorization before disbursements are made from the reserve fund.

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

Remove line 23 and insert:

to create a storm cost reserve fund when establishing rates

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 415 Pub. Rec./Investigations and Examinations by the Office of Financial Regulation
SPONSOR(S): Government Operations Subcommittee; Insurance & Banking Subcommittee; Santiago
TIED BILLS: CS/CS/HB 413 **IDEN./SIM. BILLS:** CS/SB 1002

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Bauer	Cooper
2) Government Operations Subcommittee	12 Y, 0 N, As CS	Williamson	Williamson
3) Regulatory Affairs Committee		Bauer	Hamon

SUMMARY ANALYSIS

CS/CS/HB 413 strengthens the Office of Financial Regulation's (OFR) registration, examination, and investigation authority over consumer collection agencies; however, OFR has no authority to withhold from public disclosure any information relating to consumer complaints, investigations, examinations, and registrations. CS/CS/HB 413 also authorizes OFR to conduct joint or concurrent examinations with other state or federal regulatory agencies and to share examination materials.

This bill, which is linked to the passage of CS/CS/HB 413, creates a public records exemption for certain information held by OFR relating to investigations and examinations of consumer collection agencies. Information relative to an investigation or examination by OFR is confidential and exempt from public records requirements while the investigation or examination is active. For purposes of the public record exemption, "active" means OFR or a law enforcement or administrative agency is proceeding with reasonable dispatch and has a reasonable good faith belief that the case may lead to the filing of an administrative, civil, or criminal proceeding or to the denial or conditional grant of a registration. Once the investigation or examination is no longer active, a consumer complaint and other information relative to an investigation or examination remain confidential and exempt under specified conditions.

The bill also allows OFR to share confidential and exempt information with law enforcement and administrative agencies.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

The State of Florida has a long history of providing public access to government records and meetings. The Florida Legislature enacted the first public records law in 1892.[1] One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.[2] Article I, s. 24(a) of the State Constitution states:

> Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,[3] which pre-dates the State Constitution's public records provisions, specifies conditions under which public access must be provided to records of an agency.[4] Section 119.07(1)(a), F.S., states:

> Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency records are available for public inspection. The term "public record" is broadly defined to mean:

> [A]ll documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.[5]

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or

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[1] Section 1390, 1391 F.S. (Rev. 1892).
[2] Fla. Const. art. I, s. 24.
[3] Chapter 119, F.S.
[4] The term "agency" is defined in s. 119.011(2), F.S., to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The State Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the State Constitution. *See supra* fn. 2.
[5] Section 119.011(12), F.S.

formalize knowledge.[6] All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.[7]

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.[8] If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.[9]

Only the Legislature is authorized to create exemptions to open government requirements.[10] Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.[11] A bill enacting an exemption[12] may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[13]

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)[14] provides for the systematic review, through a 5-year cycle ending October 2 of the fifth year following enactment, of an exemption from the Public Records Act or the Public Meetings Law.

The Act provide that an exemption may be created, revised, or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.[15] An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual under this provision.
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.[16]

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act are only statutory, as opposed to constitutional. Accordingly, the standards do not limit the Legislature because one session of the Legislature cannot bind another.[17] The Legislature is only limited in its review process by constitutional requirements.

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[6] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).
[7] *Wait v. Florida Power & Light Co.*, 372 So. 2d 420 (Fla. 1979).
[8] Florida Attorney General Opinion 85-62.
[9] *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So. 2d 289 (Fla. 1991).
[10] *Supra* fn. 1.
[11] *Memorial Hospital-West Volusia v. News-Journal Corporation*, 784 So. 2d 438 (Fla. 2001); *Halifax Hospital Medical Center v. News-Journal Corp.*, 724 So. 2d 567, 569 (Fla. 1999).
[12] Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.
[13] *Supra* fn. 1.
[14] Section 119.15, F.S.
[15] Section 119.15(6)(b), F.S.
[16] *Id.*
[17] *Straughn v. Camp*, 293 So. 2d 689, 694 (Fla. 1974).

Regulation of Consumer Collection Agencies and Debt Collectors

Part VI of ch. 559, F.S., regulates consumer collection agencies and protects consumers from certain debt collection practices that involve fraud, harassment, threats, and other unscrupulous activities. These collection agencies are required to comply with certain registration requirements administered by the Office of Financial Regulation (OFR). Part VI of ch. 559, F.S., provides penalties for noncompliance with certain statutory requirements.

CS/CS/HB 413 (2014)

CS/CS/HB 413 strengthens OFR's registration, examination, and investigation authority over consumer collection agencies; however, OFR has no authority to withhold from public disclosure any information relating to consumer complaints, investigations, examinations, and registrations, except that which is specifically provided in ch. 119, F.S. (such as social security numbers and bank account numbers).[18]

CS/CS/HB 413 also authorizes OFR to conduct joint or concurrent examinations with other state or federal regulatory agencies and to share examination materials.

Effect of the Bill

This bill, which is linked to the passage of CS/CS/HB 413, creates a public records exemption for certain investigative and examination information relating to consumer collection agencies and held by OFR under part VI of ch. 559, F.S. Such information is confidential and exempt from the public-records requirements of s. 119.07(1), F.S. and s. 24(a), Art. I of the State Constitution until the investigation or examination is completed or ceases to be active. However, the information remains confidential and exempt after the investigation or examination is completed or ceases to be active if disclosure would:

- Jeopardize the integrity of another active investigation or examination;
- Disclose the identity of a confidential source;
- Disclose investigative or examination techniques or procedures;
- Reveal a trade secret, as defined in the Uniform Trade Secrets Act;[19] or
- Reveal personal identifying information of a consumer unless the consumer is also the complainant. In the case of a complainant, the personal identifying information is subject to disclosure after the investigation is completed or ceases to be active, but the complainant's personal financial and health information remains confidential and exempt.

The confidential and exempt information may be disclosed by OFR at any time to a law enforcement agency or another administrative agency in the performance of its official duties and responsibilities.

The bill provides that an investigation or examination is considered active if OFR or a law enforcement or administrative agency is proceeding with reasonable dispatch and has a good faith belief that the investigation or examination might lead to the filing of an administrative, civil, or criminal proceeding or the denial or conditional grant of an application for registration or other approval required under part VI of ch. 559, F.S. The bill also defines the term "personal financial and health information" to mean:

- Information relating to the existence, nature, source, or amount of a consumer's personal income, expenses, and debt;
- Information relating to a consumer's financial transactions of any kind;

[18] The Public Records Act (ch. 119, F.S.) contains an agency-specific exemption for OFR, in which any information that OFR *receives* from other state or federal regulatory, administrative, or criminal justice agencies that confidential or exempt in accordance with the laws of the other agency. Additionally, this exemption provides confidentiality for any information that OFR *receives or develops* as part of a joint or multiagency examination or investigation with these other agencies and that OFR may obtain and use this information in accordance with a joint or multiagency agreement, except to any information that would otherwise be public if OFR independently conducted an investigation or examination under Florida law. Section 119.0712(3), F.S.

[19] The Uniform Trade Secrets Act defines the term "trade secret" to mean information, including a formula, pattern, compilation, program, device, method, technique, or process that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Section 688.002(4), F.S.

- Information relating to the existence, identification, nature, or value of a consumer's assets, liabilities, or net worth;
- A consumer's personal health condition, disease, or injury; or
- A history of a consumer's personal medical diagnosis or treatment.

The bill provides that the section is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1 creates s. 559.5558, F.S., to create a public record exemption for information held by OFR pursuant to an investigation or examination of consumer collection agencies.

Section 2 provides a statement of public necessity as required by the State Constitution.

Section 3 provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See FISCAL COMMENTS section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill's protection of trade secrets within information relating to an investigation or examination may benefit collection agencies, since disclosure of such information could result in a competitive disadvantage in the marketplace. In addition, the bill's protection of specified personal financial and health information of consumers may reduce the risk of identity theft and protect matters of personal health which are traditionally private and confidential concerns between patients and health care providers.

D. FISCAL COMMENTS:

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

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:

Vote Requirement and Public Necessity Statement for Public Records Bills
In order to pass a newly-created or expanded public records or public meetings exemption, Art. I, s. 24(c) of the State Constitution requires 1) a two-thirds vote of each house of the legislature and 2) a public necessity statement. The bill contains a public necessity statement and will require a two-thirds vote for passage.

Subject Requirement
Article I, s. 24(c) of the State Constitution requires the Legislature to create public-records or public-meetings exemptions in legislation separate from substantive law changes. This bill creates a public records exemption for OFR in a separate, stand-alone bill.

Breadth of the Exemption
Article I, s. 24(c) of the State Constitution, requires a newly created public records or public meetings exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public records exemption for information held by OFR during an active investigation or examination of consumer collection agencies. The exemption does not appear to be in conflict with the constitutional requirement that the exemption must be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Insurance & Banking Subcommittee
On February 4, 2014, the Insurance & Banking Subcommittee considered and adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment retained the provisions of the bill and made the following changes to the bill:

- Provided a clearer public necessity statement, and
- Provided a definition and limited exemption for personal health and financial information held by the OFR.

Government Operations Subcommittee
On March 12, 2014, the Government Operations Subcommittee adopted an amendment and reported the bill favorably with committee substitute. The amendment corrected a drafting error in the public necessity statement by inserting a word that was inadvertently omitted.

This analysis is drafted to the committee substitute as approved by the Government Operations Subcommittee.

A bill to be entitled

An act relating to public records; creating s. 559.5558, F.S.; providing an exemption from public records requirements for information collected in connection with investigations and examinations by the Office of Financial Regulation of the Financial Services Commission; providing a definition; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 559.5558, Florida Statutes, is created to read:

559.5558 Public records exemption; investigations and examinations.—

(1) As used in this section, the term "personal financial and health information" means:

(a) Information relating to the existence, nature, source, or amount of a consumer's personal income, expenses, and debt;

(b) Information relating to a consumer's financial transactions of any kind;

(c) Information relating to the existence, identification, nature, or value of a consumer's assets, liabilities, or net worth;

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

(d) A consumer's personal health condition, disease, or injury; or

(e) A history of a consumer's personal medical diagnosis or treatment.

(2)(a) Except as otherwise provided by this section, information held by the office pursuant to an investigation or examination of a violation of this part is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, information made confidential and exempt pursuant to this section may be disclosed by the office to a law enforcement agency or another administrative agency in the performance of its official duties and responsibilities.

(b) Information made confidential and exempt pursuant to this section is no longer confidential and exempt once the investigation or examination is completed or ceases to be active unless disclosure of the information would:

1. Jeopardize the integrity of another active investigation or examination.

2. Reveal the personal identifying information of a consumer, unless the consumer is also the complainant. A complainant's personal identifying information is subject to disclosure after the investigation or examination is completed or ceases to be active. However, a complainant's personal financial and health information remains confidential and exempt.

3. Reveal the identity of a confidential source.

4. Reveal investigative or examination techniques or procedures.

5. Reveal trade secrets, as defined in s. 688.002.

(c) For purposes of this subsection, an investigation or examination is considered active if the investigation or examination is proceeding with reasonable dispatch and the office has a reasonable good faith belief that the investigation or examination may lead to the filing of an administrative, civil, or criminal proceeding or to the denial or conditional grant of an application for registration or other approval required under this part.

(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that information held by the Office of Financial Regulation of the Financial Services Commission pursuant to an investigation or examination conducted under part VI of chapter 559, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for the following reasons:

(1) An investigation or examination conducted by the Office of Financial Regulation may lead to the filing of an administrative, civil, or criminal proceeding or to the denial or conditional granting of a registration. The premature release

of such information could frustrate or thwart the investigation or examination and impair the ability of the office to effectively and efficiently administer part VI of chapter 559, Florida Statutes.

(2) Information held by the Office of Financial Regulation that is provided to a law enforcement agency or another administrative agency for further investigation or examination should remain confidential and exempt until the investigation or examination is completed or ceases to be active. The release of this information before completion of the investigation or examination could jeopardize the integrity of the investigation and impair the ability of other agencies to carry out their statutory duties.

(3) Investigations and examinations of consumer collection agencies frequently involve the gathering of sensitive personal information, including personal financial information concerning complainants and consumers. The Office of Financial Regulation may not otherwise have access to this sensitive personal information but for the investigation or examination. If the individuals who are the subject of the information are identifiable, the disclosure of the information to the public could cause unwarranted damage to the good name or reputation of the individuals, especially if the information associated with the individual is inaccurate. Furthermore, if the individuals who are the subject of such information are identifiable, public access to such information could jeopardize the financial safety

of such individuals by placing them at risk of becoming victims of identity theft.

(4) Investigations and examinations of consumer collection agencies frequently involve the gathering of sensitive personal information, including personal health information concerning complainants and consumers. Matters of personal health are traditionally private and confidential concerns between the patient and the health care provider. The private and confidential nature of personal health matters pervades both the public and private health care sectors. Moreover, public disclosure of personal health information could have a negative effect upon a person's business and personal relationships and a person's financial well-being.

(5) Releasing information identifying a confidential source could jeopardize both the integrity of a current and future investigation or examination and the safety of the confidential source.

(6) Revealing investigative or examination techniques and procedures could allow a person to hide or conceal violations of law that otherwise would have been discovered during an investigation or examination. This exemption is necessary to enable the Office of Financial Regulation, law enforcement agencies, and other administrative agencies to effectively and efficiently carry out their statutory duties, which would be significantly impaired without this exemption.

(7) A trade secret derives independent, economic value,

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

actual or potential, from being generally unknown to, and not readily ascertainable by, other persons who might obtain economic value from its disclosure or use. Allowing public access to a trade secret through a public records request could destroy the value of the trade secret and cause a financial loss to the person or entity submitting the trade secret. Release of such information could give business competitors an unfair advantage and weaken the position of the person or entity supplying the trade secret in the marketplace.

Section 3. This act shall take effect on the same date that HB 413 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 623 Money Services Businesses
SPONSOR(S): Insurance & Banking Subcommittee; Roberson
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 590

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Bauer	Cooper
2) Criminal Justice Subcommittee	12 Y, 0 N	Jones	Cunningham
3) Government Operations Appropriations Subcommittee	13 Y, 0 N	Keith	Topp
4) Regulatory Affairs Committee		Bauer	Hamon

SUMMARY ANALYSIS

Money services businesses ("MSBs") offer a variety of non-depository financial services involving the receipt and transmission of currency, monetary value, or payment instruments through a variety of means, including wire, electronic transfer, or through third-party payment systems. MSBs that are located in Florida or do business in this state must comply with the federal Bank Secrecy Act and implementing regulations, as well as the Florida Money Services Businesses Act (ch. 560, F.S., "the Act"), which is administered and enforced by the Florida Office of Financial Regulation ("OFR").

The bill makes the following changes to the Act:

- Makes violations under s. 560.310(2)(d), F.S., relating to electronic log and database reporting requirements applicable to licensed check cashers that cash checks exceeding $1,000, a third-degree felony;
- Allows the OFR to summarily suspend the license of a MSB pursuant to s. 120.60(6), F.S., if the OFR finds the licensee poses an immediate, serious danger to the public health, safety, and welfare, and if a natural person listed on the application is criminally charged or arrested for specified crimes;
- Provides that a deferred presentment transaction is void if the person conducting the transaction is not authorized under the Act, and such person has no right to collect funds relating to such transaction; and
- Updates outdated cross-references to federal MSB regulations.

The bill has an insignificant, yet indeterminate fiscal impact on state government expenditures due to the creation of a new third degree felony offense for persons who knowingly and willfully violate information reporting requirements of check cashing transactions. On March 25, 2014, the Criminal Justice Impact Conference determined that the bill will have an insignificant prison bed impact on the Department of Corrections. The bill's provision regarding unauthorized deferred presentment transactions may have a positive impact on the private sector.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Money services businesses (MSBs) offer a variety of non-depository financial services involving the receipt and transmission of currency, monetary value, or payment instruments through a variety of means, including wire, electronic transfer, or through third-party payment systems. MSBs that are located in, or do business in this state (whether within Florida or into Florida from locations outside Florida or country),[1] must comply with the following federal and state laws and regulations.

Federal Regulation of MSBs – Bank Secrecy Act

The Financial Crimes Enforcement Network (FinCEN) is a bureau within the U.S. Department of the Treasury, and its mission is to "safeguard the financial system from illicit use and combat money laundering and promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities."[2]

FinCEN enforces the federal Currency and Foreign Transactions Reporting Act of 1970 (commonly referred to as the "Bank Secrecy Act" or "BSA"), which requires U.S. financial institutions to assist U.S. government agencies to detect and prevent money laundering. The BSA is sometimes referred to as an "anti-money laundering" law ("AML") or jointly as "BSA/AML."[3] The BSA was amended by Title III of the USA PATRIOT Act of 2001 to include additional measures to prevent, detect, and prosecute terrorist-related activities and international money laundering. The BSA requires financial institutions to keep records of cash purchases of negotiable instruments, file reports of cash transactions exceeding $10,000 (daily aggregate amount), and to report suspicious activity that might signify money laundering, tax evasion, or other criminal activities. In addition, MSBs conducting more than $1,000 in business with one person in one or more transactions are required to register with FinCEN or be subject to civil money penalties and criminal prosecution.[4]

The Secretary of the Treasury has delegated to the Director of FinCEN the authority to implement, administer, and enforce compliance with the BSA and associated regulations under 31 C.F.R. Part 103.[5] On March 1, 2011, FinCEN transferred its regulations from 31 CFR Part 103 to 31 CFR Chapter X as part of an ongoing effort to increase the efficiency and effectiveness of its regulatory oversight. There have been no substantive changes made to the underlying regulation as a result of this transfer and reorganization.[6]

State Regulation of MSBs - Money Services Businesses Act

In 1994, the Florida Legislature enacted the Money Transmitters' Code (renamed the Money Services Business Act, ch. 560, F.S., "the Act"). The Act consists of four parts: (I) general provisions, (II) payment instruments and funds transmission; (III) check cashing and foreign currency exchange; and (IV) deferred presentment. The Act does not apply to state and federally chartered banks, credit unions, trust companies, and other financial depository institutions, nor does it apply to the sovereign.[7] Part I of the Act gives supervisory, licensing, and enforcement authority to the Florida Office of Financial Regulation

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[1] *See* s. 560.103(22), F.S. (definition of "money services business").
[2] FinCEN, "What We Do," at http://www.fincen.gov/about_fincen/wwd/ (last accessed March 5, 2014).
[3] FinCEN, "FinCEN's Mandate from Congress / Bank Secrecy Act," at http://www.fincen.gov/statutes_regs/bsa/ (last accessed March 5, 2014).
[4] 31 C.F.R. § 1022.380.
[5] U.S. Department of the Treasury, Treasury Order 180-01, at http://www.treasury.gov/about/role-of-treasury/orders-directives/Pages/to180-01.aspx (last accessed March 5, 2014).
[6] FinCEN, Chapter X, at http://www.fincen.gov/statutes_regs/ChapterX/ (last accessed March 5, 2014).
[7] Section 560.104, F.S.

("OFR"), and authorizes the OFR's rulemaking body, the Financial Services Commission (Commission), to adopt rules to implement the Act's requirements regarding books and records, examinations, forms, and fees.

According to the Act, MSBs are persons who act as one or more of the following:

- Part II:
  - *Payment instrument seller*: a qualified entity that sells instruments like checks, money orders, and travelers checks. Payment instruments do not include gift cards, credit card vouchers, and letters of credit.
  - *Money transmitter*: a qualified entity that receives currency, monetary value, or payment instruments for the purpose of transmitting the same by any means to, within, or from the U.S.

- Part III:
  - *Foreign currency exchanger*: a person who exchanges currency of one country to that of another for compensation.
  - *Check casher:* a person who sells currency in exchange for payment instruments received, excluding travelers checks.
    - Licensed check cashers are required to comply with federal requirements, if applicable, and state requirements, such as maintaining specified records and reporting information to the OFR. Section 560.310, F.S., requires licensed check cashers to maintain copies of cashed checks, and for checks exceeding $1,000, the licensed check casher must submit specified transactional data to an electronic log or check-cashing database.
      - In 2013, the Florida Legislature enacted CS/CS/HB 217,[8] which authorized the OFR to issue a competitive solicitation for a statewide, real-time online check cashing database. The database will hold the same transactional information required from licensed check cashers for checks exceeding $1,000 that is currently required in an electronic log format. The implementation of check cashing database will also be used by the Department of Financial Services' Division of Workers Compensation and Division of Insurance Fraud and various law enforcement agencies in efforts to combat workers' compensation insurance fraud.

- Part IV:
  - *Deferred presentment provider ("DPP", commonly known as payday lenders):* DPPs are a MSB designation, not a separate license. DPPs are persons licensed under part II or part III of the Act, and have filed a declaration of intent with the OFR to engage in *deferred presentment transactions*, which means providing currency or a payment instrument in exchange for a customer's check and agreeing to hold the check for a deferment period.
    - Part IV of ch. 560, F.S., regulates DPPs and deferred presentment transactions. A deferred presentment transaction means providing currency or a payment instrument in exchange for a person's check and agreeing to hold the person's check for a period prior to presentment, deposit, or redemption.[9] The face amount of a check taken for a deferred presentment may not exceed $500.[10] A DPP may charge a maximum fee of 10 percent of the currency or payment instrument provided (exclusive of the verification fee). Section 560.404(19), F.S., prohibits a DPP from entering into a deferred presentment agreement with a customer if the customer has an outstanding deferred presentment agreement with any DPP, or terminated an agreement within the previous 24 hours.

The current licensee statistics from the OFR[11] are:

- Part II: 163 licensees

[8] CS/CS/HB 217 was approved by the Governor on June 7, 2013 (ch. 2013-139, Laws of Florida).
[9] *See* s. 560.402(3), F.S.
[10] Section 560.404, F.S.
[11] E-mail from the OFR (received January 21, 2014), on file with the Insurance & Banking Subcommittee staff.

- Part III: 1,133 licensees
- Part IV: 162 declarations of intent
    - 21 DPPs are licensed under Part II
    - 141 DPPs are licensed under Part III

To qualify for licensure as a MSB under the Act, an applicant must meet the following requirements:
- Demonstrate to the OFR the character and general fitness necessary to command the confidence of the public and warrant the belief that the money services business or deferred presentment provider will operate lawfully;
- Be legally authorized to do business in Florida;
- Be registered as a MSB with the FinCEN as required by 31 C.F.R. s. 103.41, if applicable;
- Have an anti-money laundering program in place that meets the requirements of 31 C.F.R. s. 103.125;[12] and
- Provide the OFR with information required under the Act and related rules.[13]

Prohibited Acts

The Act prohibits MSBs, authorized vendors, and affiliated parties from engaging in specified acts in s. 560.111, F.S., such as embezzlement and making false entries in books and documents with the intent to deceive or defraud. A person who violates any of these acts commits a third-degree felony.[14] In addition, the Act prohibits a willful violation of certain DPP requirements (i.e., willfully failing to file a declaration of intent, willfully failing to comply with the requirements for deferred presentment transactions, or willfully failing to comply with deposit and redemption requirements[15]), which is also a third-degree felony.

Emergency Suspension Authority

Currently, the Act authorizes the OFR to immediately suspend the license of a MSB that fails to provide the office specified records or fails to maintain a federally insured depository account, and such failure constitutes immediate and serious danger to the public health, safety, and welfare, for purposes of s. 120.60(6), F.S.[16] Section 20.121(3)(c), F.S., designates the director (commissioner) as the agency head for purposes of final agency action under ch. 120, F.S.

The OFR has an emergency suspension and restriction authority pursuant to s. 120.60(6), F.S., which provides that:

> (6) If the agency *finds that* immediate serious danger to the public health, safety, or welfare requires emergency suspension, restriction, or limitation of a license, the agency may take such action by any procedure that is fair under the circumstances if:
>
> (a) The procedure provides at least the same procedural protection as is given by other statutes, the State Constitution, or the United States Constitution;
>
> (b) The agency takes only that action necessary to protect the public interest under the emergency procedure; and
>
> (c) The agency states in writing at the time of, or prior to, its action the *specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances.* The agency's findings of immediate danger, necessity, and procedural fairness are judicially reviewable. Summary suspension, restriction, or limitation may be ordered, but a suspension or revocation proceeding pursuant to ss. 120.569 and 120.57, F.S., shall also be promptly instituted and acted upon (emphasis added).

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[12] In 2008, the Florida Legislature adopted a number of BSA/AML regulations in the Act and provided that it was a violation of state law, subject to administrative sanctions by the OFR, to fail to comply with federal BSA/AML regulations. Ch. 2008-177, Laws of Florida.

[13] Section 560.1401, F.S.

[14] A third degree felony is punishable by up to five years imprisonment and a $5,000 fine. Sections 775.082 and 775.083, F.S.

[15] These DPP requirements are found at ss. 560.403, 560.404, and 560.405, F.S.

[16] Section 560.114(2), F.S.

A licensee who is the subject of an emergency order may request an expedited administrative hearing with the Division of Administrative Hearings to challenge the factual basis of an emergency suspension order (ESO), or may seek to enjoin the ESO and immediately appeal to a district court of appeal to determine the limited issue of whether the ESO complies with the statutory and due process requirements of the Administrative Procedures Act.[17]

The case law surrounding ESOs has repeatedly held that general conclusory predictions of harm are not sufficient to support the issuance of an emergency suspension order; rather, the agency's stated reasons "must be factually explicit and persuasive concerning the existence of a genuine emergency."[18] The courts have found to sustain an ESO, it must: "contain *factual allegations* which demonstrate that (i) the complained of conduct was likely to continue; (ii) the order was necessary to stop the emergency; and (iii) the order was sufficiently narrowly tailored to be fair."[19]

The *Bio-Med* court further held that although proof of a specific statutory violation (such as being criminally charged with a felony) may satisfy an agency's burden in an ordinary non-emergency administrative proceeding, "an allegation of such a violation does not, by itself, satisfy the requirements of s. 120.60(6)" and the specific regulatory statute authorizing emergency action.[20]

Effect of the Bill

Prohibited Acts – s. 560.111, F.S.
The bill revises the intent standard for failing to comply with the DPP requirements, which is currently a third-degree felony if such violation is "willful." The bill provides that any licensed check casher who knowingly *and* willfully violates the check casher electronic log and database reporting requirements of s. 560.310(2)(d), F.S., commits a felony of the third degree. As noted above, the electronic log and database reporting requirements of s. 560.310(2)(d), F.S., apply to checks exceeding $1,000 that are cashed by licensees.

BSA/Chapter X citation updates
Sections 2, 3, 5, 6, and 7 of the bill conforms the Act's cross-references to federal BSA/AML regulations which were moved and renumbered by FinCEN on March 1, 2011.

Summary suspension powers – s. 560.114(2), F.S.
The bill gives the OFR an additional ground to summarily suspend a MSB's license pursuant to s. 120.60(6), F.S., if the OFR "finds that licensee poses an immediate, serious danger to the public health, safety, and welfare." Specifically, the bill allows the OFR to summarily suspend a MSB's license when a natural person who is required to be listed on the license application is criminally charged, or arrested for one of the crimes listed in:

- s. 560.114(1)(o), F.S. – A felony or equivalent which involves fraud, moral turpitude, or dishonest dealing;
- s. 560.114(1)(p), F.S. – A crime under 18 U.S.C. 1956 [laundering of monetary instruments] or 31 U.S.C. s. 5324 [structuring transactions to evade reporting requirement]; or
- s. 560.114(1)(q), F.S. – Misappropriation, conversion, or unlawful withholding of moneys belonging to others.

The bill requires the OFR to seek the issuance of a final order for the summary suspension of the licensee at a proceeding conducted by the commissioner of the OFR, or his or her designee, who shall issue the final order.

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[17] *Robin Hood Group, Inc. v. Fla. Office of Ins. Regulation*, 885, So.2d 393, 396 (Fla. 4th DCA 2004) and *Bertany Ass'n for Travel and Leisure, Inc. v. Fla. Dep't of Fin. Servs.*, 877 So.2d 854, 855 (Fla. 1st DCA 2004).
[18] *Fla. Home Builders v. Div. of Labor*, 355 So.2d 1245, 1246 (Fla. 1st DCA 1978).
[19] *Bio-Med Plus, Inc., v. Fla. Dep't of Health*, 915 So.2d 669 at 672 (Fla. 1st DCA 2005).
[20] *Id.* at 673.

Unauthorized deferred presentment – s. 560.125, F.S.

Current Situation

Often, out-of-state payday lenders evade applicable rate caps and state licensing requirements by operating through the Internet, which present challenges for regulatory detection and enforcement. Persons who provide deferred presentment transactions in Florida without the appropriate Part II or Part III license and declaration of intent, as required by the Act, typically operate through the Internet and thus evade other regulatory requirements that were intended to provide consumer protections (such as the Act's prohibitions on DPP rollovers, excessive fees, and extensions of multiple, simultaneous loans, or interest rate in excess of the caps set forth in the Florida Consumer Finance Act, ch. 516, F.S.[21]). In addition, unlicensed internet payday lenders may also seek subterfuge by operating offshore, affiliating with Native American tribes in order to claim tribal immunity, or incorporating in states with no usury caps with the belief that only the home state law applies despite reaching other states' residents through the Internet.

A number of states have recently increased enforcement efforts and/or legislative measures towards payday lending abuses, such as enacting rate caps, reaching affiliates (banks and debt collectors) who participate in the making or servicing of unauthorized loans,[22] and exercising state jurisdiction to out-of-state lenders who make usurious loans.[23] In addition, state and federal courts have ruled in favor of state jurisdiction over online payday lenders.[24]

Section 560.125(1), F.S., provides that a person may not engage in the business of a money services business or deferred presentment provider in this state unless the person is licensed or exempted from the licensure under the Act.

Effect of the Bill on Unauthorized Deferred Presentment Transactions

The bill amends s. 560.125(1), F.S., to add that a deferred presentment transaction conducted by a person who is not authorized by the OFR under the Act as a DPP is void, and that the unauthorized person has no right to collect, receive, or retain any principal, interest, or charges relating to such transactions. This would mean that the unauthorized lender does not have the legal authority to collect on the loan via garnishment, court action, or otherwise.

B. SECTION DIRECTORY:

Section 1: Amends s. 560.111, F.S., relating to definitions.

Section 2: Amends s. 560.114, F.S., relating to disciplinary actions; penalties.

Section 3: Amends s. 560.1235, F.S., relating to anti-money laundering requirements.

Section 4: Amends s. 560.125, F.S., relating to unlicensed activity; penalties.

Section 5: Amends s. 560.1401, F.S., relating to licensing standards.

Section 6: Amends s. 560.141, F.S., relating to license application.

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[21] The Florida Consumer Finance Act (ch. 516, F.S.), is also administered by the OFR and sets forth allowable interest rates for small unsecured loans. That act also provides a similar provision in that "[a] loan for which a greater rate of interest or charge than is allowed by this chapter has been contracted for or received, wherever made, is not enforceable in this state." (s. 516.02(2)(c), F.S.).

[22] New York Department of Financial Services press release on payday loan investigation (August 6, 2013), at http://www.dfs.ny.gov/about/press2013/pr1308061.htm (last accessed March 5, 2014).

[23] *See* Center for Responsible Lending, *Issue Brief: Effective State and Federal Payday Lending Enforcement: Paving the Way for Broader, Stronger Protections* (October 4, 2013), on file with the Insurance & Banking Subcommittee staff.

[24] Consumer Federation of America, *States Have Jurisdiction over Online Payday Lenders* (May 2010), on file with the Insurance & Banking Subcommittee staff.

Section 7: Amends s. 560.309, F.S., relating to conduct of business.

Section 8: Provides 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 bill has an insignificant, yet indeterminate fiscal impact on state government expenditures due to the creation of a new third degree felony offense for persons who knowingly and willfully violate information reporting requirements of check cashing transactions. On March 25, 2014, the Criminal Justice Impact Conference met and determined that the bill will have an insignificant prison bed impact on the Department of Corrections.[25]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive impact on the private sector due to the bill's prohibition on unlicensed deferred presentment transactions. This could be beneficial to consumers and may provide competitive equality for licensed MSBs who comply with the Part IV/DPP requirements of the Act.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

[25] 2014 Criminal Justice Impact Conference Review (dated March 25, 2014), on file with the Regulatory Affairs Committee staff.

None provided in the bill. However, the bill's updating of the federal regulations cited in the Act will also require updating of the same citations currently in Chapter 69V-560, Fla. Admin. Code.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 11, 2014, the Insurance & Banking Subcommittee considered and adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment retained the provisions of the bill, and made the following changes:

- Provided a title change to the bill;
- Clarified that failure to provide certain information relating to a check cashing transaction is a felony;
- Clarified the OFR's emergency suspension powers;
- Corrected several cross-references to federal Bank Secrecy Act regulations in the Act; and
- Clarified the regulatory approval required of deferred presentment providers.

This analysis is drafted to the committee substitute as passed by the Insurance & Banking Subcommittee.

A bill to be entitled

An act relating to money services businesses; amending s. 560.111, F.S.; prohibiting the knowing and willful failure of a licensee to provide certain information relating to a check cashing transaction; providing criminal penalties; reenacting and amending s. 560.114, F.S.; updating cross-references; authorizing the Office of Financial Regulation to summarily suspend a license if criminal charges are filed against certain persons or such persons are arrested for certain offenses; amending s. 560.1235, F.S.; updating cross-references; amending s. 560.125, F.S.; providing that a deferred presentment transaction conducted by an unauthorized person is void; amending ss. 560.1401 and 560.141, F.S.; updating cross-references; amending s. 560.309, F.S.; updating a cross-reference; providing an effective date.

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

Section 1. Subsection (6) is added to section 560.111, Florida Statutes, to read:

560.111 Prohibited acts.—

(6) A person who knowingly and willfully violates s. 560.310(2)(d) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

Section 2. Paragraphs (e) and (y) of subsection (1) and subsection (2) of section 560.114, Florida Statutes, are amended, and paragraph (h) of subsection (1) of that section is reenacted, to read:

560.114 Disciplinary actions; penalties.—

(1) The following actions by a money services business, authorized vendor, or affiliated party constitute grounds for the issuance of a cease and desist order; the issuance of a removal order; the denial, suspension, or revocation of a license; or taking any other action within the authority of the office pursuant to this chapter:

(e) Failure to maintain, preserve, keep available for examination, and produce all books, accounts, files, or other documents required by this chapter or related rules or orders, by 31 C.F.R. ss. 1010.306, 1010.311, 1010.312, 1010.340, 1010.410, 1010.415, 1022.210, 1022.320, 1022.380, and 1022.410 ~~103.20, 103.22, 103.23, 103.27, 103.28, 103.29, 103.33, 103.37, 103.41, and 103.125~~, or by an ~~any~~ agreement entered into with the office.

(h) Engaging in an act prohibited under s. 560.111.

(y) Violations of 31 C.F.R. ss. 1010.306, 1010.311, 1010.312, 1010.340, 1010.410, 1010.415, 1022.210, 1022.320, 1022.380, and 1022.410 ~~103.20, 103.22, 103.23, 103.27, 103.28, 103.29, 103.33, 103.37, 103.41, and 103.125~~, and United States Treasury Interpretive Release 2004-1.

(2) Pursuant to s. 120.60(6), the office may summarily

suspend the license of a money services business if the office finds that a licensee poses an immediate, serious danger to the public health, safety, and welfare. A proceeding in which the office seeks the issuance of a final order for the summary suspension of a licensee shall be conducted by the Commissioner of Financial Regulation, or his or her designee, who shall issue such order. The following acts are deemed to constitute an immediate and serious danger to the public health, safety, and welfare, and the office may immediately suspend the license of a ~~any~~ money services business if ~~the money services business fails to~~:

(a) The money services business fails to provide to the office, upon written request, any of the records required by s. 560.123, s. 560.1235, s. 560.211, or s. 560.310 or any rule adopted under those sections. The suspension may be rescinded if the licensee submits the requested records to the office.

(b) The money services business fails to maintain a federally insured depository account as required by s. 560.309.

(c) A natural person required to be listed on the license application for a money service business pursuant to s. 560.141(1)(a)3. is criminally charged with or arrested for a crime described in paragraph (1)(o), paragraph (1)(p), or paragraph (1)(q).

~~For purposes of s. 120.60(6), failure to perform any of the acts specified in this subsection constitutes immediate and serious~~

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

~~danger to the public health, safety, and welfare.~~

Section 3. Section 560.1235, Florida Statutes, is amended to read:

560.1235 Anti-money laundering requirements.—

(1) A licensee and authorized vendor must comply with all state and federal laws and rules relating to the detection and prevention of money laundering, including, as applicable, s. 560.123, and 31 C.F.R. ss. 1010.306, 1010.311, 1010.312, 1010.313, 1010.340, 1010.410, 1010.415, 1022.320, 1022.380, and 1022.410 ~~103.20, 103.22, 103.23, 103.27, 103.28, 103.29, 103.33, 103.37, and 103.41~~.

(2) A licensee and authorized vendor must maintain an anti-money laundering program in accordance with 31 C.F.R. s. 1022.210 ~~103.125~~. The program must be reviewed and updated as necessary to ensure that the program continues to be effective in detecting and deterring money laundering activities.

(3) A licensee must comply with United States Treasury Interpretive Release 2004-1.

Section 4. Subsection (1) of section 560.125, Florida Statutes, is amended to read:

560.125 Unlicensed activity; penalties.—

(1) A person may not engage in the business of a money services business or deferred presentment provider in this state unless the person is licensed or exempted from licensure under this chapter. A deferred presentment transaction conducted by a person not authorized to conduct such a transaction under this

chapter is void, and the unauthorized person has no right to collect, receive, or retain any principal, interest, or charges relating to such transaction.

Section 5. Subsections (3) and (4) of section 560.1401, Florida Statutes, are amended to read:

560.1401 Licensing standards.—To qualify for licensure as a money services business under this chapter, an applicant must:

(3) Be registered as a money services business with the Financial Crimes Enforcement Network as required by 31 C.F.R. s. 1022.380 ~~103.41~~, if applicable.

(4) Have an anti-money laundering program in place which meets the requirements of 31 C.F.R. s. 1022.210 ~~103.125~~.

Section 6. Paragraph (d) of 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:

(d) A copy of the applicant's written anti-money laundering program required under 31 C.F.R. s. 1022.210 ~~103.125~~.

Section 7. Subsection (5) of section 560.309, Florida Statutes, is amended to read:

560.309 Conduct of business.—

(5) A licensee must report all suspicious activity to the office in accordance with the criteria ~~set forth~~ in 31 C.F.R. s. 1022.320 ~~103.20~~. In lieu of filing such reports, the commission may prescribe by rule that the licensee may file such reports

with an appropriate regulator.

Section 8. This act shall take effect July 1, 2014.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 785 Workers' Compensation
SPONSOR(S): Albritton
TIED BILLS: **IDEN./SIM. BILLS:** SB 952

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N	Reilly	Cooper
2) Government Operations Appropriations Subcommittee	13 Y, 0 N	Keith	Topp
3) Regulatory Affairs Committee		Reilly	Hamon K.W.H.

SUMMARY ANALYSIS

Workers' compensation premiums are based on the employer's payroll, the type of work performed by its employees (roofers, clerical, etc., each with a classification code to which a specific premium rate applies), and the employer's loss experience (as reflected in an experience modification factor). Generally, premiums are paid up front to provide coverage for the policy period. At the end of the policy, the insurer conducts an audit to ensure that the appropriate premium has been paid. If the actual payroll is less than that initially estimated, the employer will receive a refund. If the actual payroll exceeds the initial estimation, the employer must pay an additional amount to the insurer.

Retrospective rating plans are utilized by large, sophisticated employers to decrease workers' compensation premiums. Briefly, the final premium paid by the employer is based on the employer's actual loss experience during the policy period, plus insurer expenses and an insurance charge. If the employer controls the amount of claims during the policy period, it will pay a lower premium. Retrospective rating plans allow for negotiations between an insurer and employer on various factors, e.g., negotiations on what maximum and minimum premium factors to use. These plans provide for a minimum premium and a maximum premium.

The bill permits a retrospective rating plan to contain a provision for negotiation of a workers' compensation premium between an employer and insurer if the employer has: (1) exposure in more than one state; (2) an estimated annual standard workers' compensation premium in Florida of at least $175,000; and (3) an estimated annual countrywide standard workers' compensation premium of at least $1 million.

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

The bill is effective July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Workers' Compensation Premiums
Workers' compensation premiums are based on the employer's payroll, the type of work performed by its employees (roofers, clerical, etc., each with a classification code to which a specific premium rate applies), and the employer's loss experience (as reflected in an experience modification factor). Generally, premiums are paid up front to provide coverage for the policy period. At the end of the policy, the insurer conducts an audit to ensure that the appropriate premium has been paid. If the actual payroll is less than that initially estimated, the employer will receive a refund. If the actual payroll exceeds the initial estimation, the employer must pay an additional amount to the insurer.

Retrospective Rating Plans
Retrospective rating plans are utilized by large, sophisticated employers to decrease workers' compensation premiums. Briefly, the final premium paid by the employer is based on actual loss experience during the policy period, plus insurer expenses and an insurance charge. If the employer controls the amount of claims during the policy period, it will pay a lower premium. Before there were large deductible programs in workers' compensation, retrospective rating plans were the dominant rating plan for large employers.[1]

The Office of Insurance Regulation (OIR) relates that retrospective rating has been a component of workers' compensation for over 50 years in Florida and nationwide. Retrospective rating plans allow for negotiations between an insurer and employer on various factors, e.g., negotiations on what maximum and minimum premium factors to use. Limitations in the National Council on Compensation Insurance's (NCCI) "Retrospective Rating Plan Manual for Workers' Compensation and Employers Liability Insurance," which has been approved in Florida, are designed to ensure that the calculations always result in an actuarially sound premium.[2]

The bill permits retrospective rating plans to contain a provision for negotiation of a workers' compensation premium between an employer and insurer if the employer has: (1) exposure in more than one state; (2) an estimated annual standard workers' compensation premium in Florida of at least $175,000; and (3) an estimated annual countrywide standard workers' compensation premium of at least $1 million.

B. SECTION DIRECTORY:

Section 1. Amends s. 627.072, F.S., relating to the making and use of workers' compensation rates.
Section 2. Amends s. 627.281, F.S., relating to appeals from workers' compensation and employer's liability rate filings.
Section 3. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

[1]See "2013 Workers' Compensation Annual Report" (December 31, 2013) by the Florida Office of Insurance Regulation. Available at: http://www.floir.com/Office/DataReports.aspx (Last accessed: March 24, 2014).
[2] Correspondence from OIR dated February 27, 2014, on file with the Insurance & Banking Subcommittee. OIR informs that in the early 1990s, NCCI filed the Large Risk Alternative Rating Option (LRARO) in Florida, which was disapproved by the Department of Insurance (the predecessor of the OIR). LRARO is a modification of the retrospective rating plan that removes the limitations on rating factors. The concern with such plans is that premiums may not be sufficient to cover expected losses and expenses. LRARO plans are available in many other states.

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:

To the extent that the bill allows large employers and insurers to negotiate workers' compensation insurance premiums beyond the negotiations already allowed in current retrospective rating plans, the premiums paid by large employers under such plans may decrease. However, in certain circumstances, negotiations could lead to a premium that is not sufficient to cover expected losses and expenses.

D. FISCAL COMMENTS:

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

According to the Department of Financial Services, there is the potential for workers' compensation premium savings generated by a retrospective rating plan. However, there is also potential for additional premiums generated by a retrospective rating plan. Ultimately, any premium paid by an employer under a retrospective rating plan would depend on how the employer's losses develop over a period of time. For instance, the employer's premium would be less if losses show to be less than expected; correspondingly, the employer's premium would be more if losses show to be more than expected. Aggregately, the rating plans should be revenue neutral.[3]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

[3] Email correspondence with the Department of Financial Services (March 12, 2014) on file with the Insurance & Banking Subcommittee.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to workers' compensation; amending s. 627.072, F.S.; authorizing employers to negotiate the retrospectively rated premium with insurers under certain conditions; amending s. 627.281, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Subsections (2), (3), and (4) of section 627.072, Florida Statutes, are renumbered as subsections (3), (4), and (5), respectively, and subsection (2) is added to that section, to read:

627.072 Making and use of rates.—

(2) A retrospective rating plan may contain a provision that allows for negotiation of a premium between the employer and the insurer for employers having exposure in more than one state and an estimated annual standard premium in this state of $175,000 and an estimated annual countrywide standard premium of $1 million or more for workers' compensation.

Section 2. Subsection (2) of section 627.281, Florida Statutes, is amended to read:

627.281 Appeal from rating organization; workers' compensation and employer's liability insurance filings.—

(2) If such appeal is based upon the failure of the rating

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

organization to make a filing on behalf of such member or subscriber which is based on a system of expense provisions which differs, in accordance with the right granted in s. 627.072(3) ~~627.072(2)~~, from the system of expense provisions included in a filing made by the rating organization, the office shall, if it grants the appeal, order the rating organization to make the requested filing for use by the appellant. In deciding such appeal, the office shall apply the applicable standards set forth in ss. 627.062 and 627.072.

Section 3. This act shall take effect July 1, 2014.

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

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 911 City of Panama City, Bay County
SPONSOR(S): Local & Federal Affairs Committee; Patronis
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	16 Y, 1 N, As CS	Flegiel	Rojas
2) Regulatory Affairs Committee		Butler BSB	Hamon K.W.H.

SUMMARY ANALYSIS

Panama City allows the sale, possession and consumption of alcoholic beverages (beverages) during designated special events held in its downtown centers. Properly licensed temporary vendors may sell beverages in the event areas. However, downtown restaurants are prohibited from allowing customers to carry beverages off-premises into the event areas, despite the presence of beverage vendors and the City's allowance of beverage possession and consumption.

CS/HB 911 defines two areas where the City typically holds special events during which the sale, possession and consumption of beverages is allowed. The bill requires the Department of Business and Professional Regulation (DBPR) to allow restaurants and other licensees in the event areas to let patrons exit the premises with open containers. The bill requires DBPR to grant allowances up to 15 times per year in each defined area.

This bill will take effect upon becoming law.

According to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.5(b) may apply to this bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Throughout the year, the City of Panama City holds a number of festivals and special events in its urban cores. For example, the City's Downtown Improvement Board (DIB) hosts "Friday Fest," a monthly downtown street festival with live music and vendors set up along downtown streets adjacent to local shops and restaurants.

During these special events, the City allows individuals to possess, sell and consume open alcoholic beverages on public rights-of-way, provided they stay within the event area.[1] Under state law, non-profit civic organizations (vendors) are allowed to sell beverages in the event area,[2] but restaurants are prohibited by their licenses from selling beverages for customers to consume off-premises.[3] Thus, if an individual desires to walk around the festival with a beverage, they must purchase it from a vendor.

City Ordinances

Panama City Ordinances prohibit the possession, consumption and sale of any open container containing an alcoholic beverage in or on any public way within the municipal limits.[4] However, the city council may provide exceptions to this rule during designated times and in designated areas.[5]

State Beverage Law

The Division of Alcoholic Beverages and Tobacco (ABT) of Department of Business and Professional Regulation (DBPR) is responsible for enforcement of the state Beverage Law. DBPR may issue one alcoholic beverage license for every 7,500 residents in a county.[6]

One exception to this rule allows non-profit civic organizations to sell alcoholic beverages for consumption on-premises for a period not to exceed 3 days by obtaining an ABT 6003 permit.[7] Each non-profit civic organization may receive only three such permits per calendar year. "On-premises" in this case may include a park or public street where an event is being held. In Panama City, DIB obtains this permit to allow the sale of alcoholic beverages by non-profit civic organizations.

A second exception to this rule is for restaurants, which may obtain a beverage license provided certain conditions are met.[8] However, restaurants under this exception may not operate as a "package store," meaning they cannot sell alcohol for consumption off-premises. This limitation prevents restaurants from allowing customers from leaving the premises with open containers, even when the possession of said containers is allowed under local law.

[1] Section 3-3(c), Panama City Municipal Code.
[2] Section 561.422, F.S.
[3] Section 561.20(2)(a)(4), F.S.
[4] Section 3-3(b), Panama City Municipal Code.
[5] Section 3-3(c), Panama City Municipal Code.
[6] Section 561.20(1), F.S.
[7] Section 561.422, F.S.
[8] Section 561.20(2)(a)(4), F.S.

Officials in Panama City know of at least one instance of DBPR citing a restaurant for allowing patrons to leave with open containers while an event allowing open containers was on going.[9]

Effect of Proposed Changes

The bill creates two entertainment districts in Panama City: the Historic St. Andrews Entertainment District and the Historic Downtown Entertainment District. The St. Andrews Entertainment District is centered around Bell Avenue and comprises approximately 10 city blocks located along St. Andrews Bay and adjacent to St. Andrews Marina. The Downtown Entertainment District is centered around Harrison Avenue and is comprised of over 30 city blocks. The Downtown District is bounded by 6th Avenue to the North, Massalina Bayou to the East and St. Andrews Bay to the South and West.

The bill requires DBPR to allow restaurants and other licensees located within the entertainment districts to let patrons exit the premises with open containers. DBPR may only grant the allowance for the duration of special events held within the entertainment districts. Only a holder of a valid alcoholic beverages license may qualify for the allowance. No special application or permit is required to receive the allowance; it will be conferred automatically upon the holding of a special event. The allowance applies only to special events when the city permits the open consumption of beverages. Once DBPR has granted allowances for 15 events in an entertainment district in a given year, it may not grant any more allowances for that district until the beginning of the next year.

The bill does not change the current operation of s. 561.422, F.S., or increase the number of temporary alcoholic beverage permits beyond 3 that a non-profit civic organization may receive in a calendar year.

B. SECTION DIRECTORY:

Section 1 Creates and defines the boundaries of the Historic St. Andrews Entertainment District and the Historic Downtown Entertainment District.

Section 2 Requires DBPR to grant a special allowance to beverage license holders within the entertainment districts to allow patrons to exit the premises with open containers.

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

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? December 27, 2013

WHERE? *The News Herald*, a daily newspaper published at Panama City, in Bay County, FL.

B. REFERENDUM(S) REQUIRED? Yes [] No [X]

IF YES, WHEN? N/A

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

III. COMMENTS

[9] Per Nevin Zimmerman, Panama City Attorney.

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None. [10]

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 6, 2014, the Local & Federal Affairs Committee adopted one amendment, striking line 70 and inserting language, and reported the bill favorably as a committee substitute. The amendment clarifies what type of beverages patrons may carry off the premises.

This analysis has been updated to reflect the amendment.

[10] Department of Business and Professional Regulation Legislative Bill Analysis for HB 911. Mar. 3, 2014.

Rep. Patronis
HB 911

Halifax Media Group

PUBLISHERS OF THE NEWS HERALD
Panama City, Bay County, Florida
Published Daily

State of Florida
County of Bay

Before the undersigned authority appeared Angella Lewis, who on oath says that she is Legal Advertising Representative of The News Herald, a daily newspaper published at Panama City, in Bay County, Florida; that the attached copy of advertisement, being a Legal Advertisement # **96991** in the matter of **PUBLIC NOTICE - City of Panama City** in the Bay County Court, was published in said newspaper in the issue of **December 27, 2013**

Affiant further says that .The News Herald is a direct successor of the Panama City News and that this publication, together with its direct predecessor, has been continuously published in said Bay County, Florida, each day (except that the predecessor, Panama City News, was not published on Sundays), and that this publication together with its said predecessor, has been entered as periodicals matter at the post office in Panama City, in said Bay County, Florida, for a period of 1 year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

PUBLIC NOTICE

NOTICE OF INTENT
TO SEEK
LEGISLATION

TO WHOM IT MAY CONCERN: Notice is hereby given of intent to apply to the 2014 Legislature and any Special or Extended Sessions, for passage of an act relating to Panama City, in regards to entertainment districts for special events, authorizing a limited special exemption from the requirements of Chapter 561 Florida Statutes, and providing for an effective date.

CITY COMMISSION OF
PANAMA CITY,
FLORIDA
December 27, 2013

Angella Lewis

State of Florida
County of Bay
Sworn and subscribed before me this 27th day of December , A.D., 2013, by Angella Lewis, Legal Advertising Representative of The News Herald, who is personally known to me or has produced N/A as identification.

Marie Forrest

Notary Public, State of Florida at Large

Notary Public State of Florida
Marie Forrest
My Commission EE089458
Expires 05/05/2015

HOUSE OF REPRESENTATIVES

2014 LOCAL BILL CERTIFICATION FORM

BILL #: HB 911

SPONSOR(S): Rep. Jimmy Patronis

RELATING TO: Panama City

[Indicate Area Affected (City, County, or Special District) and Subject]

NAME OF DELEGATION: Bay County Delegation

CONTACT PERSON: Patti Butchikas

PHONE NO.: (850) 914-6300/717-5006 **E-Mail:** patti.butchikas@myfloridahouse.gov

I. *House local bill policy requires that three things occur before a committee or subcommittee of the House considers a local bill: (1) The members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) the legislative delegation must hold a public hearing in the area affected for the purpose of considering the local bill issue(s); and (3) the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the rules of the delegation, at the public hearing or at a subsequent delegation meeting. Please submit this completed, original form to the Local & Federal Affairs Committee as soon as possible after a bill is filed.*

(1) Does the delegation certify that the purpose of the bill cannot be accomplished by ordinance of a local governing body without the legal need for a referendum?

YES [X] **NO** [ ]

(2) Did the delegation conduct a public hearing on the subject of the bill?

YES [X] **NO** [ ]

Date hearing held: December 5, 2013

Location: Panama City, County Commission Meeting Room

(3) Was this bill formally approved by a majority of the delegation members?

YES [X] **NO** [ ]

II. *Article III, Section 10 of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.*

Has this constitutional notice requirement been met?

Notice published: YES [X] NO [ ] **DATE** December 27, 2013

Where? News Herald **County** Bay

Referendum in lieu of publication: YES [ ] NO [X]

Date of Referendum _____

III. *Article VII, Section 9(b) of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.*

(1) Does the bill create a special district and authorize the district to impose an ad valorem tax?

YES [ ] NO [X] NOT APPLICABLE [ ]

(2) Does this bill change the authorized ad valorem millage rate for an existing special district?

YES [ ] NO [X] NOT APPLICABLE [ ]

If the answer to question (1) or (2) is YES, does the bill require voter approval of the ad valorem tax provision(s)?

YES [ ] NO [ ]

Note: House policy requires that an Economic Impact Statement for local bills be prepared at the local level and be submitted to the Local & Federal Affairs Committee.

X _____ X 2/12/14
Delegation Chair (Original Signature) Date

X JIMMY PATRONIS
Printed Name of Delegation Chair

HOUSE OF REPRESENTATIVES

2014 ECONOMIC IMPACT STATEMENT FORM

Read all instructions carefully.
House local bill policy requires that no local bill will be considered by a committee or a subcommittee without an Economic Impact Statement. This form must be prepared at the LOCAL LEVEL by an individual who is qualified to establish fiscal data and impacts, and has personal knowledge of the information given (for example, a chief financial officer of a particular local government). Please submit this completed, original form to the Local & Federal Affairs Committee as soon as possible after a bill is filed. Additional pages may be attached as necessary.

BILL #: 45728 HB 911

SPONSOR(S): Representative Jimmy Patronis

RELATING TO: Panama City
[Indicate Area Affected (City, County or Special District) and Subject]

I. REVENUES:

These figures are new revenues that would not exist but for the passage of the bill. The term "revenue" contemplates, but is not limited to, taxes, fees and special assessments. For example, license plate fees may be a revenue source. If the bill will add or remove property or individuals from the tax base, include this information as well.

	FY 14-15	FY 15-16
Revenue decrease due to bill:	$ 0	$ 0
Revenue increase due to bill:	$ 0	$ 0

II. COST:

Include all costs, both direct and indirect, including start-up costs. If the bill repeals the existence of a certain entity, state the related costs, such as satisfying liabilities and distributing assets.

Expenditures for Implementation, Administration and Enforcement:

FY14-15	FY 15-16
$ 0	$ 0

Please include explanations and calculations regarding how each dollar figure was determined in reaching total cost.

This special act is "revenue neutral". No new revenues or costs are anticipated.

The act will enable Panama City to have festival events and allow restaurants in the festival area to compete with street beer vendors.

III. FUNDING SOURCE(S):

State the specific source from which funding will be received, for example, license plate fees, state funds, borrowed funds or special assessments.

If certain funding changes are anticipated to occur beyond the following two fiscal years, explain the change and at what rate taxes, fees or assessments will be collected in those years.

	FY 14-15	FY 15-16
Local:	$ 0	$ 0
State:	$ 0	$ 0
Federal:	$ 0	$ 0

III. ECONOMIC IMPACT:

Potential Advantages:

Include all possible outcomes linked to the bill, such as increased efficiencies, and positive or negative changes to tax revenue. If an act is being repealed or an entity dissolved, include the increased or decreased efficiencies caused thereby.

Include specific figures for anticipated job growth.

1. Advantages to Individuals: Individuals can purchase an alcoholic beverage in a restaurant and them go out to the street festival.
2. Advantages to Businesses: Local restaurants within the entertainment district will be able to compete with street vendors.
3. Advantages to Government: Local police or state beverage agents will not have to determine where beer was purchased - if in a restaurant or from a vendor.

Potential Disadvantages:

Include all possible outcomes linked to the bill, such as inefficiencies, shortages, or market changes anticipated.

Include reduced business opportunities, such as reduced access to capital or training.

State any decreases in tax revenue as a result of the bill.

1. Disadvantages to Individuals: No disadvantages.

2. Disadvantages to Businesses: No disadvantages.

3. Disadvantages to Government: No disadvantages.

IV. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

Include all changes for market participants, such as suppliers, employers, retailers and laborers. If the answer is "None," explain the reasons why. Also, state whether the bill may require a governmental entity to reduce the services it provides.

1. Impact on Competition:

There will be more competition in that restaurants can compete with street vendors selling alcohol during festivals.

2. Impact on the Open Market for Employment:

None. The street vendors and restaurants are presently open during festival events.

V. SPECIFIC DATA USED IN REACHING ESTIMATES:

Include the type(s) and source(s) of data used, percentages, dollar figures, all assumptions made, history of the industry/issue affected by the bill, and any audits.

Information commonly known and discussed at City Commission meetings

PREPARED BY: _____
[Must be signed by Preparer]

Print preparer's name: Nevin J. Zimmerman

2/10/14
Date

TITLE (such as Executive Director, Actuary, Chief Accountant, or Budget Director):

City Attorney, Panama City

REPRESENTING: City of Panama City

PHONE: (850) 215-6604

E-MAIL ADDRESS: nzimmerman@burkeblue.com

A bill to be entitled

An act relating to the City of Panama City, Bay County; designating boundaries of entertainment districts within the downtown area of the city; authorizing the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to make special allowances for existing bona fide licensees operating within such entertainment districts for the sale of certain alcoholic beverages for consumption off the premises at outdoor events on public rights-of-way and public park property; requiring that such events be declared by the city commission; providing that special allowances are in addition to certain other authorized temporary permits; requiring the bona fide licensees to comply with all other statutory requirements; providing an exemption from general law; providing an effective date.

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

Section 1. For purposes of this act, there are created special zones within the downtown area of the City of Panama City known as "entertainment districts." The areas are described as:

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

(1) The Historic St. Andrews Entertainment District is that part of Panama City described as all those parcels lying within and adjacent to the following:

Begin at the intersection of 13th Street and Bayview Avenue. Thence North along said Bayview Avenue Centerline to the intersection of Bayview Avenue and 15th Street. Thence East along said 15th Street to the intersection of 15th Street and Chestnut Avenue. Thence South along Chestnut Avenue to the Shoreline of St. Andrew's Bay. Thence westerly and northerly along said shoreline to the St. Andrews Marina, thence along said shoreline of St. Andrews Marina to the St. Andrews Bay shoreline. Thence northerly and westerly along said shoreline to the extended centerline of 13th Street, thence easterly along said 13th Street to the intersection with Bayview Avenue, also being the point of beginning.

(2) The Historic Downtown Entertainment District is that part of Panama City described as all those parcels lying within and adjacent to the following:

Begin at the intersection of Beach Drive and 6th Street, thence east along 6th Street to the intersection of Allen Avenue. Thence south along the

extended centerline of Allen Avenue to the westerly shoreline of Massalina Bayou. Thence southerly and westerly along said shoreline to the St. Andrews Bay shoreline. Thence northerly and westerly along said shoreline and existing improvements to the Johnson Bayou channel. Thence northerly along said channel of Johnson Bayou to Beach Drive. Thence easterly and southerly along Beach Drive to the intersection of 6th Street, also being the point of beginning.

Section 2. (1) Notwithstanding chapter 561, Florida Statutes, and any other provision of law, the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation shall make, for bona fide licensees operating validly licensed premises within the areas described as entertainment districts, and upon declaration of a special event and valid street closure by the City Commission of Panama City, a special allowance to temporarily sell alcoholic beverages, sold for consumption on the premises, in open containers to be removed from the premises by patrons at outdoor events on public rights-of-way and public park property within the entertainment districts of Panama City. Such special allowance may be authorized for no more than 15 special events per calendar year for each one of the entertainment districts, and each allowance is valid only for the duration of the special event declared by the city commission.

(2) The special allowances authorized by this act are in addition to any other temporary permits authorized pursuant to chapter 561, Florida Statutes.

(3) The bona fide licensees shall comply with all other requirements of chapter 561, Florida Statutes, during the special allowances authorized by this act.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4017 Cable and Video Services
SPONSOR(S): Rodrigues, R.
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	14 Y, 0 N	Whittier	Keating
2) Regulatory Affairs Committee		Whittier	Hamon

SUMMARY ANALYSIS

In 2007, the Legislature created s. 610.119, F.S., which required the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) to submit reports on the status of competition in the cable and video service industry by December 1, 2009, and December 1, 2014, to the President of the Senate, the Speaker of the House of Representatives, and the majority and minority leaders of the Senate and House of Representatives. The report was to include, by each municipality and county, the number of cable and video service providers, the number of cable and video subscribers served, the number of areas served by fewer than two cable or video service providers, the trend in cable and video service prices, and the identification of any patterns of service as they impacted demographic and income groups.

In October 2009, OPPAGA submitted the first report, which noted that two barriers prevented a comprehensive assessment of the effect of cable or video service provider franchises on competition for cable and video services: provider reluctance to share data and insufficient information provided in statewide franchise documents.

HB 4017 repeals the requirement that OPPAGA submit reports on the status of competition in the cable and video industry. The bill effectively eliminates the requirement that OPPAGA complete and submit the report otherwise due this year.

There appears to be no fiscal impact on state or local governments.

The bill takes effect July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

In 2007, the Legislature designated the Department of State as the authority that issues statewide cable and video franchises. Local governmental authority to negotiate cable service franchises was removed. At that time, s. 610.119, F.S., was created to require the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) to submit reports on the status of competition in the cable and video service industry by December 1, 2009, and December 1, 2014, to the President of the Senate, the Speaker of the House of Representatives, and the majority and minority leaders of the Senate and House of Representatives.

The report was to include, by each municipality and county, the following:

- The number of cable and video service providers,
- The number of cable and video subscribers served,
- The number of areas served by fewer than two cable or video service providers,
- The trend in cable and video service prices, and
- The identification of any patterns of service as they impacted demographic and income groups.

OPPAGA issued its first report in October 2009.[1] The summary of the report states:

> The 2007 Consumer Choice Act provided for a statewide franchise for cable and video service providers and ended local government authority to negotiate franchise agreements. Several departments — State, Agriculture and Consumer Services, and Legal Affairs — have responsibilities related to the new law but none has regulatory authority. As many as 20 states also passed statewide franchise laws in recent years. However, little systematic information exists to demonstrate the effect of these laws.[2]
>
> Since 2007, the Department of State has issued 26 state franchise certificates; most certificates were issued to existing cable or video service providers. However, two barriers prevent a comprehensive assessment of the effect of these franchises on competition for cable and video services: provider reluctance to share data and insufficient information provided in statewide franchise documents. In light of these difficulties, the Legislature may wish to consider amending s. 610.119(1), Florida Statutes, to modify study requirements or make changes that might lessen the industry concerns regarding a required December 2014 follow-up study on cable and video services competition.[3]

As required by federal law, the Federal Communications Commission prepares and publishes an annual report concerning the status of competition in the market for delivery of video programming.[4] The report is intended to measure progress toward the goals of increasing competition and diversity in multichannel video programming distribution, increasing the availability of satellite delivered programming, and spurring the development of communications technologies.[5] Among other things,

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[1] Office of Program Policy Analysis & Governmental Accountability, *Benefits from Statewide Cable and Video Franchise Reform Remain Uncertain*, Report No. 09-35, October 2009.
[2] *Id.*, p. 1.
[3] *Id.*
[4] 47 U.S.C. s. 548(g)
[5] See *Fifteenth Report*, Federal Communications Commission, released July 22, 2013, in MB Docket No. 12-03, In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming.

the report addresses the number of service subscribers and market share among various market segments and participants, including a comparison of competition in rural versus urban areas.[6] The report also addresses programming and consumer behavior patterns.

Effect of Proposed Changes

The bill repeals s. 610.119(1), F.S., which removes from statute the requirement that OPPAGA submit reports, the latter of which is due by December 1, 2014, on the status of competition in the cable and video industry.

B. SECTION DIRECTORY:

Section 1. Amends s. 610.119, F.S., removing provisions directing the Office of Program Policy Analysis and Government Accountability to submit a report to the Legislature on the status of competition in the cable and video service industry.

Section 2. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have

[6] *Id.* at 157.

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:

Section 610.119(2), F.S., requiring the Department of Agriculture and Consumer Services to make recommendations by January 15, 2008, to specified recipients is obsolete and can also be repealed.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to cable and video services; amending s. 610.119, F.S.; removing provisions directing the Office of Program Policy Analysis and Government Accountability to submit a report to the Legislature on the status of competition in the cable and video service industry; providing an effective date.

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

Section 1. Subsection (1) of section 610.119, Florida Statutes, is amended to read:

610.119 Report ~~Reports~~ to the Legislature.—

~~(1) The Office of Program Policy Analysis and Government Accountability shall submit to the President of the Senate, the Speaker of the House of Representatives, and the majority and minority leaders of the Senate and House of Representatives, by December 1, 2009, and December 1, 2014, a report on the status of competition in the cable and video service industry, including, by each municipality and county, the number of cable and video service providers, the number of cable and video subscribers served, the number of areas served by fewer than two cable or video service providers, the trend in cable and video service prices, and the identification of any patterns of service as they impact demographic and income groups.~~

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

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

REGULATORY AFFAIRS COMMITTEE

HB 4017 by Rep. R. Rodrigues
Cable and Video Services

AMENDMENT SUMMARY
March 27, 2014

Amendment 1 by Rep. R. Rodrigues (Lines 11-25): The bill repeals subsection (1) from s. 610.119, F.S. [OPPAGA cable and video report]. Subsection (2), which is not addressed in the bill, required recommendations from the Department of Agriculture and Consumer Services and the Department of State to be made to the Legislature regarding the workload and staffing requirements associated with consumer complaints related to video and cable certificateholders, by January 15, 2008. This directive was fulfilled in 2008, making subsection (2) obsolete.

This amendment repeals the entire section [subsections (1) and (2)] from the statutes.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 4017 (2014)

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 Rodrigues, R. offered the following:

Amendment (with title amendment)

Remove lines 11-25 and insert:

Section 1. Section 610.119, Florida Statutes, is repealed.

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

Remove lines 2-7 and insert:

An act relating to cable and video services; repealing s. 610.119, F.S., relating to reports required to be submitted to the Legislature by the Office of Program Policy Analysis and Government Accountability and the Department of Agricultural and Consumer Services on

the status of competition in the cable and video service industry and the staffing requirements associated with consumer complaints related to video and cable certificateholders, respectively; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7097 PCB RORS 14-05 Ratification of Rules/Office of Insurance Regulation
SPONSOR(S): Rulemaking Oversight & Repeal Subcommittee; Steube
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Rulemaking Oversight & Repeal Subcommittee	12 Y, 0 N	Miller	Rubottom
1) Regulatory Affairs Committee		Reilly	Hamon

SUMMARY ANALYSIS

The Financial Services Commission (FSC) amended Rule 69O-186.013, F.A.C., "Title Insurance Statistical Gathering: Licensed Title Insurance Agencies and Florida Retail Offices of Direct-Writing Title Insurance Underwriters," for the Office of Insurance Regulation (OIR). The rule requires Florida licensed title insurance agencies, and the retail sales offices in Florida of licensed title insurers selling directly to customers, annually to submit certain statistical data OIR determines are necessary to analyze title insurance premiums, title search costs, and the condition of the title insurance industry in Florida.

The Statement of Estimated Regulatory Costs showed Rule 69O-186.013, F.A.C., would have a specific, adverse economic effect, or would increase regulatory costs, exceeding $1 million over the first 5 years the rule was in effect. Accordingly, the rule must be ratified by the Legislature before it may go into effect.

The rule was adopted on December 30, 2013, and initially submitted for ratification on January 27, 2014.

The bill authorizes the rule to go into effect. The scope of the bill is limited to this rulemaking condition and does not adopt the substance of any rule into the statutes.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Rulemaking Authority and Legislative Ratification

A rule is an agency statement of general applicability interpreting, implementing, or prescribing law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.[1] Rulemaking authority is delegated by the Legislature[2] through statute and authorizes an agency to "adopt, develop, establish, or otherwise create"[3] a rule. Agencies do not have discretion whether to engage in rulemaking.[4] To adopt a rule an agency must have a general grant of authority to implement a specific law by rulemaking.[5] The grant of rulemaking authority itself need not be detailed.[6] The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.[7]

An agency begins the formal rulemaking process by giving notice of the proposed rule.[8] The notice is published by the Department of State in the Florida Administrative Register[9] and must provide certain information, including the text of the proposed rule, a summary of the agency's statement of estimated regulatory costs (SERC) if one is prepared, and how a party may request a public hearing on the proposed rule. The SERC must include an economic analysis projecting a proposed rule's adverse effect on specified aspects of the state's economy or increase in regulatory costs.[10]

The economic analysis mandated for each SERC must analyze a rule's potential impact over the 5 year period from when the rule goes into effect. First is the rule's likely adverse impact on economic growth, private-sector job creation or employment, or private-sector investment.[11] Next is the likely adverse impact on business competitiveness,[12] productivity, or innovation.[13] Finally, the analysis must discuss whether the rule is likely to increase regulatory costs, including any transactional costs.[14] If the analysis shows the projected impact of the proposed rule in any one of these areas will exceed $1 million in the aggregate for the 5 year period, the rule cannot go into effect until ratified by the Legislature pursuant to s. 120.541(3), F.S.

Present law distinguishes between a rule being "adopted" and becoming enforceable or "effective."[15] A rule must be filed for adoption before it may go into effect[16] and cannot be filed for adoption until

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[1] Section 120.52(16); *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region,* 969 So. 2d 527, 530 (Fla. 1st DCA 2007).
[2] *Southwest Florida Water Management District v. Save the Manatee Club, Inc.,* 773 So. 2d 594 (Fla. 1st DCA 2000).
[3] Section 120.52(17).
[4] Section 120.54(1)(a), F.S.
[5] Section 120.52(8) & s. 120.536(1), F.S.
[6] *Save the Manatee Club, Inc.,* supra at 599.
[7] *Sloban v. Florida Board of Pharmacy,*982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.,* 794 So. 2d 696, 704 (Fla. 1st DCA 2001).
[8] Section 120.54(3)(a)1, F.S..
[9] Sections 120.54(3)(a)2., 120.55(1)(b)2, F.S.
[10] Section 120.541(2)(a), F.S.
[11] Section 120.541(2)(a)1., F.S.
[12] Including the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.
[13] Section 120.541(2)(a) 2., F.S.
[14] Section 120.541(2)(a) 3., F.S.
[15] Section 120.54(3)(e)6. Before a rule becomes enforceable, thus "effective," the agency first must complete the rulemaking process and file the rule for adoption with the Department of State.

completion of the rulemaking process.[17] A rule projected to have a specific economic impact exceeding $1 million in the aggregate over 5 years[18] must be ratified by the Legislature before going into effect.[19] As a rule submitted under s. 120.541(3), F.S., becomes effective if ratified by the Legislature, a rule must be filed for adoption before being submitted for legislative ratification.

Rule 69O-186.013, F.A.C.

Rule 69O-186.013, F.A.C., implemented statutory authority for OIR to require licensed title insurance agents and insurers annually to submit statistical information OIR determines is necessary to analyze premium rates, retention rates, and the condition of the title insurance industry.[20] The statute was amended in 2012[21] to require each title insurance agency and title insurer licensed in Florida, and the direct or retail sales offices of licensed title insurers located in Florida, to maintain the statistical information specified by OIR. This information must be submitted to OIR by March 31 after the year being reported.[22]

The rule as amended by the FSC[23] incorporates new forms for completion and submission by title insurance agencies and retail offices of direct-writing title insurers, together with new instructions. The SERC prepared by OIR estimates the reporting entities will incur initial costs for compliance with the amended rule of $2,000,000 and annual recurring compliance costs of $4,000,000.[24] The projected costs of the rule for the first five years of implementation are $22,000,000. The SERC further states the rule and reporting requirements were developed through consensus between the title insurance industry, the Department of Financial Services (DFS),[25] and OIR. No lower cost regulatory alternatives to the rule were submitted to OIR during the rulemaking process.

Effect of Proposed Change

The bill ratifies Rule 69O-186.013, F.A.C., allowing the rule to go into effect.

B. SECTION DIRECTORY:

Section 1: Ratifies Rule 69O-186.013, F.A.C., solely to meet the condition for effectiveness imposed by s. 120.541(3), F.S. Expressly limits ratification to the effectiveness of the rules. Directs the act shall not be codified in the Florida Statutes but only noted in the historical comments to each rule by the Department of State.

Section 2: Provides the act goes into effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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[16] Section 120.54(3)(e)6, F.S.
[17] Section 120.54(3)(e), F.S.
[18] Section 120.541(2)(a), F.S.
[19] Section 120.541(3), F.S.
[20] Section 627.782(8), F.S. (2011).
[21] Ch. 2012-206, s. 5, LOF.
[22] Section 627.782(8), F.S. (2013).
[23] OIR is a subunit of the FSC, which is the agency head of OIR for purposes of rulemaking. Section 20.121(3)(c), F.S. The FSC is authorized to make rules implementing s. 627.782(8), F.S. Section 624.308(1), F.S.
[24] Office of Insurance Regulation, "Statement of Estimated Regulatory Costs (SERC)," Rule No. 69O-186.013. In possession of the Regulatory Oversight & Repeal Subcommittee and published in the Subcommittee meeting materials for its consideration of PCB RORS 14-05 on March 5, 2014.
[25] The FSC and OIR are housed in DFS for administrative purposes but are not under any authority of DFS. Section 20.121(3), F.S.

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The economic impacts projected in the statement of estimated regulatory costs would result from implementing the data retention and reporting requirements of the rule.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The legislation does not appear to require counties or municipalities to take any 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:

The bill meets the final statutory requirement for the agency to exercise its rulemaking authority implementing its authority to require annual reporting of certain data to analyze title insurance premium rates, retention rates, and the condition of the title insurance industry. No additional rulemaking authority is required.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to ratification of rules of the Office of Insurance Regulation; ratifying specified rules requiring title insurance agencies and the retail offices of certain title insurance underwriters to electronically submit certain statistical data, for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule meeting any specified thresholds for likely adverse impact or increase in regulatory costs; providing applicability; providing an effective date.

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

Section 1. (1) The following rule is ratified for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), Florida Statutes: Rule 690-186.013, Florida Administrative Code, titled "Title Insurance Statistical Gathering: Licensed Title Insurance Agencies and Florida Retail Offices of Direct-Writing Title Insurance Underwriters" as filed for adoption with the Department of State pursuant to the certification package dated December 30, 2013.

(2) This act serves no other purpose and shall not be codified in the Florida Statutes. After this act becomes law,

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

its enactment and effective dates shall be noted in the Florida Administrative Code, the Florida Administrative Register, or both, as appropriate. This act does not alter rulemaking authority delegated by prior law, does not constitute legislative preemption of or exception to any provision of law governing adoption or enforcement of the rules cited, and is intended to preserve the status of any cited rule as a rule under chapter 120, Florida Statutes. This act does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing the adoption of any rule cited.

Section 2. This act shall take effect upon becoming a law.

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