Agriculture & Natural Resources Appropriations Subcommittee

April 7, 2015
4:30 PM – 6:30 PM
Reed Hall

Steve Crisafulli
Speaker

Ben Albritton
Chair

The Florida House of Representatives

Appropriations Committee

Agriculture & Natural Resources Appropriations Subcommittee

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AGENDA
4:30 PM—6:30 PM
Reed Hall

I. Call to Order/Roll Call

II. CS/HB 463—Ticket Sales by Ingoglia

III. CS/HB 653—Environmental Control by Pigman

IV. CS/HB 733—Petroleum Restoration Program by Ray

V. HB 765—Household Moving Services by Goodson

VI. CS/HB 1141—Natural Gas Rebate Program by Ray

VI. CS/HB 1205—Regulation of Oil and Gas Resources by R. Rodrigues

VII. Closing/Adjourn

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 463 Ticket Sales
SPONSOR(S): Business & Professions Subcommittee; Ingoglia
TIED BILLS: **IDEN./SIM. BILLS:** SB 742

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	10 Y, 3 N, As CS	Butler	Luczynski
2) Agriculture & Natural Resources Appropriations Subcommittee		Lolley	Massengale
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Several sections of chapter 817, F.S., prohibit certain fraudulent types of activities related to admission tickets and provide for civil or criminal penalties.

The bill amends s. 817.36, F.S., to:

- Provide definitions for "department" to mean the Department of Agriculture and Consumer Services (Department), "face value," "online marketplace," "place of entertainment," "resale website," and "ticket";
- Clarify when a ticket may be resold or offered for resale for more than $1 over face value;
- Clarify the required guarantees and disclosures for ticket resale websites and online marketplaces;
- Require a person, resale website, or online marketplace to make certain disclosures to a prospective ticket resale purchaser prior to a resale transaction;
- Prohibit a resale website or online marketplace from making any representation of affiliation or endorsement with a venue or artist without the express written consent of the venue or artist, unless such use constitutes fair use under federal law;
- Provide penalties for violations: a person who violates a provision of s. 817.36, F.S., related to the resale of a ticket commits a misdemeanor of the second degree, and a person who uses or distributes software intended to circumvent the ticket buying process or misrepresents affiliation or endorsement with a venue or artist without approval commits a felony of the third degree;
- Allow a person to bring a declaratory action in certain circumstances; and
- Allow for actual damages, including attorney fees and court costs, in certain circumstances.

The bill is expected to have an insignificant fiscal impact on state government and an indeterminate fiscal impact on local government and the private sector. The Criminal Justice Impact Conference (CJIC) met March 27, 2015, and determined this bill will have an insignificant impact on state prison beds. See the Fiscal Analysis & Economic Impact Statement for more details.

The bill provides an effective date of October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Tickets – Definition and Use

Absent a statute to the contrary, an event or admission ticket is considered to be a license to witness the performance, which may be revoked by the owner or proprietor at will, before or after admission of the ticketholder.[1] Florida law does not currently address whether an event or admission ticket is deemed to be a license or a property interest.

Without a statutory definition, a ticket is generally considered a license, and the ticket seller is able to place restrictions upon the use of that ticket. For example, a common restriction placed on an event or admission ticket by the seller is the inability to reenter the venue facility upon leaving. In addition to manner of use restrictions, the ticket seller is also able to place conditions and restrictions upon the resale or transferability of the ticket.

Generally, a person or entity offering to resell a ticket may only charge $1 above the admission price charged by the initial ticket seller. A person or entity must abide by these restrictions for tickets for passage or accommodations on a common carrier unless the person or entity is a travel agency,[2] multiday or multievent tickets to a theme park or entertainment complex,[3] and tickets issued by a charitable organization that offers no more than 3,000 tickets per performance.[4]

Any other tickets may be resold for a price greater than $1 above the admission price if the person or website is:

- Authorized to do so by the original ticket seller; or,
- Makes and posts certain guarantees and disclosures.[5]

A person or website offering tickets for resale that is not authorized by the original ticket seller must guarantee a full refund, including all fees, when a ticketed event is canceled, the purchaser is denied admission except when such denial is the fault of the purchaser, or the ticket is not delivered in the manner requested by the purchaser.[6] Further, such person or website operator must disclose that it is not the issuer, original seller, or reseller of the ticket does not control the pricing, and the ticket may be resold for more than its original value.[7]

A person who knowingly resells a ticket in violation of the ticket resale provisions of s. 817.36, F.S., is liable to the state for a civil penalty equal to three times the amount for which the ticket or tickets were sold.[8]

Currently, s. 817.36(5), F.S., provides that a person who intentionally uses or sells software to circumvent a security measure, access control system, or any other control or measure that is used to ensure an equitable ticket-buying process on a ticket seller's website is liable to the state for a civil penalty equal to three times the amount for which the ticket or tickets were sold.

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[1] 27A Am. Jur. 2d Entertainment and Sports Law § 42.
[2] s. 817.36(1)(a), F.S.
[3] s. 817.36(1)(b), F.S.
[4] s. 817.36(1)(c), F.S.
[5] s. 817.36(1)(d), F.S.
[6] *Id.*
[7] *Id.*
[8] s. 817.36(4), F.S.

"Software" is defined in s. 817.36(6), F.S., as computer programs that are primarily designed or produced for the purpose of interfering with the operation of any person or entity that sells, over the internet, tickets of admission to a sporting event, theater, musical performance, or place of public entertainment or amusement of any kind.

Effect of the Bill

The bill amends s. 817.36, F.S., to retitle the section from "Resale of tickets" to "Ticket sales."

Definitions

A new subsection is created to define the following terms:

"Department" means the Department of Agriculture and Consumer Services (Department).

"Face value" means "the face price of a ticket, as determined by the event presenter and printed or displayed on the ticket."

"Online marketplace" means:

> [A] website, software application for a mobile device, or any other digital platform that provides a forum for the buying and selling of tickets, but does not include a website, software application for a mobile device, or any other digital platform operated by a reseller, ticket issuer, event presenter, or agent of an owner or operator of a place of entertainment.

"Place of entertainment" means:

> [A] privately owned and operated entertainment facility or publicly owned and operated entertainment facility in this state, such as a theater, stadium, museum, arena, racetrack, or other place where performances, concerts, exhibits, games, athletic events, or contests are held and for which an entry fee is charged. A facility owned by a school, college, university, or house of worship is a place of entertainment only when an event is held for which an entry fee is charged.

"Resale website" means:

> [A] website, software application for a mobile device, any other digital platform, or portion thereof, whose primary purpose is to facilitate the resale of tickets to consumers, but excludes an online marketplace.

"Ticket" means:

> [A] printed, electronic, or other type of evidence of the right, option, or opportunity to occupy space at or to enter or attend an entertainment event even if not evidenced by any physical manifestation of such right.

Ticket as a License

As discussed above, a ticket generally is considered a license under common law absent a statute declaring otherwise, and the ticket seller is able to place restrictions upon the use of that ticket. The bill creates a definition for "ticket" that does not declare a ticket either as a license or personal property. A ticket will likely still be considered a license under common law, and provide whatever rights and privileges that entails.

Resale of Tickets and Required Guarantees

The bill renumbers s. 817.36(1), F.S., to s. 817.36(2), F.S., and authorizes certain tickets resold or offered through a resale website or online marketplace to make the required guarantees and disclosures to sell a ticket for more than $1 above the face value charged by the original ticket seller unless such resale website or online marketplace is authorized to sell such tickets by the original ticket seller.

A resale website or online marketplace that is not authorized to resell tickets by the original ticket seller may still resell tickets that are not common carrier tickets, multiday or multievent tickets to a park or entertainment complex, or tickets from a charitable organization by guaranteeing a full refund of the amount paid for the ticket including fees if:

- The event is canceled;
- The purchaser is denied admission through no fault of the purchaser; or,
- The ticket is not delivered pursuant to any delivery guarantee and such failure prevents attendance of the ticket event.

The bill removes the current requirement that a ticket reseller must deliver a ticket to the purchaser in the manner requested by the purchaser.

The bill renumbers the current s. 817.36(2) and (3), F.S., to s. 817.36(3) and (4), F.S., and includes the place of entertainment in the list of locations where an individual or entity may not sell or purchase a ticket without the prior written consent of the owner.

Prohibition on Use of Technology to Circumvent Ticket Buying Security Measures

The bill removes the current s. 817.36(5) and (6), F.S., and replaces them with a new s. 817.36(5), F.S., which more explicitly defines and prohibits the use of technology to circumvent the ticket buying process. Specifically, a person may not:

- Sell, use, or cause to be used by any means, method, technology, devices, or software that is designed, intended, or functions to bypass portions of the ticket-buying process or disguise the identity of the ticket purchaser or circumvent a security measure, an access control system, or other control, authorization, or measure on a ticket issuer's or resale ticket agent's website, software application for a mobile device, or digital platform; or,

- Use or cause to be used any means, method, or technology that is designed, intended, or functions to disguise the identity of the purchaser with the purpose of purchasing or attempting to purchase via online sale a quantity of tickets to a place of entertainment in excess of authorized limits established by the owner or operator of a place of entertainment or of the entertainment event or an agent of any such person.

A person who knowingly uses a means, method, technology, device, or software to violate subsection (5) commits a felony of the third degree, punishable as provided in s. 775.082, F.S.,[9] or s. 775.084, F.S.,[10] and each ticket purchase, sale, or violation of subsection (5) constitutes a separate offense.

Ticket Resale Disclosures

The bill creates s. 817.36(6), F.S., to require that a resale website or online marketplace make certain disclosures to a prospective ticket purchaser prior to a resale transaction. Such disclosures may be on the resale website or online marketplace, or be made in person and include:

[9] s. 775.082(3)(d), F.S., provides that the penalty for a third degree felony shall be a term of imprisonment not to exceed five years.
[10] s. 775.084, F.S., provides enhanced penalties for habitual felony offenders.

- The refund policy of the person, resale website, or online marketplace in connection with the cancellation or postponement of an entertainment event;
- That it is a resale website or online marketplace and prices of tickets can often exceed face value; and,
- If the ticket is in the actual physical possession of the reseller, the face value and exact location of the seat offered for sale, including a section, row, and seat number, or area specifically designated as accessible seating; or,
- If the ticket is not in the actual physical possession of the reseller:
    - That the ticket offered for sale is not in the actual physical possession of the reseller;
    - The period of time when the reseller reasonably expects to have the ticket in actual physical possession and available for delivery; and,
    - Whether the reseller is actively making an offer to procure the ticket.

Prohibited Representations

The bill creates s. 817.36(7), F.S., to prohibit a resale website or online marketplace from making any representation of affiliation or endorsement with a venue or artist without the express written consent of the venue or artist, except when it constitutes fair use and is consistent with applicable laws.

A person who knowingly violates subsection (7) commits a felony of the third degree, punishable as provided in s. 775.082, F.S., or s. 775.084, F.S., or by a fine not to exceed $10,000.

Department Enforcement and Administrative, Civil, and Criminal Remedies

The bill creates s. 817.36(8), F.S., which provides that a person who is an aggrieved party may bring a declaratory action to enjoin persons who have violated, are violating, or are likely to violate this section. Persons who have suffered a loss as a result of a violation may recover actual damages, plus attorney fees and court costs.

The bill creates s. 817.36(9), F.S., to provide the Department authority to enforce the requirements of s. 817.36, F.S. The Department may, by its own inquiry or as a result of complaints, conduct an investigation, conduct hearings, subpoena witnesses and evidence, and administer oaths and affirmations if it has reason to believe that a violation of s. 817.36, F.S., has occurred or is occurring.

If, as a result of the investigation, the department has reason to believe a violation of this section has occurred, the department may coordinate with the Attorney General or any state attorney and bring a civil or criminal action and seek any other relief the court deems appropriate. The Department may also provide information to any law enforcement agency concerning a violation of s. 817.36, F.S.

The bill deletes s. 817.36(4), F.S., and creates a similar remedy under s. 817.36(10), F.S., which provides that it is a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S.,[11] or s. 775.083, F.S.,[12] for someone who knowingly resells a ticket or tickets in violation of s. 817.36, F.S., unless another criminal remedy is provided for under a specific section. Each violation constitutes a separate offense.

The bill creates s. 817.36(11), F.S., to require the Department to adopt rules to implement the section.

B. SECTION DIRECTORY:

[11] s. 775.082(4)(b), F.S., provides that the penalty for a second degree misdemeanor shall be a term of imprisonment not exceeding sixty days.

[12] s. 775.083(1)(e), F.S., provides that the fine for a second degree misdemeanor shall be $500, unless a higher amount is authorized by statute.

Section 1 amends s. 817.36, F.S., to define terms; to revise disclosure and guarantee requirements for ticket resellers; to revise provisions related to circumventing security measures; to provide criminal penalties; to provide Department of Agriculture and Consumer Services enforcement authority; and to require rulemaking.

Section 2 provides an effective date of October 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   According to the department, consumer complaints will be handled with existing resources within the Division of Consumer Protection. The impact on the Office of Law Enforcement for violations is estimated to be minimal and current staff is expected to be able to handle the additional workload.

   The Criminal Justice Impact Conference (CJIC) met March 27, 2015, and determined this bill would have an insignificant impact on state prison beds (10 or fewer beds).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill provides fines of up to $10,000, which may result in a positive fiscal impact on local government.

2. Expenditures:

   Section 817.36(10), F.S., provides that a person who violates this section commits a second degree misdemeanor. This may result in an indeterminate negative fiscal impact on local government for jail beds.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The provisions of the bill may require resale websites and online marketplaces to develop new systems to track certain information related to disclosures and guarantees.

A person who violates certain provisions may have to pay a fine of up to $10,000.

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:

The Department is required to adopt rules to implement s. 817.36, F.S., to enforce the civil and criminal penalties provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 24, 2015, the Business & Professions Subcommittee considered and adopted one amendment. The amendment:

- Amends the definition of "ticket" to remove language declaring a ticket is a license;
- Amends the definition of "resale website" to clarify that an "online marketplace" is not a resale website;
- Removes the "general felony" provision for a violation of s. 817.36, F.S., and clarifies that only the use or distribution of software intended to circumvent the ticket buying process and misrepresenting oneself as affiliated or endorsed by a venue or artist are third-degree felonies;
- Removes the "ticket broker" registration scheme and the Department's duty to implement and enforce the registration;
- Clarifies several guarantees and disclosures required for resale websites and online marketplaces;
- Clarifies the Department's enforcement authority related to s. 817.36, F.S.

The staff analysis is drafted to reflect the committee substitute.

A bill to be entitled

An act relating to ticket sales; amending s. 817.36, F.S.; defining terms; revising provisions to include digital platforms; revising certain presale disclosure requirements; revising provisions relating to prohibitions on bypassing portions of the ticket buying process, disguising the identity of a buyer, or circumventing security measures; providing criminal penalties for violations; providing for recovery of damages up to treble the amount of actual damages for such violations; providing criminal penalties for knowingly reselling a ticket in violation of statute; requiring specified disclosures before resale of a ticket; prohibiting misrepresentations of affiliation or endorsement by resellers without consent; providing exceptions; authorizing declaratory judgments; providing criminal penalties for certain violations; requiring rulemaking; deleting provisions imposing penalties for intentionally using or selling software to circumvent certain ticket seller security measures; providing an effective date.

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

Section 1. Section 817.36, Florida Statutes, is amended to read:

817.36 Ticket sales ~~Resale of tickets~~.—

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

(a) "Department" means the Department of Agriculture and Consumer Services.

(b) "Face value" means the face price of a ticket, as determined by the event presenter and printed or displayed on the ticket.

(c) "Online marketplace" means a website, software application for a mobile device, or any other digital platform that provides a forum for the buying and selling of tickets, but does not include a website, software application for a mobile device, or any other digital platform operated by a reseller, ticket issuer, event presenter, or agent of an owner or operator of a place of entertainment.

(d) "Place of entertainment" means a privately owned and operated entertainment facility or publicly owned and operated entertainment facility in this state, such as a theater, stadium, museum, arena, racetrack, or other place where performances, concerts, exhibits, games, athletic events, or contests are held and for which an entry fee is charged. A facility owned by a school, college, university, or house of worship is a place of entertainment only when an event is held for which an entry fee is charged.

(e) "Resale website" means a website, software application for a mobile device, any other digital platform, or portion thereof, whose primary purpose is to facilitate the resale of

tickets to consumers, but excludes an online marketplace.

(f) "Ticket" means a printed, electronic, or other type of evidence of the right, option, or opportunity to occupy space at or to enter or attend an entertainment event even if not evidenced by any physical manifestation of such right.

(2)~~(1)~~ A person or entity that offers for resale or resells any ticket may charge only $1 above the face value ~~admission price~~ charged therefor by the original ticket seller of the ticket for the following transactions:

(a) Passage or accommodations on any common carrier in this state. However, this paragraph does not apply to travel agencies that have an established place of business in this state and are required to pay state, county, and city occupational license taxes.

(b) Multiday or multievent tickets to a park or entertainment complex or to a concert, entertainment event, permanent exhibition, or recreational activity within such a park or complex, including an entertainment/resort complex as defined in s. 561.01(18).

(c) Event tickets originally issued by a charitable organization exempt from taxation under s. 501(c)(3) of the Internal Revenue Code for which no more than 3,000 tickets are issued per performance. The charitable organization must issue event tickets with the following statement conspicuously printed or displayed on the face or back of the ticket: "Pursuant to s. 817.36, Florida Statutes, this ticket may not be resold for more

than $1 over the face value ~~original admission price~~." This paragraph does not apply to tickets issued or sold by a third party contractor ticketing services provider on behalf of a charitable organization otherwise included in this paragraph unless the required disclosure is printed or displayed on the ticket.

(d) Any tickets, other than the tickets in paragraph (a), paragraph (b), or paragraph (c), that are resold or offered through a resale ~~an Internet~~ website or online marketplace~~,~~ unless such resale website or online marketplace is authorized by the original ticket seller to sell such tickets or makes and posts the following guarantees and disclosures on ~~through Internet~~ web pages on which are visibly posted, or links to web pages on which are posted, text to which a prospective purchaser is directed before completion of the resale transaction:

1. The resale website or online marketplace operator guarantees a full refund of the amount paid for the ticket including any servicing, handling, or processing fees, if such fees are not disclosed, when:

a. The ticketed event is canceled;

b. The purchaser is denied admission to the ticketed event, unless such denial is due to the action or omission of the purchaser; or

c. The ticket is not delivered to the purchaser ~~in the manner requested and~~ pursuant to any delivery guarantees made by the reseller and such failure results in the purchaser's

inability to attend the ticketed event.

2. The resale website or online marketplace operator discloses that it is not the issuer, original seller, or reseller of the ticket or items and does not control the pricing of the ticket or items, which may be resold for more than their face ~~original~~ value.

(3)~~(2)~~ This section does not authorize any individual or entity to sell or purchase tickets at any price on property or place of entertainment where an event is being held without the prior express written consent of the owner of the property or place of entertainment.

(4)~~(3)~~ Any sales tax due for resales under this section shall be remitted to the Department of Revenue in accordance with s. 212.04.

(5)(a) A person may not sell, use, or cause to be used by any means, method, technology, devices, or software that is designed, intended, or functions to bypass portions of the ticket-buying process or disguise the identity of the ticket purchaser or circumvent a security measure, an access control system, or other control, authorization, or measure on a ticket issuer's or resale ticket agent's website, software application for a mobile device, or digital platform.

(b) A person may not use or cause to be used any means, method, or technology that is designed, intended, or functions to disguise the identity of the purchaser with the purpose of purchasing or attempting to purchase via online sale a quantity

of tickets to a place of entertainment in excess of authorized limits established by the owner or operator of a place of entertainment or of the entertainment event or an agent of any such person.

(c) A person who knowingly violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.084 or by a fine not to exceed $10,000. Each ticket purchase, sale, or violation of this subsection constitutes a separate offense.

(d) A party that has been injured by wrongful conduct in violation of this subsection may bring an action to recover all actual damages suffered as a result of any of such wrongful conduct. The court in its discretion may award damages up to three times the amount of actual damages.

~~(4) A person who knowingly resells a ticket or tickets in violation of this section is liable to the state for a civil penalty equal to treble the amount of the price for which the ticket or tickets were resold.~~

(6) A person, resale website, or online marketplace must clearly and conspicuously disclose to a prospective ticket resale purchaser, whether on the resale website or online marketplace, or in person, before a resale:

(a) The refund policy of the person, resale website, or online marketplace in connection with the cancellation or postponement of an entertainment event;

(b) That it is a resale website or online marketplace and

that prices of tickets can often exceed face value; and

(c)1. If the ticket is in the actual physical possession of the reseller, the face value and exact location of the seat offered for sale, including a section, row, and seat number, or area specifically designated as accessible seating; or

2. If the ticket is not in the actual physical possession of the reseller:

a. That the ticket offered for sale is not in the actual physical possession of the reseller.

b. The period of time when the reseller reasonably expects to have the ticket in actual physical possession and available for delivery.

c. Whether the reseller is actively making an offer to procure the ticket.

(7)(a) A resale website or online marketplace shall not make any representation of affiliation or endorsement with a venue or artist without the express written consent of the venue or artist, except when it constitutes fair use and is consistent with applicable laws.

(b) A person who knowingly violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.084 or by a fine not to exceed $10,000.

(8)(a) A person aggrieved by a violation of this section may, without regard to any other remedy or relief to which the person is entitled, bring an action to obtain a declaratory judgment that an act or practice violates this section and to

enjoin a person who has violated, is violating, or is otherwise likely to violate this section.

(b) In any action brought by a person who has suffered a loss as a result of a violation of this section, such person may recover actual damages, plus attorney fees and court costs.

(9) If the department, by its own inquiry or as a result of complaints, has reason to believe that a violation of this section has occurred or is occurring, the department may conduct an investigation, conduct hearings, subpoena witnesses and evidence, and administer oaths and affirmations. If, as a result of the investigation, the department has reason to believe a violation of this section has occurred, the department with the coordination of the Department of Legal Affairs and any state attorney, if the violation has occurred or is occurring within her or his judicial circuit, may bring a civil or criminal action and seek other relief, including injunctive relief, as the court deems appropriate. This subsection does not prohibit the department from providing information to any law enforcement agency or to any other regulatory agency and the department may report to the appropriate law enforcement officers any information concerning a violation of this section.

(10) Except as otherwise provided in this section, a person who knowingly resells a ticket or tickets in violation of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Each violation of this section constitutes a separate offense.

(11) The department shall adopt rules to implement this section.

~~(5) A person who intentionally uses or sells software to circumvent on a ticket seller's Internet website a security measure, an access control system, or any other control or measure that is used to ensure an equitable ticket-buying process is liable to the state for a civil penalty equal to treble the amount for which the ticket or tickets were sold.~~

~~(6) As used in this section, the term "software" means computer programs that are primarily designed or produced for the purpose of interfering with the operation of any person or entity that sells, over the Internet, tickets of admission to a sporting event, theater, musical performance, or place of public entertainment or amusement of any kind.~~

Section 2. This act shall take effect October 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 653 Environmental Control
SPONSOR(S): Agriculture & Natural Resources Subcommittee; Pigman
TIED BILLS: None **IDEN./SIM. BILLS:** SB 714

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N, As CS	Gregory	Blalock
2) Agriculture & Natural Resources Appropriations Subcommittee		Helpling	Massengale
3) State Affairs Committee			

SUMMARY ANALYSIS

Water Conservation and Water Resource Development

When economic conditions or population growth rates result in the actual water use being lower than permitted water use, a modification to reduce the permitted allocation may be made by the water management district (WMD) only when there is no reasonable likelihood that the allocation will be needed during the permit term. This bill incentivizes water conservation by prohibiting permitting agencies from modifying permitted water allocations during the term of the permit if actual water use is less than permitted water use due to documented implementation of water conservation measures, including, but not limited to, those measures identified in best management practices for agricultural activities. The bill also directs the WMDs to adopt rules providing water conservation incentives, including permit extensions. Further, the bill requires WMDs to promote expanded cost share criteria for additional water conservation practices, such as soil and moisture sensors, and other irrigation improvements, water-saving equipment, and water-saving household fixtures.

Water Quality Credit Trading

Water Quality Credit Trading (WQCT) or "pollutant trading" is a voluntary, market based approach designed to efficiently meet Florida's water quality goals and meet the goals of the federal Clean Water Act. This bill amends current law to allow the use of land set-asides and land use modifications, not otherwise required by state law or permit, which reduce nutrient loads into nutrient impaired surface waters to generate water quality credits.

Variances

The Department of Environmental Protection (DEP) may grant variances from the provisions of the Florida Air and Water Pollution Control Act or the rules and regulations adopted pursuant to the act. DEP may not grant variances from any provision or requirement concerning discharges of waste into waters of the state or hazardous waste management that would result in the provision or requirement being less stringent than a comparable federal provision or requirement. The bill amends current law to specify that nothing in the statute prohibits the issuance of moderating provisions under state law, subject to approval by the Environmental Protection Agency.

Solid Waste Management Trust Fund

The Solid Waste Management Trust Fund (SWMTF) exists to fund solid waste management activities. DEP has identified five facilities that used an insurance certificate to provide financial assurance and have been abandoned or were ordered closed. These facilities require closure to minimize adverse environmental impacts. Currently, DEP does not have a mechanism to access the insurance money to pay third party contractors to perform closure and long-term care activities. The bill creates a solid waste landfill closure account within the SWMTF to provide funding for the closing and long-term care of solid waste management facilities that used an insurance certificate as a form of financial assurance. The solid waste closure account will be funded by proceeds received by DEP as reimbursement from insurance companies for the costs of closing or long-term care of the facility.

The bill appears to have an indeterminate, insignificant negative fiscal impact on DEP, no fiscal impact on local government, and an indeterminate but positive fiscal impact on the private sector. See Fiscal Analysis & Economic Impact Statement for more information.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Water Conservation and Water Resource Development

Present Situation

A person must apply for and obtain a consumptive use permit (CUP) from the applicable water management district (WMD) or the Department of Environmental Protection (DEP) before using surface or groundwater of the state, unless the person is solely using the water for domestic use.[1] To obtain a CUP, an applicant must satisfy three requirements, commonly referred to as the "the three-prong test." To satisfy the test, an applicant must establish that the proposed use of the water:

- Is for a "reasonable-beneficial use," meaning the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest;[2]
- Will not interfere with any presently existing legal use of water; and
- Is consistent with the public interest.[3]

Applicants may receive a CUP with duration of twenty years if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit.[4] Otherwise, the WMD or DEP may issue a CUP for a shorter duration which reflects the period for which such reasonable assurances can be provided.[5]

When a CUP is issued for a twenty year duration, a WMD or DEP may require the permittee to provide a compliance report every 10 years during the term of the permit to maintain reasonable assurance the conditions of the CUP continue to be met.[6] Following review of a compliance report, the WMD or DEP may modify the CUP to ensure that the use meets the conditions for issuance.[7] Permit modifications resulting from review of the compliance report are not subject to competing applications, provided there is no increase in the permitted allocation or permit duration, and no change in source, except for changes in source requested by the district.[8]

In several WMDs, when economic conditions or population growth rates result in the actual water use being lower than permitted water use, a modification to reduce the permitted allocation may be made by the WMD only when there is no reasonable likelihood that the allocation will be needed during the permit term.[9] However, in order to incentivize conservation of water, if actual water use is less than permitted water use due to documented implementation of water conservation measures, the WMD may not modify the permitted allocation due to these circumstances during the term of the permit.[10]

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[1] Section 373.219. F.S.
[2] Section 373.019(16), F.S.
[3] Section 373.223(1), F.S.
[4] Section 373.236(1), F.S.
[5] Id.
[6] Section 373.236(4), F.S.
[7] Id.
[8] Id.
[9] Suwannee River Water Management District, *Water Use Permit Applicant's Handbook*, section 4.4, incorporated by reference in Rule 40B-2.301, F.A.C.; St. Johns River Water Management District, *Applicant's Handbook, Consumptive Uses of Water*, section 1.5.4, incorporated by reference in Rule 40C-2.101, F.A.C.; Rule 40D-2.371, F.A.C.; South Florida Water Management District, *Applicant's Handbook for Water Use Permit Applications within the South Florida Water Management District*, section 4.4, incorporated by reference in Rule 40E-2.091, F.A.C.
[10] Id. *See also* Rule 62-40.412(4), F.A.C.

In addition, s. 373.227, F.S., requires DEP, in cooperation with the WMDs, to develop a statewide water conservation program for public water supply that:

- Encourages utilities to implement water conservation programs that are economically efficient, effective, affordable, and appropriate;
- Allows no reduction in, and increase where possible, utility-specific water conservation effectiveness over current programs;
- Is goal-based, accountable, measurable, and implemented collaboratively with water suppliers, water users, and water management agencies;
- Includes cost and benefit data on individual water conservation practices to assist in tailoring practices to be effective for the unique characteristics of particular utility service areas, focusing upon cost-effective measures;
- Uses standardized public water supply conservation definitions and standardized quantitative and qualitative performance measures for an overall system of assessing and benchmarking the effectiveness of water conservation programs and practices;
- Creates a clearinghouse or inventory for water conservation programs and practices available to public water supply utilities;
- Develops a standardized water conservation planning process for utilities; and
- Develops and maintains a Florida-specific water conservation guidance document containing a menu of affordable and effective water conservation practices.

As part of an application for a CUP, a public water supply utility may propose a goal-based water conservation plan that is tailored to its individual circumstances.[11] If the utility provides reasonable assurance that the plan will achieve effective water conservation at least as well as the water conservation requirements adopted by the appropriate WMD, the WMD must approve the plan.[12] The approved plan will satisfy water conservation requirements imposed as a condition of obtaining a CUP.[13]

Effect of Proposed Changes

This bill creates s. 373.227(5), F.S., to incentivize water conservation by prohibiting permitting agencies from modifying permitted water allocations during the term of the permit if actual water use is less than permitted water use due to documented implementation of water conservation measures, including but not limited to, those measures identified in best management practices for agricultural activities. This change appears to be consistent with rules adopted by DEP, the Suwannee River Water Management District, the St. Johns River Water Management District, the Southwest Florida Water Management District, and the South Florida Water Management District. The bill also directs the WMDs to adopt rules providing water conservation incentives, including permit extensions.

Further, the bill creates s. 373.705(5), F.S., to require WMDs to promote expanded cost share criteria for additional conservation practices, such as soil and moisture sensors, and other irrigation improvements, water-saving equipment, and water-saving household fixtures.

Water Well Contractors License

Present Situation

Each person who engages in the business of a water well contractor must obtain a license from a WMD.[14] Persons must submit an application at the WMD in which they reside or in which his or her principal place of business is located.[15] In order to take the licensure exam, an applicant must be

[11] Section 373.227(4), F.S.
[12] Id.
[13] Id.
[14] Section 373.323(1), F.S.
[15] Section 373.323(2), F.S.

eighteen years old; have two years of experience in constructing, repairing, or abandoning water wells; and complete the an application form and pay a nonrefundable fee.[16]

An applicant must submit a letter from a water well contractor and a letter from a water well inspector employed by a governmental agency in order to demonstrate two years of experience in constructing, repairing, or abandoning water wells.[17] Further, an applicant must submit a list of at least 10 water wells that the applicant has constructed, repaired, or abandoned within the preceding five years.[18]

Effects of Proposed Change

This bill amends s. 373.323(3)(b)1., F.S., relating to the requirements for water well contractor license applicants to demonstrate two years of experience in constructing, repairing, or abandoning water wells. The change requires applicants to provide a letter from a water well contractor or a letter from a water well inspector employed by a governmental agency. A letter from both will no longer be required.

Water Quality Credit Trading

Present Situation

Water Quality Credit Trading (WQCT) or "pollutant trading" is a voluntary, market based approach designed to efficiently meet Florida's water quality goals and meet the goals of the federal Clean Water Act (CWA).[19]

In order to comply with the CWA, Florida, through the Department of Environmental Protection (DEP), must develop total maximum daily loads (TMDLs) to promote improvements in water quality throughout the state through the coordinated control of point and nonpoint sources of pollution.[20] The CWA requires states to submit to the Environmental Protection Agency (EPA) lists of impaired surface waters that do not meet applicable water quality standards after implementation of technology based effluent limitations or the application of other pollution control programs.[21] States must set a TMDL once a water body is listed as impaired.[22] TMDLs establish the maximum amount of pollutants an impaired water body can assimilate without exceeding water quality standards for pollutants.[23] Once water quality criteria are met, the surface water may be removed from the TMDL list.[24]

To meet water quality criteria, DEP is authorized to develop Basin Management Action Plans (BMAPs) to implement TMDLs.[25] BMAPs integrate management strategies through existing water quality protection programs to achieve the TMDLs and may provide for phased implementation of these management strategies to promote timely, cost-effective actions.[26] A BMAP must equitably allocate pollutant reductions to individual basins and identify mechanisms by which potential future increases in pollutant loading will be addressed.[27] These pollutant reduction measures must be incorporated into

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[16] Section 373.323(3), F.S.
[17] Id.
[18] Id.
[19] Susan Roeder Martin, *Water Quality Credit Trading – A Regulator's Perspective*, The Florida Bar Journal, May 2007, Volume 81, No. 5. at 56. citing U.S. Envtl. Prot. Agency (EPA), Draft Framework for Watershed-based Trading-Executive Summary at 2, EPA 800-R-96-001 (May 1996); see also EPA, Water Quality Trading, www.epa.gov/waterqualitytrading.
[20] Section 403.067(1), F.S.
[21] 33 U.S.C. 1313(d) (2014).
[22] Id.
[23] Section 403.067(6)(a)2., F.S.
[24] Section 403.067(5), F.S.
[25] Section 403.067(7)(a)1., F.S.
[26] Id.
[27] Section 403.067(7)(a)2., F.S.

permits for regulated facilities and otherwise accounted for through best management practices and other pollution control measures.[28]

WQCT is one method regulated facilities may use to meet pollutant reduction measures.[29] While the CWA does not specifically provide for trading, the EPA strongly promoted the use of watershed-based trading through the adoption of a water quality credit trading policy.[30] WQCT is based on the fact that different sources in a watershed can face very different costs to control the same pollutant.[31] WQCT is designed to encourage pollutant "sources to create pollutant reduction credits by making reductions greater than required to meet a regulatory requirement."[32] "Under a trading program, other sources may then purchase these pollutant reduction credits to meet their own water quality-based regulatory limit."[33] WQCT may accelerate pollutant reduction because an individual discharger's high costs to reduce pollutants could be addressed through a more economical offset of water quality credits.[34]

DEP adopted a WQCT rule, chapter 62-306, F.A.C., in 2010 to establish a pilot WQCT program in the Lower St. Johns River Basin. In 2013, the Legislature revised s. 403.067, F.S., to eliminate the provision that limited WQCT to the Lower St. Johns River Basin and authorized DEP to implement WQCT on an ongoing basis in adopted BMAPs or other applicable pollution control programs.[35] DEP is currently undertaking rule development to update this WQCT rule to apply statewide.[36]

Pollutant discharge permits and other legally binding authorizations implement WQCT. Trading must be consistent with federal law and regulations. DEP establishes the pollutant load reduction values and water quality credits and authorizes their use. A person who buys water quality credits ("buyer") must submit to DEP an affidavit, signed by the buyer and the credit generator ("seller"), disclosing the term of acquisition, number of credits, unit credit price paid, and any state funding received for the facilities or activities that generate the credits. DEP may not participate in the establishment of credit prices. Sellers of water quality credits are responsible for achieving the load reductions on which the credits are based. Buyers of water quality credits are responsible for complying with the terms of the DEP water discharge permit. DEP must take appropriate action to address the failure of a credit seller to fulfill its obligations. Lastly, DEP may authorize WQCT in adopted BMAPs.[37]

Individuals may generate credits by:

- Installing or modifying water pollution control equipment;
- Making operational changes or modifications of a process or process equipment that reduce the quantity of water discharged that reduce the load of nutrients discharged;
- Implementing structural nonpoint source management controls;
- Installing, operating, and maintaining drainage projects designed to control stormwater as part of a city or county drainage improvements; and
- Using similar pollution controls or management practices with a demonstrated ability to reduce the load of nutrients discharged.[38]

Section 403.067(8), F.S., and rule 62-306.400, F.A.C., currently do not list land set-asides and land use modifications as activities that are eligible to generate credits. Further, rule 62-306.400(3)(b), F.A.C., specifically states that land use changes may not be eligible to generate credits unless the change

[28] Id.
[29] Section 403.067(8), F.S.
[30] Martin at. 56.
[31] Environmental Protection Agency, Water Quality Trading, www.epa.gov/waterqualitytrading (last visited February 24, 2015).
[32] Martin at 56.
[33] Id.
[34] Id.
[35] Chapter 2013-146, F.S.
[36] 40 Fla. Admin. R. 138 (July 17, 2014).
[37] Section 403.067(8), F.S.
[38] Rule 62-306.400(2), F.A.C.

results in post development pollutant loading being equal to or less than loading under natural conditions for the property.

Effect of the Proposed Changes

The bill amends s. 403.067(8), F.S., to allow land set-asides and land use modifications not otherwise required by State law or permit requirements, including constructed wetlands or other water quality improvement projects, to be used as activities that are eligible to generate water quality trading credits. These land set-asides and land use modifications must reduce nutrient loads into nutrient impaired surface waters in order to generate water quality credits.

This change may require amendment of rule 62-306.400, F.A.C.

Variances

Present Situation

Section 403.201, F.S., authorizes DEP to grant a variance from the provisions of the Florida Air and Water Pollution Control Act[39] or the rules and regulations adopted pursuant to the act.

DEP may grant a variance or a renewal of a variance for any of the following reasons:

- There is no practicable means known or available for the adequate control of the pollution involved.
- Compliance with the particular requirement or requirements from which a variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time. A variance granted for this reason must prescribe a timetable for the taking of the measures required.
- To relieve or prevent another kind of hardship. Variances and renewals granted under this provision must be limited to a period of 24 months, except that variances granted for electrical power plant and transmission line siting may extend for the life of the permit certification.[40]

Such variances can apply to criteria such as antidegradation requirements,[41] water quality criteria,[42] and mixing zones.[43]

DEP may not grant variances from any provision or requirement concerning discharges of waste into waters of the state or hazardous waste management that would result in the provision or requirement being less stringent than a comparable federal provision or requirement, except for research, development, and demonstration permits for solid or hazardous waste facilities.[44]

"Moderating provisions" are generally applicable water quality standards.[45] A moderating provision is a condition in the permit that is authorized under state and federal law and applied when natural conditions prevent attainment of the criterion or when existing technology is not available to achieve the criterion.[46] Moderating provisions may be, but are not necessarily, variances.

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[39] Chapter 403, F.S.
[40] Section 403.201(1), F.S.
[41] Rule 62-4.242, F.A.C.
[42] Rule 62-4.243, F.A.C.
[43] Rule 62-4.244, F.A.C.
[44] Section 403.201(2), F.S.
[45] St. Johns Riverkeepers, Inc. and Henry O. Plamer, v. Department of Environmental Protection and Florida Pulp & Paper Association Environmental Affairs, Inc., and Buckeye Florida, LP, Case No. 09-7054RX, Conclusion of Law No. 20 (Fla. DOAH July 14, 2010); *see also* Rule 62-302.200(42), F.A.C.
[46] Department of Environmental Protection, *Water Quality Q & A*, http://www.dep.state.fl.us/evergladesforever/restoration/quality_qa.htm#4 (last visited February 19, 2015).

According to DEP, the current limitation on the use of the variance is necessary for implementation of federally delegated and approved programs.[47]

Effects of Proposed Changes

The bill amends s. 403.201(2), F.S., to specify that nothing in the section prohibits the issuance of moderating provisions under state law, subject to any necessary EPA approval. This will allow DEP to permit moderating provisions for the control of pollutants without the limitations put on variances. Examples of moderating provisions include certain exemptions, variances, mixing zones, site specific alternative criteria, and equitable allocations for meeting water quality standards.[48] These actions may not be less stringent than federal provisions or requirements. These moderating provisions will likely require approval by the EPA.[49]

Solid Waste Management Trust Fund

Present Situation

Section 403.709, F.S., creates the Solid Waste Management Trust Fund (SWMTF) to fund solid waste management activities. Annual revenues from registration fees, waste tire fees, license and permit fees, and solid waste fines and penalties must be deposited into the SWMTF.[50] DEP must allocate these funds in the following manner:

- Up to 40 percent for funding solid waste activities of DEP and other state agencies, such as providing technical assistance to local governments and the private sector, performing solid waste regulatory and enforcement functions, preparing solid waste documents, and implementing solid waste education programs.
- Up to 4.5 percent for funding research and training programs relating to solid waste management through the Center for Solid and Hazardous Waste Management.
- Up to 11 percent to use for funding to supplement any other funds provided to the Department of Agriculture and Consumer Services for mosquito control.
- Up to 4.5 percent for funding to the Department of Transportation for litter prevention and control programs through a certified Keep America Beautiful Affiliate at the local level.
- A minimum of 40 percent for funding a solid waste management grant program pursuant to s. 403.7095, F.S., for activities relating to recycling and waste reduction, including waste tires requiring final disposal.[51]

Operators who run solid waste disposal units must receive a closure permit to close a landfill.[52] Solid waste disposal units must close within 180 days after they cease receiving waste by:

- Properly sloping the sides;
- Covering the waste with two feet of dirt and, in some cases, a barrier layer;
- Vegetating the dirt; and
- Establishing a stormwater system.[53]

These facilities must also perform long-term care for thirty years.[54] This includes monitoring ground water and gas, maintaining the final cover, and maintaining the stormwater system.[55]

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[47] Florida Department of Environmental Protection, Agency Analysis of 2015 Senate Bill 714, p. 2 (February 23, 2015).
[48] Section 403.067(6)(b), (11), F.S., *see also* Florida Department of Environmental Protection, TMDL Protocol, Version 6.0 (2006) available at Florida Department of Environmental Protection.
[49] *See* 33 U.S.C. 1313(c)(2)(A), 40 CFR 124.62, 40 CFR 131.21; Water Legacy v. U.S.E.P.A., 300 F.R.D. 332, 335 (D. Minn. 2014).
[50] Sections 403.413, 403.7046, 403.708, 403.709, 403.7186, 403.759, F.S.
[51] Section 403.709(1), F.S.
[52] Rule 72-701.600(2), F.A.C.
[53] Rule 62-701.600(3), F.A.C.
[54] Rule 62-701.620, F.A.C.

Prior to operating a landfill or construction and demolition debris disposal facility, the owners or operators of the facility must provide financial assurance in favor of DEP to assure the availability of financial resources to properly close and provide long-term care of the landfill.[56] To establish the amount of financial assurance, the owner estimates the cost of closure and long term maintenance and DEP approves this figure.[57] The owner must update the cost estimate annually.[58] DEP lists the allowable financial mechanisms in rule 62-701.630, F.A.C., including an insurance certificate. Applicants may choose a financial assurance mechanism listed in the rule. Government entities that operate a landfill may use an escrow account as a financial assurance instrument.[59]

DEP identified five facilities that that used an insurance certificate to provide financial assurance and have been abandoned or were ordered closed.[60] These facilities require closure to minimize adverse environmental impacts.[61] DEP does not have a mechanism to access the insurance money to pay third party contractors to perform closure and long-term care activities.[62]

Effect of Proposed Changes

The bill amends s. 403.709, F.S., to create a solid waste landfill closure account within the SWMTF to provide funding for the closing and long-term care of solid waste management facilities. DEP may use funds from the account to contract with a third party to pay for the closing and long-term care of a solid waste management facility if:

- The facility has or had a DEP permit to operate the facility;
- The permittee provided proof of financial assurance for closure in the form of an insurance certificate;
- The facility is deemed to be abandoned or has been ordered to close by DEP;
- Closure is accomplished in substantial accordance with a closure plan approved by DEP; and
- DEP has written documentation that the insurance company issuing the closure insurance policy will provide or reimburse the funds required to complete closing and long-term care of the facility.

Funds received by DEP as reimbursement from the insurance company for the costs of closing or long-term care of the facility must be deposited into the solid waste landfill closure account.

DEP could use the budgetary authority and funds from the SWMTF Landfill Closure Account to enter into a contract with a third-party for closure construction and related environmental services to close facilities where an insurance policy was used to provide financial assurance. DEP would then receive reimbursement funds from insurers.

B. SECTION DIRECTORY:

Section 1. Amends s. 373.227, F.S., relating to water conservation.

Section 2. Amends s. 373.323, F.S., relating to licensure of water well contractors.

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[55] Id.
[56] Sections 403.707(9)(c), 403.7125, F.S.; Rule 62-701.630(2), F.A.C.
[57] Rule 62-701.630(3), F.A.C.
[58] Rule 62-701.630(4), F.A.C.
[59] Rule 62-701.630(2)(b), (5), F.A.C.
[60] Florida Department of Environmental Protection, Agency Analysis of 2015 Senate Bill 714, p. 3. (February 23, 2015).
[61] Id.
[62] DEP recently amended Rule 62-701.630(6)(e), F.A.C., to require landfill operators who use insurance certificates as a financial assurance instrument to provide a standby trust account to accompany the certificate of insurance. Thus, funds from the insurance can flow into the trust account to be used as needed and directed by DEP. This would eliminate the need for the solid waste landfill closure account for future landfills that use insurance certificates as a form of financial assurance.

Section 3. Amends s. 373.705, F.S., relating to water resource development.

Section 4. Amends s. 403.067, F.S., relating to total maximum daily loads.

Section 5. Amends s. 403.201, F.S., relating to variances.

Section 6. Amends s. 403.709, F.S., relating to the Solid Waste Management Trust Fund.

Section 7. Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   The bill appears to have an insignificant negative fiscal impact on DEP because the department will likely need to revise their WQCT rules as a result of the statutory changes in the bill. This impact can be absorbed by existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate, positive fiscal impact on entities that wish to create water quality credits by allowing them to use land set-asides and land use changes to generate water quality credits in addition to other permissible methods. Thus, the bill creates more opportunity to generate and sell credits by reducing pollutants.

The bill may have an indeterminate, positive fiscal impact on entities that must meet environmental standards in chapter 403, F.S., by allowing them to use moderating provisions under state law. This allows such entities to use an additional tool to meet water quality criteria when other methods are not feasible.

D. FISCAL COMMENTS:

The bill directs DEP to deposit funds received from an insurance company as reimbursement into the solid waste landfill closure account. According to DEP, the department would need $2,339,764 in budget authority from SWMTF in order to execute contracts with a third-party for the closure of five landfills.[63] The amount of funds requested represents the sum of the total approved closure cost estimates for the facilities listed previously in the analysis. (Coyote East, Coyote Navarre, Coyote West,

[63] Florida Department of Environmental Protection, Agency Analysis of 2015 Senate Bill 714, p. 6. (February 23, 2015).

Cerny Road, and Williams Road.)[64] All five of the landfills have Long Term Care components included in their closure insurance policy. The department would contract to close the landfills and seek reimbursement for costs required to close the landfills.[65] The reimbursement of funds provided to DEP for landfill closures would result in a neutral impact to the SWMTF.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

DEP has sufficient rule-making authority to amend rule 62-306.400, F.A.C., to conform to changes made in the statute.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2015, the Agriculture & Natural Resources Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The amendments made the following revisions to the bill:

- Allows land use modifications and land set-asides not otherwise required by State law or permit requirements, including constructed wetlands or other water quality improvement projects, to be used as activities that are eligible to generate water quality trading credits;
- Incentivizes water conservation by prohibiting permitting agencies from modifying permitted water allocations during the term of the permit if actual water use is less than permitted water use due to documented implementation of water conservation measures, including, but not limited to, those measures identified in best management practices for agriculture activities;
- Directs the WMDs to adopt rules providing water conservation incentives, including permit extensions.
- Amends the requirements for water well contractor license applicants to demonstrate two years of experience in constructing, repairing, or abandoning water wells. The change requires applicants to provide a letter from a water well contractor or a letter from a water well inspector employed by a governmental agency. The statute previously required both;
- Requires water management districts to promote expanded cost share criteria for additional conservation practices, such as soil and moisture sensors, and other irrigation improvements, water-saving equipment, and water-saving household fixtures; and
- Specifies that nothing in the provision restricting when a variances to an environmental standard may be issued prohibits the issuance of moderating provisions under state law, subject to any necessary EPA approval.

[64] Id.

[65] Email from Jorge Caspary, Director of Division of Waste Management, DEP, HB 653 Landfill Closure Issue, 3/24/15

This analysis is drafted to the bill as amended and passed by the Agriculture & Natural Resources Subcommittee.

A bill to be entitled

An act relating to environmental control; amending s. 373.227, F.S.; prohibiting water management districts from modifying consumptive use permit allocations if actual water use is less than permitted water use due to water conservation measures; requiring water management districts to adopt rules providing water conservation incentives, including permit extensions; amending s. 373.323, F.S.; revising eligibility requirements for taking the water well contractor licensure examination; amending s. 373.705, F.S.; requiring water management districts to promote expanded cost share criteria for additional conservation practices; amending s. 403.067, F.S.; authorizing the use of land set-asides and land use modifications, including constructed wetlands or other water quality improvement projects, in water quality credit trading; amending s. 403.201, F.S.; providing applicability of prohibited variances concerning discharges of waste into waters of the state and hazardous waste management; amending s. 403.709, F.S.; establishing a solid waste landfill closure account within the Solid Waste Management Trust Fund to provide funding for the closing and long-term care of solid waste facilities; authorizing the Department of Environmental Protection to contract with a third

party for such closing and long-term care under certain conditions; requiring the department to deposit certain funds into the solid waste landfill closure account; providing an effective date.

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

Section 1. Subsection (5) of section 373.227, Florida Statutes, is renumbered as subsection (6), and a new subsection (5) is added to that section, to read:

373.227 Water conservation; legislative findings and intent; objectives; comprehensive statewide water conservation program requirements.—

(5) To incentivize water conservation, if actual water use is less than permitted water use due to documented implementation of water conservation measures, including, but not limited to, those measures identified in best management practices pursuant to s. 570.93, the permitted allocation may not be modified due to such water conservation during the term of the permit. To promote water conservation and the implementation of measures that produce significant water savings beyond what is required in a consumptive use permit, each water management district shall adopt rules providing water conservation incentives, including permit extensions.

Section 2. Paragraph (b) of subsection (3) of section 373.323, Florida Statutes, is amended to read:

373.323 Licensure of water well contractors; application, qualifications, and examinations; equipment identification.—

(3) An applicant who meets the following requirements shall be entitled to take the water well contractor licensure examination:

(b) Has at least 2 years of experience in constructing, repairing, or abandoning water wells. Satisfactory proof of such experience shall be demonstrated by providing:

1. Evidence of the length of time the applicant has been engaged in the business of the construction, repair, or abandonment of water wells as a major activity, as attested to by a letter from a water well contractor or ~~and~~ a letter from a water well inspector employed by a governmental agency.

2. A list of at least 10 water wells that the applicant has constructed, repaired, or abandoned within the preceding 5 years. Of these wells, at least seven must have been constructed, as defined in s. 373.303(2), by the applicant. The list shall also include:

a. The name and address of the owner or owners of each well.

b. The location, primary use, and approximate depth and diameter of each well that the applicant has constructed, repaired, or abandoned.

c. The approximate date the construction, repair, or abandonment of each well was completed.

Section 3. Subsection (5) is added to section 373.705,

Florida Statutes, to read:

373.705 Water resource development; water supply development.—

(5) The water management districts shall promote expanded cost share criteria for additional conservation practices, such as soil and moisture sensors, and other irrigation improvements, water-saving equipment, and water-saving household fixtures.

Section 4. Paragraph (i) is added to subsection (8) of section 403.067, Florida Statutes, to read:

403.067 Establishment and implementation of total maximum daily loads.—

(8) WATER QUALITY CREDIT TRADING.—

(i) Land set-asides and land use modifications not otherwise required by state law or a permit, including constructed wetlands or other water quality improvement projects, that reduce nutrient loads into nutrient impaired surface waters may be used under this subsection.

Section 5. Subsection (2) of section 403.201, Florida Statutes, is amended to read:

403.201 Variances.—

(2) A ~~No~~ variance may not ~~shall~~ be granted from any provision or requirement concerning discharges of waste into waters of the state or hazardous waste management which would result in the provision or requirement being less stringent than a comparable federal provision or requirement, except as provided in s. 403.70715. However, this subsection does not

prohibit the issuance of moderating provisions or requirements under state law, subject to any necessary approval by the United States Environmental Protection Agency.

Section 6. Subsections (2) through (4) of section 403.709, Florida Statutes, are renumbered as subsections (3) through (5), respectively, and a new subsection (2) is added to that section to read:

403.709 Solid Waste Management Trust Fund; use of waste tire fees.—There is created the Solid Waste Management Trust Fund, to be administered by the department.

(2)(a) Notwithstanding subsection (1), a solid waste landfill closure account is established within the Solid Waste Management Trust Fund to provide funding for the closing and long-term care of solid waste management facilities. The department may use funds from the account to contract with a third party for the closing and long-term care of a solid waste management facility if:

1. The facility has or had a department permit to operate the facility.

2. The permittee provided proof of financial assurance for closure in the form of an insurance certificate.

3. The facility is deemed to be abandoned or was ordered to close by the department.

4. Closure is accomplished in substantial accordance with a closure plan approved by the department.

5. The department has written documentation that the

insurance company issuing the closure insurance policy will provide or reimburse the funds required to complete closing and long-term care of the facility.

(b) The department shall deposit the funds received from the insurance company as reimbursement for the costs of closing or long-term care of the facility into the solid waste landfill closure account.

Section 7. This act shall take effect upon becoming a law.

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: Agriculture & Natural Resources Appropriations Subcommittee

Representative Metz offered the following:

Amendment (with title amendment)

Between lines 77 and 78, insert:

Section 3. Paragraph (a) of subsection (1) and subsection (3) of section 373.467, Florida Statutes, are amended to read:

373.467 The Harris Chain of Lakes Restoration Council.—There is created within the St. Johns River Water Management District, with assistance from the Fish and Wildlife Conservation Commission and the Lake County Water Authority, the Harris Chain of Lakes Restoration Council.

(1)(a) The council shall consist of nine voting members, which shall include~~:~~ a representative of waterfront property owners, a representative of the sport fishing industry, a person with experience in ~~an~~ environmental science or regulation

~~engineer~~, a person with training in biology or another scientific discipline, ~~a person with training as~~ an attorney, a physician, ~~a person with training as~~ an engineer, and two residents of the county who do not need ~~meet~~ any specific ~~of the other~~ qualifications for membership ~~enumerated in this paragraph~~, each to be appointed by the Lake County legislative delegation. The Lake County legislative delegation may waive the qualifications for membership on a case-by-case basis if good cause is shown. A ~~No~~ person serving on the council may not be appointed to a council, board, or commission of any council advisory group agency. The council members shall serve as advisors to the governing board of the St. Johns River Water Management District. The council is subject to ~~the provisions of~~ chapters 119 and 120.

(3) The council shall meet at the call of its chair, at the request of six of its members, or at the request of the chair of the governing board of the St. Johns River Water Management District. Resignation by a council member, or failure by a council member to attend three consecutive meetings without an excuse approved by the chair, shall result in a vacancy on the council.

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

Remove line 11 and insert:

licensure examination; amending s. 373.467, F.S.; revising membership qualifications for the Harris Chain of Lakes Restoration Council; authorizing the Lake County legislative delegation to waive such membership qualifications for good cause; providing for council vacancies; amending s. 373.705, F.S.;

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: Agriculture & Natural Resources Appropriations Subcommittee

Representative Pigman offered the following:

Amendment (with title amendment)

Between lines 137 and 138, insert:

Section 6. The sum of $2,339,764 in nonrecurring funds is appropriated to the Department of Environmental Protection from the Solid Waste Management Trust Fund in Fixed Capital Outlay-Agency Managed-Closing and Long-Term Care of Solid Waste Management Facilities appropriation category for the closing and long-term care of solid waste management facilities pursuant to s. 403.709(2).

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

Remove line 30 and insert:

closure account; providing an appropriation; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 733 Petroleum Restoration Program
SPONSOR(S): Agriculture & Natural Resources Subcommittee; Ray and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N, As CS	Moore	Blalock
2) Agriculture & Natural Resources Appropriations Subcommittee		Helping	Massengale
3) State Affairs Committee			

SUMMARY ANALYSIS

Petroleum is stored in thousands of underground and aboveground storage tank systems throughout Florida. Releases of petroleum into the environment may occur as a result of accidental spills, storage tank system leaks, or poor maintenance practices. These discharges pose a significant threat to groundwater quality, and Florida relies on groundwater for 90 percent of its drinking water. The Department of Environmental Protection (Department or DEP) is responsible for regulating these storage tank systems.

In 1986, the Legislature enacted the State Underground Petroleum Environmental Response Act (SUPER Act) to address the pollution problems caused by leaking underground petroleum storage systems. The SUPER Act led to the creation of the Petroleum Restoration Program (Restoration Program), which establishes the requirements and procedures for cleaning up contaminated land as well as the circumstances under which the state will pay for the cleanup. Under the Restoration Program, eligible contaminated sites are rehabilitated by the state in priority order.

As of February 2015, there are approximately 18,400 sites eligible for state funding. Of these, approximately 8,400 have been rehabilitated and closed, approximately 5,000 are currently undergoing some phase of rehabilitation, and approximately 5,000 await rehabilitation.

Two programs under the Restoration Program allow sites to receive rehabilitation funding out of priority order under certain circumstances. These programs are the Low-Scored Site Initiative and Advanced Cleanup.

The bill makes various changes to the Low-Scored Site Initiative and Advanced Cleanup. The bill changes the name of the Low-Scored Site Initiative to the Low-Risk Site Initiative (LRSI) and requires a responsible party who wishes to participate in LRSI to provide evidence of authorization from the property owner. The bill also revises the criteria that must be met to participate in LRSI. In addition, the bill increases the amount of money that may be encumbered from the Inland Protection Trust Fund each year to fund LRSI from $10 million to $15 million and increases the funding limit per site from $30,000 to $35,000.

The bill reduces the minimum number of sites that a facility owner or operator or other responsible party must bundle in order to be eligible for performance-based contracts under Advanced Cleanup from 20 to 10. The bill also increases the annual allocation for Advanced Cleanup contracts from $15 million to $25 million.

The bill appears to have an indeterminate fiscal impact on state government, an indeterminate positive fiscal impact on the private sector, and no fiscal impact on local government. (See Fiscal Analysis & Economic Impact Statement.)

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Petroleum Restoration Program

Petroleum is stored in thousands of underground and aboveground storage tank systems throughout Florida. Releases of petroleum into the environment may occur as a result of accidental spills, storage tank system leaks, or poor maintenance practices.[1] These discharges pose a significant threat to groundwater quality, and Florida relies on groundwater for 90 percent of its drinking water.[2] The identification and cleanup of petroleum contamination is particularly challenging due to Florida's diverse geology, diverse water systems, and the complex dynamics between contaminants and the environment.[3]

In 1983, Florida began enacting legislation to regulate underground and aboveground storage tank systems in an effort to protect Florida's groundwater from past and future petroleum releases.[4] The Department of Environmental Protection (Department or DEP) is responsible for regulating these storage tank systems. In 1986, the Legislature enacted the State Underground Petroleum Environmental Response Act (SUPER Act) to address the pollution problems caused by leaking underground petroleum storage systems.[5] The SUPER Act authorized the Department to establish criteria for the prioritization, assessment and cleanup, and reimbursement for cleanup of contaminated areas, which led to the creation of the Petroleum Restoration Program (Restoration Program). The Restoration Program establishes the requirements and procedures for cleaning up contaminated land as well as the circumstances under which the state will pay for the cleanup.

Site Rehabilitation

Florida law requires land contaminated by petroleum to be cleaned up, or rehabilitated, so that the concentration of each contaminant in the ground is below a certain level.[6] These levels are known as Cleanup Target Levels (CTLs).[7] Once the CTLs for a contaminated site[8] have been attained, rehabilitation is complete and the site may be closed. When a site is closed, no further cleanup action is required unless the contaminant levels increase above the CTLs or another discharge occurs.[9]

State Funding Assistance for Rehabilitation

The average cost to rehabilitate a site is approximately $300,000, but some sites may cost millions of dollars to rehabilitate.[10] Under Florida law, an owner of contaminated land (site owner) is responsible for rehabilitating the land unless the site owner can show that the contamination resulted from the activities of a previous owner or other third party (responsible party), who is then responsible.[11] Over the years, different eligibility programs have been implemented to provide state financial assistance to

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[1] DEP, GUIDE TO FLORIDA'S PETROLEUM CLEANUP PROGRAM 1 (2002).
[2] *Id.*
[3] *Id.*
[4] Chapter 83-310, L.O.F.
[5] Chapter 86-159, L.O.F.
[6] Section 376.3071(5)(b)3., F.S.
[7] *Id.*
[8] A "site" is any contiguous land, sediment, surface water, or groundwater area upon or into which a discharge of petroleum or petroleum products has occurred or for which evidence exists that such a discharge has occurred. The site is the full extent of the contamination, regardless of property boundaries.
[9] DEP, GUIDE TO FLORIDA'S PETROLEUM CLEANUP PROGRAM 24 (2002).
[10] DEP, GUIDE TO FLORIDA'S PETROLEUM CLEANUP PROGRAM 26 (2002).
[11] Section 376.308, F.S.

certain site owners and responsible parties for site rehabilitation. To receive rehabilitation funding assistance, a site must qualify under one of these programs, which are outlined in the following table:

TABLE 1: STATE-ASSISTED PETROLEUM CLEANUP ELIGIBILITY PROGRAMS		
PROGRAM NAME	**PROGRAM DATES**	**PROGRAM DESCRIPTION**
Early Detection Incentive Program (EDI) s. 376.3071(9), F.S.	Discharges must have been reported between July 1, 1986, and December 31, 1988, to be eligible	• First state-assisted cleanup program • 100 percent state funding for cleanup if site owners reported releases • Originally gave site owners the option of conducting cleanup themselves and receiving reimbursement from the state or having the state conduct the cleanup in priority order • Reimbursement option was phased out, so all cleanups are now conducted by the state
Petroleum Liability and Restoration Insurance Program (PLRIP) s. 376.3072, F.S.	Discharges must have been reported between January 1, 1989, and December 31, 1998, to be eligible	• Required facilities to purchase third party liability insurance to be eligible • Provides varying amounts of state-funded site restoration coverage[12]
Abandoned Tank Restoration Program (ATRP) s. 376.305(6), F.S.	Applications must have been submitted between June 1, 1990, and June 30, 1996[13]	Provides 100 percent state funding for cleanup, less deductible, at facilities that had out-of-service or abandoned tanks as of March 1990
Innocent Victim Petroleum Storage System Restoration Program s. 376.30715, F.S.	The application period began on July 1, 2005, and remains open	Provides 100 percent state funding for a site acquired before July 1, 1990, that ceased operating as a petroleum storage or retail business before January 1, 1985
Petroleum Cleanup Participation Program (PCPP) s. 376.3071(13), F.S.	PCPP began on July 1, 1996, and accepted applications until December 31, 1998	• Created to provide financial assistance for sites that had missed all previous opportunities • Only discharges that occurred before 1995 were eligible • Site owner or responsible party must pay 25 percent of cleanup costs[14] • Originally had a $300,000 cap on the amount of coverage, which was raised to $400,000 beginning July 1, 2008

[12] The PLRIP initially provided $1M worth of site restoration coverage to eligible sites. In 1994, the state began phasing out the Department's participation in the restoration insurance program by reducing the amount of restoration coverage provided. For discharges reported from January 1, 1994, to December 31, 1996, coverage was limited to $300,000. For discharges reported from January 1, 1997, to December 31, 1998, coverage was limited to $150,000. Section 376.3072(2)(d)2.c.-d., F.S. In 2008, the Legislature raised the coverage for all PLRIP sites as follows: sites with $1M in coverage were raised to $1.2M, sites with $300,000 in coverage were raised to $400,000, and sites with $150,000 in coverage were raised to $300,000. Chapter 2008-127, s. 3, at 6, L.O.F.

[13] The ATRP originally had a one-year application period, but the deadline was extended. The deadline is now waived indefinitely for site owners who are financially unable to pay for the closure of abandoned tanks. Section 376.305(6)(b), F.S.

[14] The 25 percent copay requirement can be reduced or eliminated if the site owner and all responsible parties demonstrate that they are financially unable to comply. Section 376.3071(13)(c), F.S.

TABLE 1: STATE-ASSISTED PETROLEUM CLEANUP ELIGIBILITY PROGRAMS		
PROGRAM NAME	**PROGRAM NAME**	**PROGRAM NAME**
Consent Order (aka "Hardship" or "Indigent") s. 376.3071(7)(c), F.S.	This program began in 1986 and remains open	• Created to provide financial assistance under certain circumstances for sites that the Department initiates an enforcement action to clean up • An agreement is formed whereby the Department conducts the cleanup and the site owner or responsible party pays for a portion of the costs

As of February 2015, there are approximately 18,400 sites eligible for state funding through one of the above programs. Of these, approximately 8,400 have been rehabilitated and closed, approximately 5,000 are currently undergoing some phase of rehabilitation, and approximately 5,000 await rehabilitation.

Inland Protection Trust Fund

To fund the cleanup of contaminated sites, the SUPER Act created the Inland Protection Trust Fund (IPTF).[15] The IPTF is funded by an excise tax per barrel on petroleum and petroleum products in or imported into the state.[16] The amount of the excise tax per barrel is determined by a formula, which is dependent upon the unobligated balance of the IPTF.[17] Each year, $196 million to $199 million from the excise tax is deposited into the IPTF, of which $110 million to $125 million is generally available for site rehabilitation.

Funding for rehabilitation of a site is based on a relative risk scoring system. Each funding-eligible site receives a numeric score based on the threat the site contamination poses to the environment or to human health, safety, or welfare.[18] Sites currently in the Restoration Program range in score from 5 to 115 points, with a score of 115 representing a substantial threat and a score of 5 representing a very low threat. Sites are rehabilitated in priority order beginning with the highest score, with funding based on available budget.[19] The Department sets the priority score funding threshold, which is the minimum score a site must be assigned to receive restoration funding at a particular point in time. The threshold is periodically raised or lowered depending on the Restoration Program's current budget, projected expenditures for the remainder of the fiscal year, and the next fiscal year's anticipated budget. Currently, the threshold is set at 30 points.

Expediting Site Rehabilitation

As described above, eligible contaminated sites typically receive state rehabilitation funding in priority order based on their numeric score. However, there are some programs that allow sites to receive funding for rehabilitation or site closure out of priority score order, as long as the sites are eligible under one of the programs in Table 1. Two of these programs are Advanced Cleanup and Low Scored Site Initiative.

Advanced Cleanup

Advanced Cleanup (formerly known as Preapproved Advanced Cleanup) is a program that was created in 1996 to allow an eligible site to receive state rehabilitation funding even if the site's priority score does not fall within the threshold currently being funded.[20] The purpose of creating Advanced Cleanup

[15] Section 376.3071(3)-(4), F.S.
[16] Sections 206.9935(3) and 376.3071(6), F.S.
[17] The amount of the excise tax per barrel is based on the following formula: 30 cents if the unobligated balance is between $100 million and $150 million; 60 cents if the unobligated balance is between $50 million and $100 million; and 80 cents if the unobligated balance is $50 million or less. Section 206.9935(3), F.S.
[18] Chapter 62-771.100, F.A.C.
[19] Chapter 62-771.300, F.A.C.
[20] Section 376.30713(1), F.S.

was to facilitate property transactions or public works projects on contaminated sites.[21] To participate in Advanced Cleanup, a site must be eligible for state rehabilitation funding under the Early Detection Incentive Program (EDI), the Petroleum Liability and Restoration Insurance Program (PLRIP), the Abandoned Tank Restoration Program (ATRP), the Innocent Victim Petroleum Storage System Restoration Program (Innocent Victim), or the Petroleum Cleanup Participation Program (PCPP).[22]

To apply for Advanced Cleanup, a site owner or responsible party must bid a cost share of the total site rehabilitation.[23] The cost share must be at least 25 percent of the total cost of rehabilitation.[24] For PCPP sites, the cost share must be at least 25 percent of the state's share of the rehabilitation, as the site owner or responsible party is already required to pay for 25 percent of the total cost of rehabilitation to be eligible for PCPP.[25] Alternatively, an applicant may use a commitment to pay, a demonstrated cost savings to DEP, or both to meet this requirement if the application proposes a performance-based contract for the cleanup of 20 or more sites.[26]

In years when the Department runs a bid cycle, bids may be accepted in two windows of May 1 through June 30 and November 1 through December 31.[27] Bids are awarded based solely on the proposed cost-share percentage and not the estimated dollar amount of that share.[28] The Department may enter into Advanced Cleanup contracts for a total of up to $15 million per fiscal year,[29] and no more than $5 million per fiscal year may be approved for rehabilitation work at an individual facility.[30]

Low Scored Site Initiative

The Low Scored Site Initiative (LSSI) was created to expedite the assessment and closure of sites that contain minimal contamination and that are not a threat to human health or the environment. To participate in LSSI, a site owner or responsible party must demonstrate that the following criteria are met:

- Upon assessment, the site retains a priority ranking score of 29 points or less;
- No excessively contaminated soil exists onsite;
- A minimum of six months of groundwater monitoring indicates that the plume is shrinking or stable;
- The remaining contamination resulting from petroleum products does not adversely affect adjacent surface waters;
- The area of groundwater contamination is less than one-quarter acre and is confined to the source property boundary; and
- Soils onsite found between the land surface and two feet below the land surface must meet the soil cleanup target levels (SCTLs) established by the Department unless human exposure is limited by appropriate institutional or engineering controls.[31]

An assessment is conducted to determine whether the above criteria are met.[32] The state pays the assessment costs for sites eligible for funding under EDI, ATRP, Innocent Victim, PLRIP, or PCPP.[33] Funding for LSSI is limited to $10 million per fiscal year, which may only be used to fund site

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[21] *Id.*
[22] For PCPP sites, Advanced Cleanup is only available if the 25 percent copay requirement of PCPP has not been reduced or eliminated. Section 376.30713(1)(d), F.S.
[23] Section 376.30713(2)(a), F.S.
[24] *Id.*
[25] Section 376.30713(1)(d)-(2)(a), F.S.
[26] Section 376.30713(2)(a)1., F.S.
[27] Section 376.30713(2)(a), F.S.
[28] Section 376.30713(2)(b), F.S.
[29] Section 376.30713(4), F.S.
[30] A "facility" includes, but is not limited to, "multiple site facilities such as airports, port facilities, and terminal facilities even though such enterprises may be treated as separate facilities for other purposes under this chapter." Section 376.30713(4), F.S.
[31] Section 376.3071(11)(b)1., F.S.
[32] DEP PETROLEUM RESTORATION PROGRAM, PROCEDURAL AND TECHNICAL GUIDANCE FOR THE LOW-SCORED SITE INITIATIVE 9 (2013).
[33] *Id.* at 3.

assessments.[34] Each site has a funding cap of $30,000, and each site owner or responsible party is limited to 10 eligible sites per fiscal year.[35] Funds are allocated on a first-come, first-served basis.[36] Sites not eligible for state rehabilitation funding may still qualify for closure under LSSI if an assessment reveals that the above criteria are met, but the state will not pay for the assessment.[37]

If the assessment shows the above criteria are met, there are three options for site closure:

- If no contamination is detected during the assessment, the Department may issue a site rehabilitation completion order.[38]
- If the assessment demonstrates that minimal contamination exists onsite, but the above criteria are met, the Department may issue an LSSI no further action administrative order. This determination acknowledges that the contamination is not a threat to human health or the environment.[39]
- If soil between the land surface and two feet below the land surface exceeds SCTLs, but the above criteria are otherwise met, the Department may issue a site rehabilitation completion order with conditions. This determination requires that institutional and/or engineering controls be put in place to prevent human or environmental exposure to the contamination. The state is not authorized to fund such controls.[40]

If at any time data collected during the assessment indicate that the above criteria for closure will not be met, assessment activities will be terminated.[41] LSSI funding will be discontinued if it is determined at any point that a closure cannot be accomplished within the $30,000 funding limit, unless the site owner or responsible party is willing to contribute funds to the assessment work.[42] A site determined to be ineligible for LSSI funding retains its current program eligibility and will receive rehabilitation funding in priority order.

Effect of Proposed Changes

Low-Risk Site Initiative

The bill changes the name of the Low Scored Site Initiative to the Low-Risk Site Initiative (LRSI) and makes various changes to the program. The bill requires a responsible party who wishes to participate in LRSI to provide evidence of authorization from the property owner.

To participate in LRSI, the bill requires a property owner or responsible party to submit a "No Further Action" proposal that demonstrates the required criteria are met and revises the criteria in the following manner:

- Removes the requirement that a contaminated site must have a priority ranking score of 29 points or less.
- Provides a more specific standard for the prohibition on the presence of excessively contaminated soil on the site. Specifically, soil saturated with petroleum or petroleum products, or soil that causes a total corrected hydrocarbon measurement of 500 parts per million (ppm) or higher for Gasoline Analytical Group or 50 ppm or higher for Kerosene Analytical Group, as defined by DEP rule, must not exist onsite as a result of a release of petroleum products;

[34] Section 376.3071(11)(b)3.c., F.S.
[35] *Id.*
[36] *Id.*
[37] DEP PETROLEUM RESTORATION PROGRAM, PROCEDURAL AND TECHNICAL GUIDANCE FOR THE LOW-SCORED SITE INITIATIVE 1-2 (2013).
[38] Section 376.3071(11)(b)2., F.S.
[39] *Id.*
[40] DEP PETROLEUM RESTORATION PROGRAM, PROCEDURAL AND TECHNICAL GUIDANCE FOR THE LOW-SCORED SITE INITIATIVE 3 (2013).
[41] *Id.* at 11.
[42] *Id.*

- Specifies that the requirement that contamination remaining at the site does not adversely affect adjacent surface waters includes the effects of those waters on human health and the environment.
- Removes the requirement that the area of groundwater contamination is less than one-quarter acre.
- Allows the presence of groundwater containing petroleum products' chemicals of concern that is not confined to the source property boundaries if it only migrates to a transportation facility of the Florida Department of Transportation.
- Adds a requirement that the groundwater contamination containing the petroleum products' chemicals of concern is not a threat to any permitted potable water supply well.

If DEP determines that the property owner or responsible party has demonstrated that these conditions are met, DEP must issue a site rehabilitation completion order that incorporates the "No Further Action" proposal. This determination acknowledges that minimal contamination exists onsite and that such contamination is not a threat to the public health, safety, or welfare, water resources, or the environment. If DEP determines that a discharge for which a site rehabilitation completion order was issued pursuant to LRSI may pose a threat to the public health, safety, or welfare, water resources, or the environment, the issuance of the site rehabilitation completion order does not alter eligibility for state-funded rehabilitation that would otherwise apply.

The bill authorizes DEP to approve the cost of a limited remediation plan, in addition to the cost of the assessment authorized in current law, submitted by a property owner or responsible party if DEP determines that the assessment and limited remediation will likely result in a no further action determination. The approval may be provided in one or more task assignments or modifications thereof, but the total amount authorized for a particular site may not exceed the threshold amount specified in chapter 287, F.S.,[43] for a Category Two purchasing category, which is currently $35,000. This is an increase from the current LRSI funding limit of $30,000. The bill authorizes DEP to pay the costs associated with a professional land survey or specific purpose survey, if needed, and costs associated with obtaining a title report and recording fees.

The bill requires DEP to procure contractual services for LRSI in accordance with chapter 287, F.S., and applicable DEP rules in order to ensure the work is conducted in a cost-effective manner.

The bill increases the amount of time within which assessment work must be completed from six months to nine months. However, if groundwater monitoring is required following the assessment in order to satisfy the LRSI conditions, DEP may authorize an additional six months to complete the monitoring.

The bill also increases the annual amount of money that may be encumbered from the Inland Protection Trust Fund to fund LRSI from $10 million to $15 million.

Advanced Cleanup

The bill reduces the minimum number of sites that a facility owner or operator or other responsible party must bundle in order to be eligible for performance-based contracts under Advanced Cleanup from 20 to 10.

The bill also adds a new requirement that an applicant who is not the property owner for any of the sites contained in an application must provide evidence of authorization from the property owners for site access and rehabilitation tasks consistent with the proposed course of action.

The bill increases the annual allocation for Advanced Cleanup contracts from $15 million to $25 million.

[43] Chapter 287, F.S., regulates state agency procurement of commodities and services.

B. SECTION DIRECTORY:

Section 1. amends s. 376.3071, F.S., relating to the Inland Protection Trust Fund.

Section 2. amends s. 376.30713, F.S., relating to Advanced cleanup.

Section 3. provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill increases the amount of money that may be encumbered from the Inland Protection Trust Fund to fund LRSI contracts from $10 million to $15 million and increases the annual allocation for Advanced Cleanup contracts from $15 million to $25 million. However, these changes do not increase DEP's overall annual appropriation for the Restoration Program, but rather revise how much of the annual appropriation may be expended on these programs within the Restoration Program.

   The fiscal impact on DEP is indeterminate as a result of reducing the number of sites that must be bundled to be eligible to compete for performance-based contracts for Advanced Cleanup from 20 to 10. According to DEP, the process of bundling sites and implementing cleanups under a performance-based contract has resulted in an average cost savings ranging between 25 percent and 40 percent. The decrease in the number of sites needed for a bundle in conjunction with raising the amount of funds available may result in pushing the average cost savings closer to 25 percent.[44] However, the decreased bundled site requirement together with the increased amount of available funds should result in more sites being cleaned up sooner, resulting in an overall cost savings over time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill appears to have an indeterminate positive fiscal impact on the private sector because more rehabilitation contracts may be awarded as a result of increasing the total funding limits for Advanced Cleanup and LRSI.

D. FISCAL COMMENTS:

None.

[44] DEP, 2015 Agency Legislative Bill Analysis for SB 314.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The DEP has sufficient authority, if necessary, to update is rules relating to the LRSI and Advanced Cleanup programs to reflect the new requirements of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 24, 2015, the Agriculture & Natural Resources Subcommittee heard a proposed committee substitute for HB 733 and reported the bill favorably with committee substitute.

The committee substitute:

- Reduces the minimum number of sites that a facility owner or operator or other responsible party must bundle in order to be eligible for performance-based contracts under Advanced Cleanup from 20 to 10;
- Increases the annual allocation for Advanced Cleanup contracts from $15 million to $25 million;
- Changes the name of the Low Scored Site Initiative to the Low-Risk Site Initiative (LRSI);
- Revises the criteria for participating in LRSI, including removing the requirement that a site must have a priority ranking score of 29 or less;
- Authorizes DEP to approve the cost of a limited remediation under LRSI;
- Increases the amount of money that DEP may spend on each LRSI site from $30,000 to $35,000;
- Increases the amount of time allowed to complete LRSI assessment work from six months to nine months; and
- Increases the amount of money that may be spent to fund LRSI from $10 million to $15 million.

This analysis is drafted to the committee substitute as passed by the Agriculture & Natural Resources Subcommittee.

A bill to be entitled

An act relating to the Petroleum Restoration Program; amending s. 376.3071, F.S.; renaming the low-score site initiative as the low-risk site initiative; requiring that responsible parties provide evidence of authorization from property owners to conduct site rehabilitation; requiring that responsible parties and property owners submit certain proposals for voluntary participation in the low-risk site initiative; increasing the total amount of costs that the department may approve for each site; authorizing the department to approve certain assessment, remediation, survey, and report costs; requiring that the department procure certain contractual services for completion of certain work; extending the period for completion of assessment and limited remediation work; providing an additional extension for certain groundwater monitoring; increasing the amount of funds that may be encumbered from the Inland Protection Trust Fund for the low-risk site initiative in any fiscal year; requiring that the department issue a site rehabilitation completion order that incorporates proposals for no further action upon demonstration that certain conditions have been met; providing that certain discharges do not alter eligibility for state-funded rehabilitation; amending s. 376.30713, F.S.;

reducing the number of sites necessary to meet the eligibility requirement for an advanced cleanup application; requiring that certain applicants provide evidence of authorization from property owners for site access and rehabilitation program tasks as part of an advanced cleanup application; increasing the total amount for which the department may contract for advanced cleanup work in a fiscal year; providing an effective date.

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

Section 1. Paragraph (b) of subsection (12) of section 376.3071, Florida Statutes, is amended, and paragraph (c) is added to that subsection, to read:

376.3071 Inland Protection Trust Fund; creation; purposes; funding.—

(12) SITE CLEANUP.—

(b) Low-risk ~~Low-scored~~ site initiative.—Notwithstanding subsections (5) and (6), a site ~~with a priority ranking score of 29 points or less~~ may voluntarily participate in the low-risk ~~low-scored~~ site initiative regardless of whether the site is eligible for state restoration funding.

1. To participate in the low-risk ~~low-scored~~ site initiative, the ~~responsible party or~~ property owner or the responsible party that provides evidence of authorization from

the property owner must submit a "No Further Action" proposal and ~~must~~ affirmatively demonstrate that the ~~following~~ conditions of paragraph (c) are met~~:~~

~~a. Upon reassessment pursuant to department rule, the site retains a priority ranking score of 29 points or less.~~

~~b. Excessively contaminated soil, as defined by department rule, does not exist onsite as a result of a release of petroleum products.~~

~~c. A minimum of 6 months of groundwater monitoring indicates that the plume is shrinking or stable.~~

~~d. The release of petroleum products at the site does not adversely affect adjacent surface waters, including their effects on human health and the environment.~~

~~e. The area of groundwater containing the petroleum products' chemicals of concern is less than one-quarter acre and is confined to the source property boundaries of the real property on which the discharge originated.~~

~~f. Soils onsite that are subject to human exposure found between land surface and 2 feet below land surface meet the soil cleanup target levels established by department rule or human exposure is limited by appropriate institutional or engineering controls~~.

2. Upon affirmative demonstration that ~~of~~ the conditions of paragraph (c) are met ~~under subparagraph 1.~~, the department shall issue a site rehabilitation completion order incorporating the ~~determination of~~ "No Further Action~~.~~" proposal submitted by

the property owner or the responsible party that provides evidence of authorization from the property owner ~~Such determination acknowledges that minimal contamination exists onsite and that such contamination is not a threat to the public health, safety, or welfare, water resources, or the environment~~. If no contamination is detected, the department may issue a site rehabilitation completion order.

3. Sites that are eligible for state restoration funding may receive payment of costs for the low-risk ~~low-scored~~ site initiative as follows:

a. A ~~responsible party or~~ property owner or a responsible party that provides evidence of authorization from the property owner may submit an assessment and limited remediation plan designed to affirmatively demonstrate that the site meets the conditions of paragraph (c) ~~under subparagraph 1~~. Notwithstanding the priority ranking score of the site, the department may approve the cost of the assessment and limited remediation, including up to 6 months of groundwater monitoring, in one or more task assignments or modifications thereof, not to exceed the threshold amount provided in s. 287.017 for CATEGORY TWO, ~~$30,000~~ for each site where the department has determined that the assessment and limited remediation, if applicable, will likely result in a determination of no further action. The department may not pay the costs associated with the establishment of institutional or engineering controls, with the exception of the costs associated with a professional land

survey or specific purpose survey, if needed, and costs associated with obtaining a title report and recording fees.

b. To ensure that work conducted pursuant to this paragraph is completed in a cost-effective manner, the department shall procure such contractual services pursuant to chapter 287 and applicable department rules.

c.~~b.~~ The assessment and limited remediation work must ~~shall~~ be completed no later than 9 ~~6~~ months after the department authorizes the start of a state-funded low-risk site initiative task ~~issues its approval~~. If groundwater monitoring is required after the assessment and limited remediation to satisfy the conditions of paragraph (c), the department may authorize an additional 6 months to complete the monitoring.

d.~~c.~~ No more than $15 ~~$10~~ million for the low-risk ~~low-scored~~ site initiative may be encumbered from the fund in any fiscal year. Funds shall be made available on a first-come, first-served basis and shall be limited to 10 sites in each fiscal year for each ~~responsible party or~~ property owner or each responsible party that provides evidence of authorization from the property owner.

e.~~d.~~ Program deductibles, copayments, and the limited contamination assessment report requirements under paragraph (13)(c) do not apply to expenditures under this paragraph.

(c) The department shall issue a site rehabilitation completion order incorporating the "No Further Action" proposal submitted by a property owner or a responsible party that

provides evidence of authorization from the property owner upon affirmative demonstration that the following conditions are met:

1. Soil saturated with petroleum or petroleum products or soil that causes a total corrected hydrocarbon measurement of 500 parts per million or higher for Gasoline Analytical Group or 50 parts per million or higher for Kerosene Analytical Group, as defined by department rule, does not exist onsite as a result of a release of petroleum products.

2. A minimum of 6 months of groundwater monitoring indicates that the plume is shrinking or stable.

3. The release of petroleum products at the site does not adversely affect adjacent surface waters, including their effects on human health and the environment.

4. The area of groundwater containing the petroleum products' chemicals of concern is confined to the source property boundaries of the real property on which the discharge originated or has migrated from the source property only to a transportation facility of the Department of Transportation.

5. The groundwater contamination containing the petroleum products' chemicals of concern is not a threat to any permitted potable water supply well.

6. Soils onsite that are subject to human exposure found between land surface and 2 feet below land surface meet the soil cleanup target levels established pursuant to s. 376.3071(5)(b)9., or human exposure is limited by appropriate institutional or engineering controls.

Issuance of a site rehabilitation completion order under this paragraph acknowledges that minimal contamination exists onsite and that such contamination is not a threat to the public health, safety, or welfare, water resources, or the environment. If the department determines that a discharge for which a site rehabilitation completion order was issued pursuant to this subsection may pose a threat to the public health, safety, or welfare, water resources, or the environment, the issuance of the site rehabilitation completion order does not alter eligibility for state-funded rehabilitation that would otherwise be applicable under this section.

Section 2. Subsections (2) and (4) of section 376.30713, Florida Statutes, are amended to read:

376.30713 Advanced cleanup.—

(2) The department may approve an application for advanced cleanup at eligible sites~~, before funding based on the site's priority ranking established pursuant to s. 376.3071(5)(a),~~ pursuant to this section. Only the facility owner or operator or the person otherwise responsible for site rehabilitation qualifies as an applicant under this section.

(a) Advanced cleanup applications may be submitted between May 1 and June 30 and between November 1 and December 31 of each fiscal year. Applications submitted between May 1 and June 30 shall be for the fiscal year beginning July 1. An application must consist of:

1. A commitment to pay 25 percent or more of the total cleanup cost deemed recoverable under this section along with proof of the ability to pay the cost share. An application proposing that the department enter into a performance-based contract for the cleanup of 10 ~~20~~ or more sites may use a commitment to pay, a demonstrated cost savings to the department, or both to meet the cost-share requirement. For an application relying on a demonstrated cost savings to the department, the applicant shall, in conjunction with the proposed agency ~~term~~ contractor, establish and provide in the application the percentage of cost savings in the aggregate that is being provided to the department for cleanup of the sites under the application compared to the cost of cleanup of those same sites using the current rates provided to the department by the proposed agency ~~term~~ contractor. The department shall determine whether the cost savings demonstration is acceptable. Such determination is not subject to chapter 120.

2. A nonrefundable review fee of $250 to cover the administrative costs associated with the department's review of the application.

3. A limited contamination assessment report.

4. A proposed course of action.

5. If the applicant is not the property owner for any of the sites contained in the application, evidence of authorization from the property owners for site access and petroleum site rehabilitation program tasks consistent with the

proposed course of action.

The limited contamination assessment report must be sufficient to support the proposed course of action and to estimate the cost of the proposed course of action. Costs incurred related to conducting the limited contamination assessment report are not refundable from the Inland Protection Trust Fund. Site eligibility under this subsection or any other provision of this section is not an entitlement to advanced cleanup or continued restoration funding. The applicant shall certify to the department that the applicant has the prerequisite authority to enter into an advanced cleanup contract with the department. The certification must be submitted with the application.

(b) The department shall rank the applications based on the percentage of cost-sharing commitment proposed by the applicant, with the highest ranking given to the applicant who proposes the highest percentage of cost sharing. If the department receives applications that propose identical cost-sharing commitments and that exceed the funds available to commit to all such proposals during the advanced cleanup application period, the department shall proceed to rerank those applicants. Those applicants submitting identical cost-sharing proposals that exceed funding availability must be so notified by the department and offered the opportunity to raise their individual cost-share commitments, in a period specified in the notice. At the close of the period, the department shall proceed

to rerank the applications pursuant to this paragraph.

(4) The department may enter into contracts for a total of up to $25 ~~$15~~ million of advanced cleanup work in each fiscal year. However, a facility or an applicant who bundles multiple sites as specified in subparagraph (2)(a)1. may not be approved for more than $5 million of cleanup activity in each fiscal year. For the purposes of this section, the term "facility" includes, but is not limited to, multiple site facilities such as airports, port facilities, and terminal facilities even though such enterprises may be treated as separate facilities for other purposes under this chapter.

Section 3. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 765 Household Moving Services
SPONSOR(S): Goodson
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 798

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	12 Y, 0 N	Whittier	Luczynski
2) Agriculture & Natural Resources Appropriations Subcommittee		Lolley	Massengale
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Chapter 507, F.S., establishes laws pertaining to the loading, transportation or shipment, unloading, and affiliated storage of household goods as part of household moves, and addresses household moving practices in the state that are consistent with federal law governing consumer protection. The chapter applies to the operations of any mover or moving broker engaged in the *intrastate* transportation or shipment of household goods originating and terminating in the state and does not apply to shipments contracted by the U.S., the state, or any local government or political subdivision of the state.

The bill makes the following major changes to chapter 507, F.S.:

- Provides definitions for "impracticable operations" and "tariff" and revises the definition of mover, clarifying that a mover required to register with the Department of Agricultural and Consumer Services (DACS) does not include a laborer hired only for the purposes of loading and unloading goods;
- Lowers the registration fees for moving brokers;
- Provides that DACS may immediately suspend a mover's registration or eligibility for registration if a mover does not maintain motor vehicle insurance coverage;
- Provides that a mover must offer valuation coverage and may not limit its liability for the loss or damage of household goods to a specified valuation rate;
- Requires a mover to annually file a tariff with DACS and requires that the tariff be posted and available for public inspection;
- Requires a mover to conduct a physical survey of the household goods to be moved unless the survey is waived by the shipper;
- Requires a mover to provide a binding estimate to the shipper prior to executing a contract for service, which details the total charges for moving the household goods;
- Requires DACS to prepare a publication of rights, responsibilities, and remedies for movers and shippers under the chapter and requires that a mover provide a prospective shipper the published summary of rights and responsibilities, a binding estimate, and copies of the tariff;
- Requires a mover to tender household goods for delivery on the agreed upon delivery date;
- Provides a maximum allowable charge for moving goods and time-frames in which payments should be submitted to the mover;
- Provides that a mover may collect partial payment if part of the shipment of household goods is lost or destroyed and outlines shipper's rights in the instance of partial/total loss of household goods;
- Provides that DACS can immediately suspend a registration or the processing of an application for registration if the registrant or applicant is formally charged with certain crimes and provides for penalties against movers who fail to comply with a law enforcement officer's order to relinquish a shipper's household goods.

The bill appears to have an insignificant fiscal impact on state government, no impact on local government, and a fiscal impact on the private sector. See Fiscal Analysis & Economic Impact Statement for more details.

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 507, F.S., establishes laws pertaining to the loading, transportation or shipment, unloading, and affiliated storage of household goods as part of household moves, and addresses household moving practices in the state that are consistent with federal law governing consumer protection. The chapter applies to the operations of any mover or moving broker engaged in the *intrastate* transportation or shipment of household goods originating and terminating in the state and does not apply to shipments contracted by the U.S., the state, or any local government or political subdivision of the state. Legislative intent provides that "the chapter is intended to secure the satisfaction and confidence of shippers and members of the public when using a mover."[1]

Section 507.01, F.S., provides the following definitions:

- "Household goods" or "goods" means personal effects or other personal property commonly found in a home, personal residence, or other dwelling, including, but not limited to, household furniture. The term does not include freight or personal property moving to or from a factory, store, or other place of business.
- "Household move" or "move" means the loading of household goods into a vehicle, moving container, or other mode of transportation or shipment; the transportation or shipment of those household goods; and the unloading of those household goods, when the transportation or shipment originates and terminates at one of the following ultimate locations, regardless of whether the mover temporarily stores the goods while en route between the originating and terminating locations:
    - From one dwelling to another dwelling;
    - From a dwelling to a storehouse or warehouse that is owned or rented by the shipper or the shipper's agent; or
    - From a storehouse or warehouse that is owned or rented by the shipper or the shipper's agent to a dwelling.
- "Mover" means a person who, for compensation, contracts for or engages in the loading, transportation or shipment, or unloading of household goods as part of a household move. The term does not include a postal, courier, envelope, or package service that does not advertise itself as a mover or moving service.
- "Moving broker" or "broker" means a person who, for compensation, arranges for another person to load, transport or ship, or unload household goods as part of a household move or who, for compensation, refers a shipper to a mover by telephone, postal or electronic mail, Internet website, or other means.
- "Shipper" means a person who uses the services of a mover to transport or ship household goods as part of a household move.

Section 507.03, F.S., requires movers and moving brokers engaged in intrastate moving to register with the Department of Agriculture and Consumer Services (DACS) biennially (every 2 years). The registration fee is $300 per year for each mover or moving broker. At the time of application or renewal, a $600 fee is due for the two-year registration.[2] There are approximately 900 movers and 12 moving brokers in the state.[3]

[1] s. 507.02, F.S.
[2] s. 507.03, F.S.
[3] Email from Jonathan Rees, Deputy Director of Legislative Affairs, Department of Agriculture and Consumer Services, RE: the moving industry in the state (Mar. 5, 2015).

A Certificate of Insurance must be provided by the mover showing proof of proper coverage. Insurance and surety must be issued by a company authorized to transact business in this state. The DACS shall be named as a certificate holder and must be notified at least 10 days before cancellation of insurance coverage.[4] A copy of the policy, declarations page or insurance card will not be accepted.

Coverage must include:

- Liability insurance coverage for the loss or damage of household goods – not less than $10,000 per shipment.
    - In lieu of maintaining the liability insurance, a mover operating two or fewer trucks is authorized, and a moving broker is required, to file with DACS, a performance bond or certificate of deposit in the amount of $25,000.[5]
- Motor vehicle coverage, including bodily injury and property damage liability coverage in the following minimum amounts:
    - $50,000 per occurrence for a commercial motor vehicle with a gross weight of less than 35,000 pounds.
    - $100,000 per occurrence for a commercial motor vehicle with a gross weight of more than 35,000 pounds, but less than 44,000 pounds.
    - $300,000 per occurrence for a commercial motor vehicle with a gross weight of 44,000 pounds or more.[6]

A mover may offer valuation coverage to compensate a shipper if there is loss or damage of the shipper's household goods that occurs during a household move. A mover may not limit their liability for the loss or damage of household goods to a valuation rate that is less than 60 cents per pound per article. If a mover limits their liability to less than that rate, the provision of a contract for moving services is void. If a mover limits its liability for a shipper's goods, the mover must disclose the limitation, including the valuation rate, to the shipper in writing at the time that the estimate and contract for services are executed and before any moving or accessorial services are provided. The disclosure must also inform the shipper of the opportunity to purchase valuation coverage if the mover offers that coverage.[7]

Before providing any moving or accessorial services, a contract and estimate must be provided to a prospective shipper in writing, must be signed and dated by the shipper and the mover, and must include:

- The name, telephone number, and physical address where the mover's employees are available during normal business hours.
- The date the contract or estimate is prepared and any proposed date of the move.
- The name and address of the shipper, the addresses where the articles are to be picked up and delivered, and a telephone number where the shipper may be reached.
- The name, telephone number, and physical address of any location where the goods will be held pending further transportation, including situations where the mover retains possession of goods pending resolution of a fee dispute with the shipper.
- An itemized breakdown and description and total of all costs and services for loading, transportation or shipment, unloading, and accessorial services to be provided during a household move or storage of household goods.
- Acceptable forms of payment. A mover shall accept a minimum of two of the three following forms of payment:
    - Cash, cashier's check, money order, or traveler's check;

[4] s. 507.04, F.S.
[5] s. 507.04(1), F.S.
[6] s. 507.04(2), F.S.
[7] s. 507.04(4) and (5), F.S.

- Valid personal check, showing upon its face the name and address of the shipper or authorized representative; or
- Valid credit card, which shall include, but not be limited to, Visa or MasterCard.[8]

Movers and moving brokers are not currently required to file a tariff with DACS. A tariff is a legal document that includes the exact prices, services, rules, regulations, classifications, policies, and other provisions of the services offered by the mover.[9] Further, there is no requirement that a mover tender household goods for delivery on the agreed upon delivery date.

The department has no publication that includes a summary of the rights and responsibilities of and remedies available to movers and shippers.[10] There is no provision in the statute for movers to collect a partial payment from a shipper if part of the shipment of household goods is lost or destroyed. Administrative remedies and penalties are: issuing notices of noncompliance; imposing an administrative fine; directing person/business to cease and desist specified activities; refusing to register, revoke, or suspend a registration, or place a registrant on probation.

Effects of Proposed Changes

Legislative intent for the chapter is expanded to include the provision of "consistency and transparency in moving practices" in addition to securing the satisfaction and confidence of shippers and members of the public when using a mover.

The bill adds definitions for the following terms:

- "Impracticable operations" means conditions that make it impossible for a mover to perform pickup or delivery services for a household move with its road haulage equipment.
- "Tariff" means the document filed with the department by a mover under s. 507.045, which reflects its rates and charges for transportation and accessorial services.

The definition of "mover" is clarified to reflect that an individual hired as a laborer to assist a shipper only in the loading and unloading of the shipper's own household goods is not included as a "mover."

"Liability Insurance" is retitled "cargo liability insurance" throughout the section. Consequences for failing to maintain insurance coverage are moved from s. 507.04(1), F.S., to s. 507.04(3), F.S. This change does not remove the insurance requirement; it expands it by moving it to a section that refers to both cargo liability insurance and motor vehicle insurance requirements.

The bill decreases the biennial registration fee for a moving broker from $300 per year to $100 per year. At the time of application or renewal, a $200 fee is due for the two-year registration. The registration fee for each mover remains at $300 per year with the application or renewal for the biennial registration remaining at $600. The bill removes the requirement for a moving broker to provide *evidence* of current and valid insurance or alternative coverage; however, it does not remove the *actual* requirement for a moving broker to have alternative coverage if they have two or fewer vehicles.

A moving company's valuation coverage protects a shipper's goods from damage. Currently, a mover may offer valuation coverage to compensate a shipper if there is loss or damage of the shipper's household goods that occurs during a household move. The bill changes valuation coverage from an optional offering to a required offering. The current valuation rate permits the mover to limit the liability for the loss or damage of household goods at no less than 60 cents per pound. The bill amends this to require the mover to offer coverage that is no less than the cost of replacement of the goods less depreciated value.

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[8] s. 507.05, F.S.
[9] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2015 House Bill 765, p. 2 (Feb. 24, 2015).
[10] *Id.*

The bill requires each mover to annually file a tariff with DACS, which must be posted and available for public inspection. Such tariff must be clear and concise and arranged in a manner that allows a shipper to determine the precise cost of, and the terms of service applicable to, the move. The bill specifies items that the tariff must contain. DACS may reject a tariff that fails to meet the requirements of this section or departmental rule, and such tariff is void and its use is unlawful.

Language is added that details the aspects of physical surveys, the process of waiving a survey, and the provisions of a binding estimate. A physical survey must be performed by the mover to provide an accurate binding estimate unless the goods being shipped are outside of a 50-mile radius of the location of the agent who prepares the estimate. In other instances, a physical survey may be waived if the shipper elects to do so; however, this waiver must be documented in writing and retained by the mover. Before executing a contract for service, and at least 48 hours before the scheduled time and date of a shipment, a mover must provide a binding estimate of the total charges including, but not limited to, the loading, transportation or shipment, and unloading of household goods and accessorial services.

Under the bill, movers are allowed to charge a one-time fee not to exceed $100 for binding estimates. The estimates should be signed upon completion, with both the mover and shipper maintaining a copy. Movers can amend the estimates if done within the 48-hours preceding the scheduled loading of goods. Further provisions outline exclusions for binding estimates and addendums to the original contract.

The bill provides additional provisions to the contract for service that is provided to the shipper by the mover prior to providing any services. These include: total charges based on the binding estimate and the terms and conditions of the contract, a caveat listing the maximum potential payment if the shipper and mover agree to pay upon delivery, and the recognition of addendums. A copy of the contract must accompany the household goods whenever they are in the mover's possession.

The bill requires DACS to prepare a summary of the rights and responsibilities of, and remedies, available to movers and shippers. The publication must include a form to be signed by the mover and the shipper acknowledging that both parties have read and understand the document. This acknowledgment form, along with the publication, must be attached as a part of the contract for service. The bill outlines the information that must be provided to the shipper by the mover prior to services being rendered.

The bill requires a mover to tender goods on the agreed delivery date or within the time frame specified. If a mover cannot deliver the household goods within the agreed upon time frame, the mover must make every effort to notify the shipper of the delay and provide an amended date of delivery. The DACS notes that, "This will add consumer protection from loss or theft of goods and increase the ability to hold carriers responsible for damages, losses or failures—responsible carriers will be unaffected."[11]

The bill provides that movers may only charge the amount of the binding estimate, plus any additional services requested or agreed to in writing. A mover is specifically prohibited from charging, demanding, collecting, or receiving compensation for transportation or accessorial services in an amount greater than the rates and charges specified in the tariff that was in effect on the date that the binding estimate was signed by the mover and the shipper.

If a mover is proposing a change to a rate or charge, or the manner in which such rate or charge is calculated, in the tariff, DACS must be notified and the change is not effective until 30 days after the mover provides notice of the proposed change to the department. Upon a showing of good cause, DACS may waive the 30-day notice requirement. Such notice must plainly state the proposed change and its effective date.

[11] Florida Department of Agriculture and Consumer Services Agency Analysis of 2015 House Bill 765, p. 5 (Feb. 24, 2015).

Any payment that is not collected upon delivery must be billed within 15-days of delivery. Movers may bill shippers for late fees should the shipper fail to make their payment within 30-days of delivery. The bill does not provide guidelines or limits on the late fees that can be charged by the mover.

Under the bill, movers can collect a partial payment from a shipper if part of the shipment of household goods is lost or destroyed. This could include:

- A prorated percentage of the binding estimate;
- Charges for additional services requested by the shipper after the contract was issued;
- Charges for impracticable operations (not to exceed 15% of all other charges due at delivery); and
- Any specific valuation rate charges due, if applicable.

It is the responsibility of the mover to determine what amount of the household goods were lost or destroyed during transit. If there was a total loss or destruction, the mover may not request freight charges from the shipper, but can collect a specific valuation rate charge due. If the total loss or destruction was the fault of the shipper, the total loss provisions are not applicable. Further language outlines shipper's rights in regard to collection for losses.

Administrative penalties are revised to include that DACS shall immediately suspend a registration or the processing of an application for registration if the registrant or applicant is formally charged with certain crimes, including: fraud, theft, larceny, embezzlement, or fraudulent conversion or misappropriation of property. Criminal penalties are amended to make reference to the new tariff and binding estimate requirements. Failure of a mover to comply with the order of a law enforcement officer related to the relinquishment of a shipper's household goods, in partial delivery circumstances and meeting certain conditions, is a felony of the third degree. The bill states that complying with the order from law enforcement is not a waiver to seek further payment from the shipper.

B. SECTION DIRECTORY:

Section 1. Amends s. 507.01, F.S., relating to definitions.

Section 2. Amends s. 507.02, F.S., relating to legislative intent.

Section 3. Amends s. 507.03, F.S., relating to registration.

Section 4. Amends s. 507.04, F.S., relating to required insurance coverages, liability limitations, and valuation coverage.

Section 5. Creates s. 507.045, F.S., relating to tariffs.

Section 6. Amends s. 507.05, F.S., relating to physical surveys, binding estimates, and contracts for service.

Section 7. Creates s. 507.054, F.S., relating to a publication of rights and responsibilities.

Section 8. Creates s. 507.055, F.S., relating to disclosures.

Section 9. Amends s. 507.06. F.S., relating to delivery and storage of household goods.

Section 10. Creates s. 507.065, F.S., relating to payment.

Section 11. Creates s. 507.066, F.S., relating to collection for losses.

Section 12. Amends s. 507.07, F.S., relating to violations.

Section 13. Amends s. 507.09, F.S., relating to administrative remedies and penalties.

Section 14. Amends s. 507.11, F.S., relating to criminal penalties.

Section 15. Creates s. 507.14, F.S., relating to rulemaking.

Section 16. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The department provided the following fiscal analysis.[12]

General Inspection Trust Fund	FY 15-16	FY 16-17
Current Revenues	$322,083	$322,083
Reduction in fee for moving brokers[13]	$ (2,400)	$ (2,400)
Total Revenues	**$319,683**	**$319,683**

2. Expenditures:

General Inspection Trust Fund	FY 15-16	FY 16-17
Current Recurring Expenditures	$97,531	$97,531
Workload Increase		
Recurring – Consumer Services		
Salaries and Benefits		
Regulatory Consultant (1)	$48,941	$48,941
Senior Clerk (1)	$35,051	$35,051
Expenses		
Professional Expense Package (1)	$6,166	$6,166
Support Staff Expense Package (1)	$5,057	$5,057
Special Category		
Human Resources Allocation (2)	$688	$688
Total Recurring Workload Increase	$95,903	$95,903
Total Recurring Expenditures	**$193,434**	**$193,434**

[12] Florida Department of Agriculture and Consumer Services Agency Analysis of 2015 House Bill 765, p. 7 (Feb. 24, 2015). Email from Stormie Knight, Senior Management Analyst, Department of Agriculture and Consumer Services, RE: HB 765, regarding estimated cost statement for FY 2015-16 (Mar. 25, 2015).

[13] The Department of Agriculture and Consumer Services estimates a recurring annual loss of $2,400 resulting from lowering the annual registration fee for moving brokers from $300 to $100.

Nonrecurring – Consumer Services	FY 15-16	FY 16-17
Expenses		
Professional Expense Package (1)	$3,882	$0
Support Staff Expense Package (1)	$3,666	$0
Contracted Services		
Software – develop, test, deploy		
1,040 hrs @ $85	$88,400	$0
Total Nonrecurring Expenditures	$95,948	$0
Total Recurring/ Nonrecurring Expenditures	**$289,382**	**$193,434**
General Inspection Trust Fund Fund Balance	**$30,301**	**$126,249**

B. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill decreases the biennial registration fee for a moving broker from $300 per year to $100 per year.

The bill changes valuation coverage from an optional offering to a required offering and requires the mover to offer coverage that is no less than the cost of replacement of the goods less depreciated value.

Under the bill, movers are allowed to charge a one-time fee not to exceed $100 for binding estimates.

The bill specifies that movers may only charge the amount of the binding estimate, plus any additional services requested or agreed to in writing.

C. FISCAL COMMENTS:

On March 11, 2015, the Criminal Justice Impact Conference estimated that the new felony created in the bill would have an insignificant fiscal impact on the state in terms of impacting prison beds.

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:

No new rule-making authority is created, but the authority for DACS to adopt rules to administer the chapter is moved from s. 507.09, F.S., to s. 507.14, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On line 162, the bill removes the requirement for a moving broker to provide *evidence* of current and valid insurance or alternative coverage; however, on line 193, it does not remove the *actual* requirement for a moving broker to have alternative coverage if they have two or fewer vehicles.

The language in lines 402-405, permitting the mover to perform and bill for additional services that the shipper has not agreed to pay for, may create a loophole for movers to add charges without the shipper's consent.

Lines 570-572 authorize a mover to bill a shipper for late fees should the shipper fail to make their payment within 30-days of delivery; however, the bill does not provide guidelines or limits on the late fees that can be charged by the mover.

Line 623 references "requirement under this part." Chapter 507 does not contain parts. Based on the context of the provision, a reference to "chapter" may be more appropriate.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to household moving services; amending s. 507.01, F.S.; defining terms; amending s. 507.02, F.S.; clarifying intent; amending s. 507.03, F.S.; revising the registration fees for a moving broker; removing the requirement that a moving broker provide evidence of current and valid insurance or alternative coverage; amending s. 507.04, F.S.; removing a prohibition that a mover may not limit its liability for the loss or damage of household goods to a specified valuation rate; removing a requirement that a mover disclose a liability limitation when the mover limits its liability for a shipper's goods; requiring a mover to offer valuation coverage to compensate a shipper for the loss or damage of the shipper's household goods that are lost or damaged during a household move; requiring the valuation coverage to indemnify the shipper for at least the cost of replacement goods less depreciated value; revising the time at which the mover must disclose the terms of the coverage to the shipper in writing; revising the information that the disclosure must provide to the shipper; creating s. 507.045, F.S.; requiring a mover to annually publish, file, and post a tariff with the Department of Agricultural and Consumer Services; requiring the department to reject a noncomplying

tariff; providing that a tariff must contain certain information; prohibiting a mover from charging, demanding, collecting, or receiving compensation beyond that agreed upon by the mover and shipper; requiring a mover to provide certain notice to the department about changes in rates or charges and related rules; providing that the department may waive a certain notice requirement; amending s. 507.05, F.S.; requiring a mover to conduct a physical survey and provide a binding estimate in certain circumstances unless waived by the shipper in writing; requiring specified content for the binding estimate; authorizing the mover to provide a maximum one-time fee for providing a binding estimate; requiring the mover and shipper to sign the estimate; requiring the mover to provide the shipper with a copy of the estimate at the time of signature; providing that a binding estimate may only be amended under certain circumstances; providing that a mover reaffirms the original binding estimate once the mover begins to load the household goods for a move; authorizing a mover to charge more than the binding estimate in certain circumstances; requiring a mover to allow a shipper to consider whether additional services are needed; requiring a mover to retain a copy of the binding estimate for a specified period; requiring a

mover to provide a contract for service to the shipper before providing moving or accessorial services; requiring a driver to have possession of the contract before leaving the point of origin; requiring a mover to retain a contract of service for a specified period; creating s. 507.054, F.S.; requiring the department to prepare a publication that summarizes the rights and responsibilities of, and remedies available to, movers and shippers; requiring the publication to meet certain specifications; creating s. 507.055, F.S.; requiring a mover to provide certain disclosures to a prospective shipper; amending s. 507.06, F.S.; requiring a mover to tender household goods for delivery on the agreed upon delivery date or within a specified period unless waived by the shipper; requiring a mover to immediately notify and provide certain information to a shipper if the mover is unable to perform delivery on the agreed upon date or during the specified period; requiring a mover to take certain actions if the mover amends the date or period for pick up or delivery; creating s. 507.065, F.S.; providing a maximum amount that a mover may charge a shipper; requiring a mover to bill a shipper for certain amounts within a specified period; creating s. 507.066, F.S.; specifying the amount of payment that the mover may collect upon delivery of

partially lost or destroyed household goods; requiring a mover to determine the proportion of lost or destroyed household goods; prohibiting a mover from collecting or requiring a shipper to pay any charges other than specific valuation rate charges if a household goods shipment is totally lost or destroyed in transit; amending s. 507.07, F.S.; providing that it is a violation of ch. 507, F.S., to fail to comply with specified provisions; providing that it is a violation of ch. 507, F.S., to increase the contracted cost for moving services in certain circumstances; conforming a provision to a change made by this act; amending s. 507.09, F.S.; requiring the department, upon verification by certain entities, to immediately suspend a registration or the processing of an application for a registration in certain circumstances; amending s. 507.11, F.S.; providing criminal penalties; conforming a provision to a change made by this act; creating s. 507.14, F.S.; requiring the department to adopt rules; providing an effective date.

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

Section 1. Present subsections (6) through (9) of section 507.01, Florida Statutes, are amended, and new subsections (8)

and (14) are added to that section, to read:

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

~~(6) "Estimate" means a written document that sets forth the total costs and describes the basis of those costs, relating to a shipper's household move, including, but not limited to, the loading, transportation or shipment, and unloading of household goods and accessorial services.~~

(6)~~(7)~~ "Household goods" or "goods" means personal effects or other personal property commonly found in a home, personal residence, or other dwelling, including, but not limited to, household furniture. The term does not include freight or personal property moving to or from a factory, store, or other place of business.

(7)~~(8)~~ "Household move" or "move" means the loading of household goods into a vehicle, moving container, or other mode of transportation or shipment; the transportation or shipment of those household goods; and the unloading of those household goods, when the transportation or shipment originates and terminates at one of the following ultimate locations, regardless of whether the mover temporarily stores the goods while en route between the originating and terminating locations:

(a) From one dwelling to another dwelling;

(b) From a dwelling to a storehouse or warehouse that is owned or rented by the shipper or the shipper's agent; or

(c) From a storehouse or warehouse that is owned or rented

by the shipper or the shipper's agent to a dwelling.

(8) "Impracticable operations" means conditions that make it impossible for a mover to perform pickup or delivery services for a household move with its road haulage equipment.

(9) "Mover" means a person who, for compensation, contracts for or engages in the loading, transportation or shipment, or unloading of household goods as part of a household move. The term does not include a postal, courier, envelope, or package service that does not advertise itself as a mover or moving service or an individual that is hired as a laborer to assist a shipper only in the loading and unloading of the shipper's own household goods.

(14) "Tariff" means the document filed with the department by a mover under s. 507.045 which reflects its rates and charges for transportation and accessorial services.

Section 2. Subsection (3) of section 507.02, Florida Statutes, is amended to read:

507.02 Construction; intent; application.—

(3) This chapter is intended to provide consistency and transparency in moving practices and to secure the satisfaction and confidence of shippers and members of the public when using a mover.

Section 3. Subsections (3) and (9) of section 507.03, Florida Statutes, are amended to read:

507.03 Registration.—

(3) Registration fees shall be calculated at the rate of

$300 per year per mover and $100 per year per ~~or~~ moving broker. All amounts collected shall be deposited by the Chief Financial Officer to the credit of the General Inspection Trust Fund of the department for the sole purpose of administration of this chapter.

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

Section 4. Subsections (1), (3), (4), and (5) of section 507.04, Florida Statutes, are amended to read:

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

(1) CARGO LIABILITY INSURANCE.—

(a)1. Except as provided in paragraph (b), each mover operating in this state must maintain current and valid cargo liability insurance coverage of at least $10,000 per shipment for the loss or damage of household goods resulting from the negligence of the mover or its employees or agents.

2. The mover must provide the department with evidence of liability insurance coverage before the mover is registered with the department under s. 507.03. All insurance coverage maintained by a mover must remain in effect throughout the mover's registration period. ~~A mover's failure to maintain insurance coverage in accordance with this paragraph constitutes an immediate threat to the public health, safety, and welfare. If a mover fails to maintain insurance coverage, the department~~

~~may immediately suspend the mover's registration or eligibility for registration, and the mover must immediately cease operating as a mover in this state. In addition, and notwithstanding the availability of any administrative relief pursuant to chapter 120, the department may seek from the appropriate circuit court an immediate injunction prohibiting the mover from operating in this state until the mover complies with this paragraph, a civil penalty not to exceed $5,000, and court costs.~~

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

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

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

The original bond or certificate of deposit must be filed with the department and must designate the department as the sole beneficiary. The department must use the bond or certificate of deposit exclusively for the payment of claims to consumers who are injured by the fraud, misrepresentation, breach of contract, misfeasance, malfeasance, or financial failure of the mover or moving broker or by a violation of this chapter by the mover or broker. Liability for these injuries may be determined in an

administrative proceeding of the department or through a civil action in a court of competent jurisdiction. However, claims against the bond or certificate of deposit must only be paid, in amounts not to exceed the determined liability for these injuries, by order of the department in an administrative proceeding. The bond or certificate of deposit is subject to successive claims, but the aggregate amount of these claims may not exceed the amount of the bond or certificate of deposit.

(3) INSURANCE COVERAGES.—The insurance coverages required under paragraph (1)(a) and subsection (2) must be issued by an insurance company or carrier licensed to transact business in this state under the Florida Insurance Code as designated in s. 624.01. The department shall require a mover to present a certificate of insurance of the required coverages before issuance or renewal of a registration certificate under s. 507.03. The department shall be named as a certificateholder in the certificate and must be notified at least 10 days before cancellation of insurance coverage. A mover's failure to maintain insurance coverage constitutes an immediate threat to the public health, safety, and welfare. If a mover fails to maintain insurance coverage, the department may immediately suspend the mover's registration or eligibility for registration, and the mover must immediately cease operating as a mover in this state. In addition, and notwithstanding the availability of any administrative relief pursuant to chapter 120, the department may seek from the appropriate circuit court

an immediate injunction prohibiting the mover from operating in this state until the mover complies with this paragraph, a civil penalty not to exceed $5,000, and court costs.

(4) ~~LIABILITY LIMITATIONS; VALUATION RATES.—A mover may not limit its liability for the loss or damage of household goods to a valuation rate that is less than 60 cents per pound per article. A provision of a contract for moving services is void if the provision limits a mover's liability to a valuation rate that is less than the minimum rate under this subsection. If a mover limits its liability for a shipper's goods, the mover must disclose the limitation, including the valuation rate, to the shipper in writing at the time that the estimate and contract for services are executed and before any moving or accessorial services are provided. The disclosure must also inform the shipper of the opportunity to purchase valuation coverage if the mover offers that coverage under subsection (5).~~

~~(5)~~ VALUATION COVERAGE.—A mover shall ~~may~~ offer valuation coverage to compensate a shipper for the loss or damage of the shipper's household goods that are lost or damaged during a household move. ~~If a mover offers valuation coverage,~~ The coverage must indemnify the shipper for at least the cost of replacement of the goods less depreciated value ~~minimum valuation rate required under subsection (4)~~. The mover must disclose the terms of the coverage to the shipper in writing within ~~at the time that~~ the binding estimate and again when the contract for services is ~~are~~ executed and before any moving or

accessorial services are provided. The disclosure must inform the shipper of the cost of the valuation coverage, if any ~~the valuation rate of the coverage, and the opportunity to reject the coverage~~. ~~If valuation coverage compensates a shipper for at least the minimum valuation rate required under subsection (4), the coverage satisfies the mover's liability for the minimum valuation rate.~~

Section 5. Section 507.045, Florida Statutes, is created to read:

507.045 Tariffs.—

(1) Each mover shall annually file a tariff with the department which must be posted and available for public inspection. Such tariff must be clear and concise and arranged in a manner that allows a shipper to determine the precise cost of, and the terms of service applicable to, the move. The department may reject a tariff that fails to meet the requirements of this section or department rule, and such tariff is void and its use is unlawful.

(2) At a minimum, a tariff must contain the following information:

(a) A table of contents, arranged in alphabetical order, which shows the page number or item number for each household good or accessorial service. If the content of a tariff is so limited that its title page or interior arrangement plainly discloses its contents, the table of contents may be omitted.

(b) An index of the household goods, with specific rates,

which makes reference to the page or items where the household goods are listed. An index is not required if the tariff has fewer than five pages or if the rates for a destination are listed alphabetically by household good.

(c) An explanation of any notes, abbreviations, or symbols.

(d) Clear and explicit terms that specify covered services.

(e) A transportation rate that is explicitly stated in a dollar amount.

(f) The charge for any accessorial service rendered in connection with the move. The tariff must separately state each service to be rendered and the associated charge.

1. Charges for packing and unpacking must be stated as amounts per moving container or per 100 pounds of weight.

2. An hourly labor charge for miscellaneous labor services performed at the request of the shipper shall be specified if a flat rate for all such services is not stated.

(g) A charge for impracticable operations, including identification of the specific services considered to be impracticable operations.

(h) The mileage associated with the tariff, or the method by which mileage will be determined for the tariff, which must be based on the distance between the point of origin and the destination.

(3) A mover may not charge, demand, collect, or receive

compensation for transportation or accessorial services in an amount greater than the rates and charges specified in the tariff that was in effect on the date that the binding estimate required under s. 507.05(3) was signed by the mover and the shipper.

(4) A change to a rate or charge, or the manner in which such rate or charge is calculated, specified in a mover's tariff is not effective until 30 days after the mover provides notice of the proposed change to the department. Such notice must plainly state the proposed change and its effective date. Upon a showing of good cause, the department may waive the 30-day notice requirement.

Section 6. Section 507.05, Florida Statutes, is amended to read:

507.05 Physical surveys, binding estimates, and contracts for service. ~~Before providing any moving or accessorial services, a contract and estimate must be provided to a prospective shipper in writing, must be signed and dated by the shipper and the mover, and must include:~~

(1) PHYSICAL SURVEY.—A mover must conduct a physical survey of the household goods to be moved and provide the prospective shipper with a binding estimate of the cost of the move. A physical survey is not required if the household goods are located outside a 50-mile radius of the location of the agent who prepares the estimate.

(2) WAIVER OF SURVEY.—A shipper may elect to waive the

physical survey, and such waiver must be in writing and signed by the shipper before the household goods are loaded. The mover shall retain a copy of the waiver as an addendum to the contract for service.

(3) BINDING ESTIMATE.—Before executing a contract for service for a household move, and at least 48 hours before the scheduled time and date of a shipment of household goods, a mover must provide a binding estimate of the total charges, including, but not limited to, the loading, transportation or shipment, and unloading of household goods and accessorial services. The binding estimate shall be based on a physical survey conducted pursuant to subsection (1), unless waived pursuant to subsection (2).

(a) At a minimum, the binding estimate must include all of the following:

1. The table of measures used by the mover or the mover's agent in preparing the estimate.

2. The date the estimate was prepared and the proposed date of the move, if any.

3. An itemized breakdown and description of services, and the total cost to the shipper of loading, transporting or shipping, unloading, and accessorial services.

4. A statement that the estimate is binding on the mover and the shipper and that the charges shown apply only to those services specifically identified in the estimate.

5. Identification of acceptable forms of payment.

(b) A mover may charge a one-time fee, not to exceed $100, for providing a binding estimate.

(c) The binding estimate must be signed by the mover and the shipper, and a copy must be provided to the shipper by the mover at the time that the estimate is signed.

(d) A binding estimate may only be amended by the mover before the 48 hours immediately preceding the scheduled loading of household goods for shipment, when the shipper has requested additional services of the mover not previously disclosed in the original binding estimate, or upon mutual agreement of the mover and the shipper. Once a mover begins to load the household goods for a move, failure to execute a new binding estimate signifies the mover has reaffirmed the original binding estimate.

(e) A mover may not collect more than the amount of the binding estimate unless:

1. The shipper tenders additional household goods or requires services that are not specifically included in the binding estimate, in which case the mover is not required to honor the estimate. If, despite the addition of household goods or the need for additional services, the mover chooses to perform the move, it must, before loading the household goods, reaffirm the binding estimate or negotiate a revised binding estimate.

2. Upon issuance of the contract for services, the mover advises the shipper, in advance of performing additional services, including accessorial services, that such services are

essential to properly performing the move. The mover must allow the shipper at least 1 hour to determine whether to authorize the additional services.

a. If the shipper agrees to pay for the additional services, the mover must execute a written addendum to the contract for services, which must be signed by the shipper. The addendum may be sent to the shipper by facsimile, e-mail, overnight courier, or certified mail, with return receipt requested. The mover must bill the shipper for only the agreed upon additional services within 15 days after the delivery of those additional services pursuant to s. 507.06.

b. If the shipper does not agree to pay for the additional services, the mover may perform and, pursuant to s. 507.06, bill the shipper for only those additional services necessary to complete the delivery.

3. The shipper requests additional services after the contract for service has been issued, in which case the mover must inform the shipper of the associated charges in writing. The mover may require full payment at the destination for the costs associated with the additional requested services and the full amount of the original binding estimate.

(f) A mover shall retain a copy of the binding estimate for each move performed for at least 1 year after its preparation date as an attachment to the contract for service.

(4) CONTRACT FOR SERVICE.—Before providing any moving or accessorial services, a mover must provide a contract for

service to the shipper, which the shipper must sign and date.

(a) At a minimum, the contract for service must include:

1.~~(1)~~ The name, telephone number, and physical address where the mover's employees are available during normal business hours.

2.~~(2)~~ The date the contract was ~~or estimate is~~ prepared and the ~~any~~ proposed date of the move, if any.

3.~~(3)~~ The name and address of the shipper, the addresses where the articles are to be picked up and delivered, and a telephone number where the shipper may be reached.

4.~~(4)~~ The name, telephone number, and physical address of any location where the household goods will be held pending further transportation, including situations in which ~~where~~ the mover retains possession of household goods pending resolution of a fee dispute with the shipper.

5.~~(5)~~ An itemized breakdown and description and total of all costs and services for loading, transportation or shipment, unloading, and accessorial services to be provided during a household move or storage of household goods.

6. The total charges owed by the shipper based on the binding estimate and the terms and conditions for their payment, including any required minimum payment.

7. If the household goods are transported under an agreement to collect payment upon delivery, the maximum payment that the mover may demand at the time of delivery.

8.~~(6)~~ Acceptable forms of payment, which must be clearly

and conspicuously disclosed to the shipper on the binding estimate and the contract for services. A mover must ~~shall~~ accept at least ~~a minimum of~~ two of the three following forms of payment:

a.~~(a)~~ Cash, cashier's check, money order, or traveler's check;

b.~~(b)~~ Valid personal check, showing upon its face the name and address of the shipper or authorized representative; or

c.~~(c)~~ Valid credit card, which shall include, but not be limited to, Visa or MasterCard. ~~A mover must clearly and conspicuously disclose to the shipper in the estimate and contract for services the forms of payments the mover will accept, including the forms of payment described in paragraphs (a)-(c).~~

(b) Each addendum to the contract for service is an integral part of the contract.

(c) A copy of the contract for service must accompany the household goods whenever they are in the mover's or the mover's agent's possession. Before a vehicle that is being used for the move leaves the point of origin, the driver responsible for the move must have the contract for service in his or her possession.

(d) A mover shall retain a contract for service for each move it performs for at least 1 year after the date the contract for service was signed.

Section 7. Section 507.054, Florida Statutes, is created

to read:

507.054 Publication.—

(1) The department shall prepare a publication that includes a summary of the rights and responsibilities of, and remedies available to, movers and shippers under this chapter. The publication must include a form, to be signed by the mover and shipper, stating that both parties have read and understand the document and an acknowledgement, to be signed by the mover, that the failure of a mover to relinquish household goods as required by this chapter constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, that any other violation of this chapter constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and that any violation of this chapter constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act. The publication must also include a notice to the shipper about the potential risks of shipping sentimental or family heirloom items. The publication, including the signed and dated form, must be attached as an integral part of the contract for service.

(2) A mover may provide exact copies of the department's publication to shippers or may customize the color, design, and dimension of the front and back covers of the standard department publication. If the mover customizes the publication, the customized publication must include the content specified in subsection (1) and meet the following requirements:

(a) The font size used must be at least 10 points, with the exception that the following must appear prominently on the front cover in at least 12-point boldface type: "Your Rights and Responsibilities When You Move. Furnished by Your Mover, as Required by Florida Law."

(b) The size of the booklet must be at least 36 square inches.

Section 8. Section 507.055, Florida Statutes, is created to read:

507.055 Required disclosure and acknowledgment of rights and remedies.—Before executing a contract for service for a move, a mover must provide to a prospective shipper all of the following:

(1) The publication required under s. 507.054.

(2) A concise, easy-to-read, and accurate binding estimate required under s. 507.05(3).

(3) A notice of the availability of the mover's tariff, including an explanation that the shipper may examine the tariff at the premises of the mover or request that copies of the tariff be sent to him or her.

Section 9. Subsection (1) of section 507.06, Florida Statutes, is amended, and subsections (4) and (5) are added to that section, to read:

507.06 Delivery and storage of household goods.—

(1) A mover must relinquish household goods to a shipper and must place the household goods inside a shipper's dwelling

or, if directed by the shipper, inside a storehouse or warehouse that is owned or rented by the shipper or the shipper's agent, unless the shipper has not tendered payment pursuant to s. 507.065 ~~in the amount specified in a written contract or estimate signed and dated by the shipper~~. A mover may not, under any circumstances, refuse to relinquish prescription medicines and household goods for use by children, including children's furniture, clothing, or toys~~, under any circumstances~~.

(4) A mover shall tender household goods for delivery to a shipper on the agreed upon delivery date or within the timeframe specified in the contract for service. This requirement may be waived by the shipper.

(5) If a mover becomes aware that it will be unable to perform either the pickup or the delivery of household goods on the date agreed upon or during the timeframe specified in the contract for service, the mover shall, at its own expense, immediately notify the shipper of the delay.

(a) A mover's notification of delay must be provided to a shipper in person or by telephone, facsimile, e-mail, overnight courier, or certified mail, return receipt requested. If the mover does not receive confirmation that the shipper has received the notification, the mover shall undertake a second method of notification.

(b) A mover must advise the shipper of the amended date or timeframe within which the mover expects to pick up or deliver the household goods. The mover must consider the needs of the

shipper in establishing the amended date or timeframe. The mover must also do all of the following:

1. Document, in writing, the date, time, and manner of notification of the delay and the amended date or period for pickup or delivery.

2. Retain the documentation required by subparagraph 1. as part of its file on the move for 1 year after the notification date.

3. Upon the request of the shipper, furnish a copy of the notice by hand delivery or by first-class mail.

Section 10. Section 507.065, Florida Statutes, is created to read:

507.065 Payment.—

(1) Except as provided in s. 507.05(3), the maximum amount that a mover may charge before relinquishing household goods to a shipper is the exact amount of the binding estimate, plus charges for any additional services requested or agreed to in writing by the shipper after the contract for service was issued and for impracticable operations as defined in the mover's tariff, if applicable.

(2) A mover must bill a shipper for any charges assessed under this chapter which are not collected upon delivery of household goods at their destination within 15 days after such delivery. A mover may assess a late fee for any uncollected charges if the shipper fails to make payment within 30 days after receipt of the bill.

Section 11. Section 507.066, Florida Statutes, is created to read:

507.066 Collection for losses.—

(1) PARTIAL LOSSES.—A mover may collect an adjusted payment from a shipper if part of a shipment of household goods is lost or destroyed.

(a) A mover may collect the following at delivery:

1. A prorated percentage of the binding estimate. The prorated percentage must equal the percentage of the weight of the portion of the household goods delivered relative to the total weight of the household goods that were ordered to be moved.

2. Charges for any additional services requested by the shipper after the contract for service was issued.

3. Charges for impracticable operations, if applicable; however, such charges may not exceed 15 percent of all other charges due at delivery.

4. Any specific valuation rate charges due, as provided in s. 507.04(4), if applicable.

(b) The mover may bill and collect from the shipper any remaining charges not collected at the time of delivery in accordance with s. 507.065. This paragraph does not apply if the loss or destruction of household goods occurred as a result of an act or omission of the shipper.

(c) A mover must determine, at its own expense, the proportion of the household goods, based on actual or

constructive weight, which were lost or destroyed in transit.

(2) TOTAL LOSSES.—A mover may not collect, or require a shipper to pay, freight charges, including a charge for accessorial services, when a household goods shipment is lost or destroyed in transit; however, the mover may collect a specific valuation rate charge due, as provided in s. 507.04(4). This subsection does not apply if the loss or destruction was due to an act or omission of the shipper.

(3) SHIPPER'S RIGHTS.—A shipper's rights under this section are in addition to any other rights the shipper may have with respect to household goods that were lost or destroyed while in the custody of the mover or the mover's agent. These rights also apply regardless of whether the shipper exercises his or her right to obtain a refund of the portion of a mover's published freight charges corresponding to the portion of the lost or destroyed household goods, including any charges for accessorial services, at the time the mover disposes of claims for loss, damage, or injury to the household goods.

Section 12. Subsections (1), (4), and (5) of section 507.07, Florida Statutes, are amended, to read:

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

(1) To operate ~~conduct business as a mover or moving broker, or advertise to engage~~ in violation ~~the business~~ of ~~moving~~ or fail to comply with ss. 507.03-507.10, or any other requirement under this part ~~offering to move, without being registered with the department~~.

(4) To increase the contracted cost ~~fail to honor and comply with all provisions of the contract~~ for moving services previously provided in a binding estimate of the scheduled date and time of the move without a request by the shipper to perform additional services not disclosed on the original binding estimate ~~or bill of lading regarding the purchaser's rights, benefits, and privileges thereunder~~.

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

Section 13. Section 507.09, Florida Statutes, is amended to read:

507.09 Administrative remedies; penalties.—

(1) The department may enter an order doing one or more of the following if the department finds that a mover or moving broker, or a person employed or contracted by a mover or broker, has violated or is operating in violation of this chapter or the rules or orders issued pursuant to this chapter:

(a) Issuing a notice of noncompliance under s. 120.695.

(b) Imposing an administrative fine in the Class II category pursuant to s. 570.971 for each act or omission.

(c) Directing that the person cease and desist specified activities.

(d) Refusing to register or revoking or suspending a registration.

(e) Placing the registrant on probation, subject to the conditions specified by the department.

(2) The department shall, upon notification and subsequent written verification by a law enforcement agency, a court, a state attorney, or the Department of Law Enforcement, immediately suspend a registration or the processing of an application for a registration if the registrant, applicant, or an officer or director of the registrant or applicant is formally charged with a crime involving fraud, theft, larceny, embezzlement, or fraudulent conversion or misappropriation of property or a crime arising from conduct during a movement of household goods until final disposition of the case or removal or resignation of that officer or director.

(3) The administrative proceedings that ~~which~~ could result in the entry of an order imposing any of the penalties specified in subsection (1) or subsection (2) are governed by chapter 120.

~~(3) The department may adopt rules under ss. 120.536(1) and 120.54 to administer this chapter.~~

Section 14. Section 507.11, Florida Statutes, is amended to read:

507.11 Criminal penalties.—

(1) The refusal of a mover or a mover's employee, agent, or contractor to comply with an order from a law enforcement officer to relinquish a shipper's household goods after the officer determines that the shipper has tendered payment of the amount of a written binding estimate, any charges for additional

services requested by the shipper after the contract for service was issued, and charges for applicable impracticable operations, as defined in the mover's tariff ~~or contract~~, or after the officer determines that the mover did not produce a signed estimate or contract for service upon which demand is being made for payment, is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A mover's compliance with an order from a law enforcement officer to relinquish household goods to a shipper is not a waiver or finding of fact regarding any right to seek further payment from the shipper.

(2) The refusal of a mover or a mover's employee, agent, or contractor to comply with an order from a law enforcement officer to relinquish a shipper's household goods after the officer determines that the shipper has tendered payment of the prorated percentage of the binding estimate for a partial delivery under s. 507.066 is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A mover's compliance with an order from an law enforcement agency to relinquish household goods to a shipper is not a waiver or finding of fact regarding any right to seek further payment from the shipper.

(3)~~(2)~~ Except as provided in subsections ~~subsection~~ (1) and (2), any person or business that violates this chapter commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 15. Section 507.14, Florida Statutes, is created to read:

507.14 Rulemaking.—The department shall adopt rules to administer this chapter.

Section 16. This act shall take effect July 1, 2015.

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: Agriculture & Natural Resources Appropriations Subcommittee

Representative Goodson offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Present subsections (2) through (5) of section 507.01, Florida Statutes, are redesignated as subsections (3) through (6), respectively, present subsections (9) through (11) of that section are redesignated as subsections (10) through (12), respectively, present subsections (12) and (13) of that section are redesignated as subsections (14) and (15), respectively, new subsections (2), (9), and (13) are added to that section, and present subsections (6) and (9) are amended, to read:

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

(2) "Additional services" means any additional transportation of household goods which is performed by a mover,

is not specifically included in a binding estimate or contract, and results in a charge to the shipper.

~~(6) "Estimate" means a written document that sets forth the total costs and describes the basis of those costs, relating to a shipper's household move, including, but not limited to, the loading, transportation or shipment, and unloading of household goods and accessorial services.~~

(9) "Impracticable operations" means conditions arising after execution of a contract for household moving services which make it impractical for a mover to perform pickup or delivery services for a household move.

(10)~~(9)~~ "Mover" means a person who, for compensation, contracts for or engages in the loading, transportation or shipment, or unloading of household goods as part of a household move. The term does not include a postal, courier, envelope, or package service that, or a person labor who, does not advertise ~~itself~~ as a mover or moving service.

(13) "Personal laborer" means an individual hired directly by the shipper to assist in the loading and unloading of the shipper's own household goods. The term does not include any individual who has contracted with or is compensated by a third-party or whose services are brokered as part of a household move.

Section 2. Subsection (3) of section 507.02, Florida Statutes, is amended to read:

507.02 Construction; intent; application.—

(3) This chapter is intended to provide consistency and transparency in moving practices and to secure the satisfaction

and confidence of shippers and members of the public when using a mover.

Section 3. Subsections (1), (3), (4), and (5) of section 507.04, Florida Statutes, are amended to read:

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

(1) CARGO LIABILITY INSURANCE.—

(a)1. Except as provided in paragraph (b), each mover operating in this state must maintain current and valid cargo liability insurance coverage of at least $10,000 per shipment for the loss or damage of household goods resulting from the negligence of the mover or its employees or agents.

2. The mover must provide the department with evidence of liability insurance coverage before the mover is registered with the department under s. 507.03. All insurance coverage maintained by a mover must remain in effect throughout the mover's registration period. ~~A mover's failure to maintain insurance coverage in accordance with this paragraph constitutes an immediate threat to the public health, safety, and welfare. If a mover fails to maintain insurance coverage, the department may immediately suspend the mover's registration or eligibility for registration, and the mover must immediately cease operating as a mover in this state. In addition, and notwithstanding the availability of any administrative relief pursuant to chapter 120, the department may seek from the appropriate circuit court an immediate injunction prohibiting the mover from operating in this state until the mover complies with this paragraph, a civil penalty not to exceed $5,000, and court costs.~~

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

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

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

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

(3) INSURANCE COVERAGES.—The insurance coverages required under paragraph (1)(a) and subsection (2) must be issued by an

insurance company or carrier licensed to transact business in this state under the Florida Insurance Code as designated in s. 624.01. The department shall require a mover to present a certificate of insurance of the required coverages before issuance or renewal of a registration certificate under s. 507.03. The department shall be named as a certificateholder in the certificate and must be notified at least 10 days before cancellation of insurance coverage. A mover's failure to maintain insurance coverage constitutes an immediate threat to the public health, safety, and welfare. If a mover fails to maintain insurance coverage, the department may immediately suspend the mover's registration or eligibility for registration, and the mover must immediately cease operating as a mover in this state. In addition, and notwithstanding the availability of any administrative relief pursuant to chapter 120, the department may seek from the appropriate circuit court an immediate injunction prohibiting the mover from operating in this state until the mover complies with this paragraph, a civil penalty not to exceed $5,000, and court costs.

(4) ~~LIABILITY LIMITATIONS; VALUATION RATES.—A mover may not limit its liability for the loss or damage of household goods to a valuation rate that is less than 60 cents per pound per article. A provision of a contract for moving services is void if the provision limits a mover's liability to a valuation rate that is less than the minimum rate under this subsection. If a mover limits its liability for a shipper's goods, the mover must disclose the limitation, including the valuation rate, to the shipper in writing at the time that the estimate and contract~~

~~for services are executed and before any moving or accessorial services are provided. The disclosure must also inform the shipper of the opportunity to purchase valuation coverage if the mover offers that coverage under subsection (5).~~

~~(5)~~ VALUATION COVERAGE.—A mover shall ~~may~~ offer valuation coverage to compensate a shipper for the loss or damage of the shipper's household goods that are lost or damaged during a household move. ~~If a mover offers valuation coverage,~~ The coverage must indemnify the shipper for at least the cost of repair or replacement of the goods, unless waived or amended by the shipper. The shipper may waive or amend the valuation coverage, and the waiver must be made in a signed acknowledgment in the contract ~~minimum valuation rate required under subsection (4)~~. The mover must disclose the terms of the coverage to the shipper in writing, including any deductibles, within ~~at the time that~~ the binding estimate and again when the contract for services is ~~are~~ executed and before any moving or accessorial services are provided. The disclosure must inform the shipper of the cost of the valuation coverage, if any ~~the valuation rate of the coverage, and the opportunity to reject the coverage~~. ~~If valuation coverage compensates a shipper for at least the minimum valuation rate required under subsection (4), the coverage satisfies the mover's liability for the minimum valuation rate.~~

Section 4. Section 507.05, Florida Statutes, is amended to read:

507.05 Physical surveys, binding estimates, and contracts for service. ~~Before providing any moving or accessorial~~

~~services, a contract and estimate must be provided to a prospective shipper in writing, must be signed and dated by the shipper and the mover, and must include:~~

(1) PHYSICAL SURVEY.—A mover must conduct a physical survey of the household goods to be moved and provide the prospective shipper with a binding estimate of the cost of the move.

(2) WAIVER OF SURVEY.—A shipper may elect to waive the physical survey, and such waiver must be in writing and signed by the shipper before the household goods are loaded. The mover shall retain a copy of the waiver as an addendum to the contract for service.

(3) BINDING ESTIMATE.—Before executing a contract for service for a household move, and at least 48 hours before the scheduled time and date of a shipment of household goods, a mover must provide a binding estimate of the total charges, including, but not limited to, the loading, transportation or shipment, and unloading of household goods and accessorial services. The binding estimate shall be based on a physical survey conducted pursuant to subsection (1), unless waived pursuant to subsection (2).

(a) The shipper may waive the binding estimate if the waiver is made by signed or electronic acknowledgment before the commencement of the 48-hour period before the household goods are loaded. The mover shall retain a copy of the waiver as an addendum to the contract for services. To be enforceable, a waiver executed under this paragraph must, at a minimum, include a statement in uppercase type that is at least 5 points larger than, and clearly distinguishable from, the rest of the text of

the waiver or release containing the statement. The exact statement to be included in a waiver of a binding estimate to be used by all movers shall be determined by the department in rulemaking and must include a delineation of the specific rights that a shipper may lose by waiving the binding estimate.

(b) The shipper may also waive the 48-hour period if the moving services requested commence within 48 hours of the shipper's initial contact with the mover contracted to perform the moving services.

(c) At a minimum, the binding estimate must include all of the following:

1. The table of measures used by the mover or the mover's agent in preparing the estimate.

2. The date the estimate was prepared and the proposed date of the move, if any.

3. An itemized breakdown and description of services, and the total cost to the shipper of loading, transporting or shipping, unloading, and accessorial services.

4. A statement that the estimate is binding on the mover and the shipper and that the charges shown apply only to those services specifically identified in the estimate.

5. Identification of acceptable forms of payment.

(d) The binding estimate must be signed by the mover and the shipper, and a copy must be provided to the shipper by the mover at the time that the estimate is signed.

(e) A binding estimate may only be amended by the mover before the scheduled loading of household goods for shipment when the shipper has requested additional services of the mover

not previously disclosed in the original binding estimate, or upon mutual agreement of the mover and the shipper. Once a mover begins to load the household goods for a move, failure to execute a new binding estimate signifies the mover has reaffirmed the original binding estimate.

(f) A mover may not collect more than the amount of the binding estimate unless:

1. The shipper waives receipt of a binding estimate under this subsection.

2. The shipper tenders additional household goods, requests additional services, or requires services that are not specifically included in the binding estimate, in which case the mover is not required to honor the estimate. If, despite the addition of household goods or the need for additional services, the mover chooses to perform the move, it must, before loading the household goods, inform the shipper of the associated charges in writing. The mover may require full payment at the destination for the costs associated with the additional requested services and the full amount of the original binding estimate.

3. Upon issuance of the contract for services, the mover advises the shipper, in advance of performing additional services, including accessorial services, that such services are essential to properly performing the move. The mover must allow the shipper at least 1 hour to determine whether to authorize the additional services.

a. If the shipper agrees to pay for the additional services, the mover must execute a written addendum to the

contract for services, which must be signed by the shipper. The addendum may be sent to the shipper by facsimile, e-mail, overnight courier, or certified mail, with return receipt requested. The mover must bill the shipper for the agreed upon additional services within 15 days after the delivery of those additional services pursuant to s. 507.06.

b. If the shipper does not agree to pay for the additional services, the mover may perform and, pursuant to s. 507.06, bill the shipper for those additional services necessary to complete the delivery.

(g) A mover shall retain a copy of the binding estimate for each move performed for at least 1 year after its preparation date as an attachment to the contract for service.

(4) CONTRACT FOR SERVICE.—Before providing any moving or accessorial services, a mover must provide a contract for service to the shipper, which the shipper must sign and date.

(a) At a minimum, the contract for service must include:

1.~~(1)~~ The name, telephone number, and physical address where the mover's employees are available during normal business hours.

2.~~(2)~~ The date the contract was ~~or estimate is~~ prepared and the ~~any~~ proposed date of the move, if any.

3.~~(3)~~ The name and address of the shipper, the addresses where the articles are to be picked up and delivered, and a telephone number where the shipper may be reached.

4.~~(4)~~ The name, telephone number, and physical address of any location where the household goods will be held pending further transportation, including situations in which ~~where~~ the

mover retains possession of household goods pending resolution of a fee dispute with the shipper.

5.~~(5)~~ A binding estimate provided in accordance with subsection (3) ~~An itemized breakdown and description and total of all costs and services for loading, transportation or shipment, unloading, and accessorial services to be provided during a household move or storage of household goods~~.

6. The total charges owed by the shipper based on the binding estimate and the terms and conditions for their payment, including any required minimum payment.

7. If the household goods are transported under an agreement to collect payment upon delivery, the maximum payment that the mover may demand at the time of delivery.

8.~~(6)~~ Acceptable forms of payment, which must be clearly and conspicuously disclosed to the shipper on the binding estimate and the contract for services. A mover must ~~shall~~ accept at least ~~a minimum of~~ two of the three following forms of payment:

a.~~(a)~~ Cash, cashier's check, money order, or traveler's check;

b.~~(b)~~ Valid personal check, showing upon its face the name and address of the shipper or authorized representative; or

c.~~(c)~~ Valid credit card, which shall include, but not be limited to, Visa or MasterCard. ~~A mover must clearly and conspicuously disclose to the shipper in the estimate and contract for services the forms of payments the mover will accept, including the forms of payment described in paragraphs (a)-(c).~~

(b) Each addendum to the contract for service is an integral part of the contract.

(c) A copy of the contract for service must accompany the household goods whenever they are in the mover's or the mover's agent's possession. Before a vehicle that is being used for the move leaves the point of origin, the driver responsible for the move must have the contract for service in his or her possession.

(d) A mover shall retain a contract for service for each move it performs for at least 1 year after the date the contract for service was signed.

Section 5. Section 507.054, Florida Statutes, is created to read:

507.054 Publication.—

(1) The department shall prepare a publication that includes a summary of the rights and responsibilities of, and remedies available to movers and shippers under this chapter. The publication must include a statement that a mover's failure to relinquish household goods as required by this chapter constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, that any other violation of this chapter constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and that any violation of this chapter constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act. The publication must also include a notice to the shipper about the potential risks of shipping sentimental or family heirloom items.

(2) A mover may provide exact copies of the department's publication to shippers or may customize the color, design, and dimension of the front and back covers of the standard department publication. If the mover customizes the publication, the customized publication must include the content specified in subsection (1) and meet the following requirements:

(a) The font size used must be at least 10 points, with the exception that the following must appear prominently on the front cover in at least 12-point boldface type: "Your Rights and Responsibilities When You Move. Furnished by Your Mover, as Required by Florida Law."

(b) The size of the booklet must be at least 36 square inches.

(3) The shipper must acknowledge receipt of the publication by signed acknowledgement in the contract.

Section 6. Section 507.055, Florida Statutes, is created to read:

507.055 Required disclosure and acknowledgment of rights and remedies.—Before executing a contract for service for a move, a mover must provide to a prospective shipper all of the following:

(1) The publication required under s. 507.054.

(2) A concise, easy-to-read, and accurate binding estimate required under s. 507.05(3).

Section 7. Subsections (1) and (3) of section 507.06, Florida Statutes, are amended, and subsection (4) is added to that section, to read:

507.06 Delivery and storage of household goods.—

(1) On the agreed upon delivery date or within the timeframe specified in the contract for service, a mover must relinquish household goods to a shipper and must place the household goods inside a shipper's dwelling or, if directed by the shipper, inside a storehouse or warehouse that is owned or rented by the shipper or the shipper's agent, unless the shipper has not tendered payment pursuant to s. 507.065 or s. 507.066 ~~in the amount specified in a written contract or estimate signed and dated by the shipper~~. This requirement may be waived by the shipper. A mover may not, under any circumstances, refuse to relinquish prescription medicines and household goods for use by children, including children's furniture, clothing, or toys~~, under any circumstances~~.

(3) A mover that lawfully fails to relinquish a shipper's household goods may place the goods in storage until payment in accordance with ss. 507.065 or 507.066 is tendered; however, the mover must notify the shipper of the location where the goods are stored and the amount due within 5 days after receipt of a written request for that information from the shipper, which request must include the address where the shipper may receive the notice. A mover may not require a prospective shipper to waive any rights or requirements under this section.

(4) If a mover becomes aware that it cannot perform the pickup or the delivery of household goods on the date agreed upon or during the timeframe specified in the contract for service due to circumstances not anticipated by the contract, the mover shall notify the shipper of the delay and advise the shipper of the amended date or timeframe within which the mover

expects to pick up or deliver the household goods in a timely manner.

Section 8. Section 507.065, Florida Statutes, is created to read:

507.065 Payment.—

1) Except as provided in s. 507.05(3), the maximum amount that a mover may charge before relinquishing household goods to a shipper is the exact amount of the binding estimate, unless waived by the shipper, plus charges for any additional services requested or agreed to in writing by the shipper after the contract for service was issued and for impracticable operations, if applicable.

(2) A mover must bill a shipper for any charges assessed under this chapter which are not collected upon delivery of household goods at their destination within 15 days after such delivery. A mover may assess a late fee for any uncollected charges if the shipper fails to make payment within 30 days after receipt of the bill.

Section 9. Section 507.066, Florida Statutes, is created to read:

507.066 Collection for losses.—

(1) PARTIAL LOSSES.—A mover may collect an adjusted payment from a shipper if part of a shipment of household goods is lost or destroyed.

(a) A mover may collect the following at delivery:

1. A prorated percentage of the binding estimate. The prorated percentage must equal the percentage of the weight of

the portion of the household goods delivered relative to the total weight of the household goods that were ordered to be moved.

2. Charges for any additional services requested by the shipper after the contract for service was issued.

3. Charges for impracticable operations, if applicable; however, such charges may not exceed 15 percent of all other charges due at delivery.

4. Any specific valuation rate charges due, as provided in s. 507.04(4), if applicable.

(b) The mover may bill and collect from the shipper any remaining charges not collected at the time of delivery in accordance with s. 507.065. This paragraph does not apply if the loss or destruction of household goods occurred as a result of an act or omission of the shipper.

(c) A mover must determine, at its own expense, the proportion of the household goods, based on actual or constructive weight, which were lost or destroyed in transit.

(2) TOTAL LOSSES.—A mover may not collect, or require a shipper to pay, freight charges, including a charge for accessorial services, when a household goods shipment is lost or destroyed in transit; however, the mover may collect a specific valuation rate charge due, as provided in s. 507.04(4). This subsection does not apply if the loss or destruction was due to an act or omission of the shipper.

(3) SHIPPER'S RIGHTS.—A shipper's rights under this section are in addition to any other rights the shipper may have with respect to household goods that were lost or destroyed while in the custody of the mover or the mover's agent. These rights also apply regardless of whether the shipper exercises his or her right to obtain a refund of the portion of a mover's published freight charges corresponding to the portion of the lost or destroyed household goods, including any charges for accessorial services, at the time the mover disposes of claims for loss, damage, or injury to the household goods.

Section 10. Subsections (1), (4), and (5) of section 507.07, Florida Statutes, are amended, to read:

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

(1) To operate ~~conduct business as a mover or moving broker, or advertise to engage~~ in violation ~~the business~~ of ~~moving~~ or fail to comply with ss. 507.03-507.10, or any other requirement under this chapter ~~offering to move, without being registered with the department~~.

(4) To increase the contracted cost ~~fail to honor and comply with all provisions of the contract~~ for moving services in any way other than provided for in this chapter ~~or bill of lading regarding the purchaser's rights, benefits, and privileges thereunder~~.

(5) To withhold delivery of household goods or in any way hold household goods in storage against the expressed wishes of

the shipper if payment has been made as delineated in the estimate or contract for services, or pursuant to this chapter.

Section 11. Section 507.09, Florida Statutes, is amended to read:

507.09 Administrative remedies; penalties.—

(1) The department may enter an order doing one or more of the following if the department finds that a mover or moving broker, or a person employed or contracted by a mover or broker, has violated or is operating in violation of this chapter or the rules or orders issued pursuant to this chapter:

(a) Issuing a notice of noncompliance under s. 120.695.

(b) Imposing an administrative fine in the Class II category pursuant to s. 570.971 for each act or omission.

(c) Directing that the person cease and desist specified activities.

(d) Refusing to register or revoking or suspending a registration.

(e) Placing the registrant on probation, subject to the conditions specified by the department.

(2) The department shall, upon notification and subsequent written verification by a law enforcement agency, a court, a state attorney, or the Department of Law Enforcement, immediately suspend a registration or the processing of an application for a registration if the registrant, applicant, or an officer or director of the registrant or applicant is formally charged with a crime involving fraud, theft, larceny,

embezzlement, or fraudulent conversion or misappropriation of property or a crime arising from conduct during a movement of household goods until final disposition of the case or removal or resignation of that officer or director.

(3) The administrative proceedings that ~~which~~ could result in the entry of an order imposing any of the penalties specified in subsection (1) or subsection (2) are governed by chapter 120.

~~(3) The department may adopt rules under ss. 120.536(1) and 120.54 to administer this chapter.~~

Section 12. Section 507.11, Florida Statutes, is amended to read:

507.11 Criminal penalties.—

(1) The refusal of a mover or a mover's employee, agent, or contractor to comply with an order from a law enforcement officer to relinquish a shipper's household goods after the officer determines that the shipper has tendered payment in accordance with ss. 507.065 and 507.066 ~~of the amount of a written estimate or contract~~, or after the officer determines that the mover did not produce a signed estimate or contract for service upon which demand is being made for payment, is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A mover's compliance with an order from a law enforcement officer to relinquish household goods to a shipper is not a waiver or finding of fact regarding any right to seek further payment from the shipper.

(2) Except as provided in subsection (1), any person or business that violates this chapter commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 13. Section 507.14, Florida Statutes, is created to read:

507.14 Rulemaking.—The department shall adopt rules to administer this chapter.

Section 14. This act shall take effect July 1, 2015.

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 household moving services; amending s. 507.01, F.S.; defining terms; amending s. 507.02, F.S.; clarifying intent; amending s. 507.04, F.S.; removing a prohibition that a mover may not limit its liability for the loss or damage of household goods to a specified valuation rate; removing a requirement that a mover disclose a liability limitation when the mover limits its liability for a shipper's goods; requiring a mover to offer valuation coverage to compensate a shipper for the loss or damage of the shipper's household goods that are lost or damaged

during a household move; requiring the valuation coverage to indemnify the shipper for at least the cost of repair or replacement goods unless waived or amended by the shipper; authorizing the shipper to waive or amend the valuation coverage; requiring that the waiver be made in a signed acknowledgment in the contract; revising the time at which the mover must disclose the terms of the coverage to the shipper in writing including any deductibles; revising the information that the disclosure must provide to the shipper; amending s. 507.05, F.S.; requiring a mover to conduct a physical survey and provide a binding estimate in certain circumstances unless waived by the shipper; requiring specified content for the binding estimate; authorizing a shipper to waive the binding estimate in certain circumstances; requiring the mover and shipper to sign the estimate; requiring the mover to provide the shipper with a copy of the estimate at the time of signature; providing that a binding estimate may only be amended under certain circumstances; authorizing a mover to charge more than the binding estimate in certain circumstances; requiring a mover to allow a shipper to consider whether additional services are needed; requiring a mover to retain a copy of the binding estimate for a specified period; requiring a mover to provide a

contract for service to the shipper before providing moving or accessorial services; requiring a driver to have possession of the contract before leaving the point of origin; requiring a mover to retain a contract of service for a specified period; creating s. 507.054, F.S.; requiring the department to prepare a publication that summarizes the rights and responsibilities of, and remedies available to, movers and shippers; requiring the publication to meet certain specifications; creating s. 507.055, F.S.; requiring a mover to provide certain disclosures to a prospective shipper; amending s. 507.06, F.S.; requiring a mover to tender household goods for delivery on the agreed upon delivery date or within a specified period unless waived by the shipper; requiring a mover to notify and provide certain information to a shipper if the mover is unable to perform delivery on the agreed upon date or during the specified period; creating s. 507.065, F.S.; providing a maximum amount that a mover may charge a shipper; requiring a mover to bill a shipper for certain amounts within a specified period; creating s. 507.066, F.S.; specifying the amount of payment that the mover may collect upon delivery of partially lost or destroyed household goods; requiring a mover to determine the proportion of lost or destroyed

household goods; prohibiting a mover from collecting or requiring a shipper to pay any charges other than specific valuation rate charges if a household goods shipment is totally lost or destroyed in transit; amending s. 507.07, F.S.; providing that it is a violation of ch. 507, F.S., to fail to comply with specified provisions; providing that it is a violation of ch. 507, F.S., to increase the contracted cost for moving services in certain circumstances; conforming a provision to a change made by this act; amending s. 507.09, F.S.; requiring the department, upon verification by certain entities, to immediately suspend a registration or the processing of an application for a registration in certain circumstances; amending s. 507.11, F.S.; providing criminal penalties; creating s. 507.14, F.S.; requiring the department to adopt rules; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1141 Natural Gas Rebate Program
SPONSOR(S): Business & Professions Subcommittee; Ray
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1538

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	11 Y, 0 N, As CS	Whittier	Luczynski
2) Agriculture & Natural Resources Appropriations Subcommittee		Lolley	Massengale
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Currently, there is not an incentive program in Florida for those who are considering converting a locomotive, ship, or high-horsepower engine to natural gas; however, in 2013, the Legislature created the Natural Gas Fuel Fleet Vehicle Rebate Program within the Department of Agriculture and Consumer Services (DACS). The purpose of the program is to award rebates for up to 50 percent of the eligible costs incurred in the conversion or retrofitting of diesel- or gasoline-powered motor vehicles to natural gas-powered.

The bill creates the Heavy Transportation Industry Natural Gas Rebate Program within DACS. Similar to the Natural Gas Fuel Fleet Vehicle Rebate Program, the program provides for the award of rebates for up to 50 percent of the eligible costs for converting traditionally-fueled locomotives, waterborne ships, and high-horsepower engines to natural gas-fueled or for up to 50 percent of the eligible costs for the purchase of such eligible vehicles or vessels. Applicants must have placed these locomotives, ships, and engines into service on or after July 1, 2015, for commercial business or governmental purposes. An applicant is eligible to receive a maximum rebate of $500,000 per vehicle up to a total of $1 million per fiscal year.

The bill requires DACS to determine and publish on its website, on an ongoing basis, the amount of available funding for rebates remaining in each fiscal year and to provide, by December 1, 2016, and by December 1 of each subsequent year of the program, an annual assessment of the use of the rebate program to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability.

The bill appropriates $10 million in recurring funds, beginning with FY 2015-2016 through FY 2019-2020, from the General Revenue Fund to DACS.

The bill may have a significant positive fiscal impact on the private sector. See Fiscal Analysis & Economic Impact Statement for more details.

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

U.S. Environmental Protection Agency Standards

The U.S. Environmental Protection Agency (EPA) has adopted very stringent standards to reduce emissions of diesel particulate matter (PM) and nitrogen oxide (NOx) from locomotives and marine diesel engines. The EPA's goal is to tighten emissions on existing engines when remanufactured and set long term standards referred to as Tier-4 standards.[1]

According to the EPA, there is a coordinated strategy that includes Clean Air Act standards, as well as implementation of the international standards for marine engines and their fuels contained in Annex VI to the International Convention on the Prevention of Pollution from Ships (a treaty called MARPOL).[2, 3]

EPA has adopted a similar approach to regulating "nonroad" transportation, high-horsepower engines, which are used in machines that perform a wide range of jobs. High-horsepower engines include excavators and other construction equipment; farm tractors and other agricultural equipment; heavy forklifts; and airport ground service equipment. Nonroad sources are regulated by type, size, weight, use, and/or horsepower.[4]

The EPA estimates that by 2030, compliance with this standard will result in an annual reduction of 800,000 tons of NOx emissions and 27,000 tons of PM emissions;[5] however, compliance with these emissions mandates will be costly for the heavy transportation industry. The three most common methods of achieving these goals are:

- Using costly ultra-low sulfur diesel (road grade diesel),
- Installing scrubber systems on the engines which are similar to those of coal power plants, or
- Using natural gas (the lowest cost alternative).[6]

Florida does not have a Liquefied Natural Gas (LNG) plant at this time and transports by truck any railroad LNG from Macon, Georgia, to destinations in Florida. Any railroad or ship LNG needs must be met by transporting the commodity from out of state. However, as a result of the growing demands for natural gas, several companies are looking to build LNG plants but need a specific demand for the capital intensive projects. The Florida Natural Gas Association asserts, "This legislation will help focus the use of liquefied natural gas as the means to meet the emission mandates and aid the guarantee of

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[1] Email from a representative of the Florida Natural Gas Association, RE: Rail and maritime industries and EPA's emission mandates (Mar. 13, 2015).

[2] United States Environmental Protection Agency, Office of Transportation and Air Quality, *EPA Finalizes More Stringent Standards for Control of Emissions from New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder*, pg. 1 (Dec. 2009), *available at* http://www.epa.gov/otaq/regs/nonroad/marine/ci/420f09068.pdf.

[3] According to the EPA, the MARPOL Annex VI contains a program that applies stringent engine emission standards and fuel sulfur limits to ships that operate in specially designated Emission Control Areas (ECAs). The quality of fuel that complies with the ECA standard changes over time. The United States has obtained designation for the North American ECA and the US Caribbean ECA. The effective dates of the standards for an area depend on the area's designation date. By 2030, this coordinated strategy is expected to reduce annual emissions of NOx in the United States by about 1.2 million tons and PM emissions by about 143,000 tons. Source: United States Environmental Protection Agency, *Ocean Vessels and Large Ships*, http://www.epa.gov/otaq/oceanvessels.htm (last visited Mar. 13, 2015).

[4] Email from staff of the Florida Department of Environmental Protection, RE: high-horsepower engines (Mar. 20, 2015).

[5] Email from a representative of the Florida Natural Gas Association, RE: Rail and maritime industries and EPA's emission mandates (Mar. 13, 2015).

[6] *Id.*

liquefied natural gas sources in Florida which will provide fuel for our growing trade and tourism industries."[7]

Natural Gas Fuel

During the past several years, exploration has uncovered a supply of natural gas in the United States which has resulted in a reduction in the price of natural gas and an increased interest in natural gas-powered vehicles, fuel plants, and refueling infrastructure.

Natural gas is touted as the cleanest of the fossil fuels. The Natural Gas Supply Association points out that, "Pollutants emitted in the United States, particularly from the combustion of fossil fuels, have led to the development of many pressing environmental problems. Natural gas, emitting fewer harmful chemicals into the atmosphere than other fossil fuels, can help to mitigate some of these environmental issues." These concerns include:

- Greenhouse Gas Emissions;
- Smog, Air Quality and Acid Rain;
- Industrial and Electric Generation Emissions; and
- Pollution from the Transportation Sector.[8]

When compared using equivalent units of measure, natural gas is less expensive per gallon than traditional fuels. The U.S. Department of Energy reports that in the Fall of 2014, the national average price for gasoline was $3.34 a gallon, the price for diesel was $3.77 a gallon, and for a gasoline gallon equivalent of compressed natural gas was $2.16.[9]

Florida East Coast Industries (FECI) reported that, in April 2014, using equivalent units of measure, the national price for railroad diesel was $2.95 a gallon and a diesel gallon equivalent of railroad LNG was $1.47.[10]

Currently, most locomotives use diesel and most ships today use bunker fuel which is crude oil.[11] To refuel locomotives with LNG, railroads use a tender that sits between two locomotives. There are 14 railroads in Florida.[12] Total diesel fuel used by railroads in Florida is approximately 70 million gallons a year, which is the equivalent of approximately 119 million gallons of natural gas.[13]

To refuel ships with LNG, another ship transports the LNG in ISO tanks to a port and then transfers the natural gas to the ship's fuel tank. Each ship requires about 25,000 to 30,000 gallons of natural gas per day, resulting in the need for approximately 10 million gallons annually per ship.[14] The FECI notes that, "... by converting ships to natural gas, you get not only the cost savings but significant environmental benefit since crude is a lot dirtier than natural gas."

Although initial savings in fuel costs may be offset by the cost of a natural gas vehicle, locomotive, ship, or high-horsepower engine over gasoline, diesel, or crude oil, cost savings are expected after a few years.

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[7] *Id.*
[8] NaturalGas.Org, http://www.naturalgas.org/environment/naturalgas/ (last visited Mar. 13, 2015).
[9] United States Department of Energy, *Clean Cities Alternative Fuel Price Report*, pg. 4-5 (Oct. 2014),*available at* http://www.afdc.energy.gov/uploads/publication/alternative_fuel_price_report_oct_2014.pdf.
[10] Email from a representative of Florida East Coast Industries, RE: Rail and maritime industries and liquefied natural gas (Mar. 14, 2015).
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*

Natural Gas Fuel Fleet Vehicle Rebate Program

Currently, there is not an incentive program in Florida for those who are considering converting a locomotive, ship, or high-horsepower engine to natural gas; however, in 2013, the Legislature created the Natural Gas Fuel Fleet Vehicle Rebate Program (rebate program) within the Department of Agriculture and Consumer Services (DACS), the purpose of which is to "help reduce transportation costs in this state and encourage freight mobility investments that contribute to the economic growth of the state."[15]

Section 377.810, F.S., provides the following definitions under the program:

- "Conversion costs" means the excess cost associated with retrofitting a diesel- or gasoline-powered motor vehicle to a natural gas fuel-powered motor vehicle.
- "Department" means the Department of Agriculture and Consumer Services.
- "Eligible costs" means the cost of conversion or the incremental cost incurred by an applicant in connection with an investment in the conversion, purchase, or lease lasting at least 5 years, of a natural gas fleet vehicle placed into service on or after July 1, 2013. The term does not include costs for project development, fueling stations, or other fueling infrastructure.
- "Fleet vehicles" means three or more motor vehicles registered in this state and used for commercial business or governmental purposes.
- "Incremental costs" means the excess costs associated with the purchase or lease of a natural gas fuel motor vehicle as compared to an equivalent diesel- or gasoline-powered motor vehicle.
- "Natural gas fuel" means any:
    - Liquefied petroleum gas product,
    - Compressed natural gas product, or
    - Combination thereof used in a motor vehicle as defined in s. 206.01(23).

  The term includes, but is not limited to, all forms of fuel commonly or commercially known or sold as natural gasoline, butane gas, propane gas, or any other form of liquefied petroleum gas, compressed natural gas, or liquefied natural gas. This term does not include natural gas or liquefied petroleum placed in a separate tank of a motor vehicle for cooking, heating, water heating, or electric generation.[16]

Beginning with Fiscal Year 2013-2014 and continuing through Fiscal Year 2017-2018 (five years), DACS is required to award rebates for the eligible costs of conversion or retrofitting of a diesel- or gasoline-powered motor vehicle to a natural gas fuel-powered motor vehicle. Specifically, DACS is to award rebates for up to 50 percent of the eligible costs of a natural gas fuel fleet vehicle or bi-fuel natural gas fuel operating system placed into service on or after July 1, 2013. An applicant is eligible to receive a maximum rebate of $25,000 per vehicle up to a total of $250,000 per applicant per fiscal year, on a first-come, first-served basis. The DACS must reserve 40 percent of the annual allocation for governmental applicants and 60 percent for commercial applicants. The total amount that DACS can award for these rebates is $6 million[17] per year.[18]

The law provides steps for application and authorizes DACS to adopt rules to implement and administer the section by December 31, 2013.

The DACS must determine and publish on its website on an ongoing basis the amount of available funding for rebates remaining in each fiscal year and to provide, by October 1 each year, an annual assessment of the use of the rebate program to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability (OPPAGA). By January 31, 2016, OPPAGA is to provide a report reviewing the rebate

[15] s. 377.810(1), F.S.
[16] s. 377.810(2), F.S.
[17] The rebate is funded through the state's General Revenue Fund.
[18] s. 377.810(3), F.S.

program to the Governor, the President of the Senate, and the Speaker of the House of Representatives.[19]

The Florida Natural Gas Vehicle Coalition reports that in Florida, the Natural Gas Fuel Fleet Vehicle Rebate Program has produced 1,820 jobs and $68 million in wages since its inception. When the legislation was passed there were approximately 32 Compressed Natural Gas (CNG) stations in Florida. According to Biofuels Digest, there are now 61 active CNG fueling stations with an additional 29 planned.[20] The Digest quotes a report from Fishkind & Associates that, "... a CNG station costs on average $1.5 million, meaning investment in CNG station infrastructure has been $91.5 million over the past two years."[21]

Effects of Proposed Changes

The bill creates the Heavy Transportation Industry Natural Gas Rebate Program within DACS. Similar to the Natural Gas Fuel Fleet Vehicle Rebate Program, the program provides for the award of rebates for up to 50 percent of the eligible costs for converting traditionally-fueled locomotives, waterborne ships, and high-horsepower engines to natural gas-fueled or for up to 50 percent of the eligible costs for the purchase of such eligible vehicles or vessels.

Applicants must have placed these locomotives, ships, and engines into service on or after July 1, 2015, for commercial business or governmental purposes. An applicant is eligible to receive a maximum rebate of $500,000 per vehicle up to a total of $1 million per fiscal year. Total appropriations for the program are $10 million per fiscal year.

The purpose of the program is to help reduce transportation costs in the state, encourage the use of a domestic fuel source, and encourage heavy transportation investments that contribute to the economic growth of the state. The bill provides the following definitions under the program:

- "Conversion costs" means the costs associated with retrofitting a diesel-powered, gasoline-powered, or heavy-fuel-oil-powered locomotive, waterborne ship, or high-horsepower engine to a natural-gas-fuel-powered eligible vehicle or vessel.
- "Department" means the Department of Agriculture and Consumer Services.
- "Eligible costs" means the conversion costs or the incremental costs incurred by an applicant in connection with an investment in the conversion of, purchase of, or lease lasting at least 10 years of, a natural-gas-fuel-powered eligible vehicle or vessel. The term does not include costs for project development, fueling stations, or other fueling infrastructure.
- "Eligible vehicle or vessel" means a locomotive, waterborne ship, or high-horsepower engine used for transportation purposes, registered or licensed in the state, and used for commercial business or governmental purposes within the state. An eligible vehicle must be newly constructed or repowered and placed into service on or after July 1, 2015. A waterborne ship must be built and documented in the United States with a coastwise endorsement under 46 U.S.C. s. 55102 and be used to provide regular transportation of merchandise between one or more ports in the state and other domestic ports.
- "High-horsepower engine" means an engine that provides more than 1,000 horsepower and is used for nonhighway transportation purposes.
- "Incremental costs" means the excess costs associated with the purchase or lease of a natural-gas-fuel-powered eligible vehicle or vessel as compared to an equivalent diesel-powered, gasoline-powered, or heavy-fuel-oil-powered eligible vehicle or vessel.
- "Natural gas fuel" means any:

[19] s. 377.810(7) and (8), F.S.
[20] Isabel Lane, *Florida's natural gas vehicle incentive program creates 200% growth in fueling stations*, BIOFUELSDIGEST (Oct. 6, 2014), http://www.biofuelsdigest.com/bdigest/2014/10/06/floridas-natural-gas-vehicle-incentive-program-creates-200-growth-in-fueling-stations/.
[21] *Id.*

- Liquefied petroleum gas product,
- Compressed natural gas product, or a
- Combination thereof used in an eligible vehicle or vessel.

The term includes, but is not limited to, all forms of fuel commonly or commercially known or sold as:

- Natural gasoline,
- Butane gas,
- Propane gas, or
- Any other form of liquefied petroleum gas, compressed natural gas, or liquefied natural gas.

The term does not include natural gas or liquefied petroleum placed in a separate tank for cooking, heating, water heating, or electric generation.

The bill provides steps for application and authorizes DACS to adopt rules to implement and administer the program by December 31, 2015.

The DACS must determine and publish on its website on an ongoing basis the amount of available funding for rebates remaining in each fiscal year and must provide, by December 1, 2016, and by December 1 of each subsequent year of the program, an annual assessment of the use of the rebate program to the Governor, the President of the Senate, the Speaker of the House of Representatives, and OPPAGA. The bill specifies items that are to be included in the assessment.

B. SECTION DIRECTORY:

Section 1. Creates the heavy transportation industry natural gas rebate program within DACS; defines terms; prescribes powers and duties of DACS; provides rebate eligibility requirements; provides limits on awards; authorizes DACS to adopt rules; requires DACS to publish certain information on its website; directs DACS to submit an annual assessment to the Governor, the Legislature, and OPPAGA by a specified date; and provides for recurring appropriations.

Section 2. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill appropriates $10 million in recurring funds, beginning with FY 2015-2016 through FY 2019-2020, from the General Revenue Fund to DACS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may result in increased savings for owners of locomotives, waterborne ships, or high-horsepower engines that convert from being powered by traditional fuels to being powered by natural gas fuel. It may lead to the creation of a natural gas plant and refueling infrastructure in the state.

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:

The bill provides rule-making authority to DACS to implement and administer the program, including rules relating to the forms required to claim a rebate under this program, the required documentation and basis for establishing eligibility for a rebate, procedures and guidelines for claiming a rebate, and the collection of economic impact data from applicants. The rules "may" be adopted by December 31, 2015.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 17, 2015, the Business & Professions Subcommittee considered and adopted a strike-all amendment, and two amendments to the strike-all amendment, and reported the bill favorably as a committee substitute. The committee substitute, as amended, differs from the filed bill by:

- Expanding the purpose of the bill to include encouraging the use of a domestic fuel source and encouraging heavy transportation industry investments that contribute to the economic growth of the state;
- Expanding those eligible to use the program to include high-horsepower engines that are converted from using heavy fuel oil to being powered by natural gas;
- Specifying that eligible ships must be waterborne ships that are built and documented in the United States with a coastwise endorsement under the 46 U.S.C. s. 55102 and that are used to provide regular transportation of merchandise between one or more ports in Florida and other domestic ports;
- Changing the earliest date that a vehicle must be placed into service from January 1, 2015, to July 1, 2015;
- Changing the rule-adoption date for DACS from January 1, 2016, to December 31, 2015, and making adoption of the rules by DACS permissive, i.e., "shall" to "may;"
- Changing the date of DACS' annual assessment deadline from October 1st to December 1st.
- Removing the OPPAGA report requirement; and
- Providing for annual appropriations of $10 million from the General Revenue Fund to DACS, beginning in FY 2015-2016 and continuing through FY 2019-2020.

The staff analysis is drafted to reflect the committee substitute.

A bill to be entitled

An act relating to a natural gas rebate program; creating s. 377.811, F.S.; creating the heavy transportation industry natural gas rebate program within the Department of Agriculture and Consumer Services; defining terms; providing powers and duties of the department with respect to the program; providing rebate eligibility requirements; providing limits on rebate awards; providing for an application process; authorizing the department to adopt rules; requiring the department to publish on its website the availability of rebate funds; requiring the department to submit an annual assessment to the Governor, the Legislature, and the Office of Program Policy Analysis and Government Accountability by a specified date; providing recurring appropriations; providing an effective date.

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

Section 1. Section 377.811, Florida Statutes, is created to read:

377.811 Heavy transportation industry natural gas rebate program.—

(1) CREATION AND PURPOSE OF PROGRAM.—There is created within the Department of Agriculture and Consumer Services a

heavy transportation industry natural gas rebate program. The purpose of the program is to help reduce transportation costs in the state, encourage the use of a domestic fuel source, and encourage heavy transportation industry investments that contribute to the economic growth of the state.

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

(a) "Conversion costs" means the costs associated with retrofitting a diesel-powered, gasoline-powered, or heavy-fuel-oil-powered locomotive, waterborne ship, or high-horsepower engine to a natural-gas-fuel-powered eligible vehicle or vessel.

(b) "Department" means the Department of Agriculture and Consumer Services.

(c) "Eligible costs" means the conversion costs or the incremental costs incurred by an applicant in connection with an investment in the conversion of, purchase of, or lease lasting at least 10 years of, a natural-gas-fuel-powered eligible vehicle or vessel. The term does not include costs for project development, fueling stations, or other fueling infrastructure.

(d) "Eligible vehicle or vessel" means a locomotive, waterborne ship, or high-horsepower engine used for transportation purposes, registered or licensed in the state, and used for commercial business or governmental purposes within the state. An eligible vehicle must be newly constructed or repowered and placed into service on or after July 1, 2015. A waterborne ship must be built and documented in the United States with a coastwise endorsement under 46 U.S.C. s. 55102 and

be used to provide regular transportation of merchandise between one or more ports in the state and other domestic ports.

(e) "High-horsepower engine" means an engine that provides more than 1,000 horsepower and is used for nonhighway transportation purposes.

(f) "Incremental costs" means the excess costs associated with the purchase or lease of a natural-gas-fuel-powered eligible vehicle or vessel as compared to an equivalent diesel-powered, gasoline-powered, or heavy-fuel-oil-powered eligible vehicle or vessel.

(g) "Natural gas fuel" means any liquefied petroleum gas product, compressed natural gas product, or combination thereof used in an eligible vehicle or vessel. The term includes, but is not limited to, all forms of fuel commonly or commercially known or sold as natural gasoline, butane gas, propane gas, or any other form of liquefied petroleum gas, compressed natural gas, or liquefied natural gas. The term does not include natural gas or liquefied petroleum placed in a separate tank for cooking, heating, water heating, or electric generation.

(3) HEAVY TRANSPORTATION INDUSTRY NATURAL GAS REBATE.—The department shall award rebates for eligible costs. A rebate may not exceed 50 percent of the eligible costs of a natural gas eligible vehicle or vessel with a dedicated or bi-fuel natural gas fuel operating system placed into service on or after July 1, 2015. An applicant is eligible to receive a maximum rebate of $500,000 per eligible vehicle or vessel up to a total of $1

million per fiscal year. All eligible vehicles or vessels must comply with applicable United States Environmental Protection Agency emission standards.

(4) APPLICATION PROCESS.—

(a) An applicant seeking to obtain a rebate shall submit an application to the department by a specified date each year as established by department rule. The application shall require a complete description of all eligible costs, proof of purchase or lease of the eligible vehicle or vessel for which the applicant is seeking a rebate, a copy of the vehicle or vessel registration certificate or equivalent documentation, a description of the total rebate sought by the applicant, and any other information deemed necessary by the department. The application form adopted by department rule must include an affidavit from the applicant certifying that all information contained in the application is true and correct.

(b) The department shall determine the rebate eligibility of each applicant in accordance with the requirements of this section and department rule. The total amount of rebates allocated to certified applicants in each fiscal year may not exceed the amount appropriated for the program in the fiscal year. Rebates shall be allocated to eligible applicants on a first-come, first-served basis, determined by the date and time when the application is received, until all appropriated funds for the fiscal year are expended or the program ends, whichever occurs first. Incomplete applications submitted to the

department may not be accepted and do not secure a place in the first-come, first-served application process.

(5) RULES.—The department may adopt rules to implement and administer this section by December 31, 2015, including rules relating to the forms required to claim a rebate under this section, the required documentation and basis for establishing eligibility for a rebate, procedures and guidelines for claiming a rebate, and the collection of economic impact data from applicants.

(6) PUBLICATION.—The department shall determine and publish on its website on an ongoing basis the amount of available funding for rebates remaining in each fiscal year.

(7) ANNUAL ASSESSMENT.—By December 1, 2016, and each year thereafter that the program is funded, the department shall provide an annual assessment of the use of the rebate program during the previous fiscal year to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability. The assessment must include, at a minimum, the following information:

(a) The name of each applicant awarded a rebate under this section;

(b) The amount of the rebates awarded to each applicant;

(c) The type and description of each eligible vehicle or vessel for which each applicant applied for a rebate; and

(d) The aggregate amount of funding awarded for all

applicants claiming rebates under this section.

Section 2. Beginning with the 2015-2016 fiscal year, and each year thereafter through the 2019-2020 fiscal year, the sum of $10 million in recurring funds is appropriated from the General Revenue Fund to the Department of Agriculture and Consumer Services to implement the heavy transportation industry natural gas rebate program under s. 377.811, Florida Statutes.

Section 3. This act shall take effect July 1, 2015.

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: Agriculture & Natural Resources Appropriations Subcommittee

Representative Ray offered the following:

Amendment (with title amendment)

Remove lines 132-137 and insert:

Section 2. Notwithstanding s. 216.301, Florida Statutes, the unobligated balance of funds in the General Revenue Fund provided to the Department of Agriculture and Consumer Services for the Natural Gas Fuel Fleet Vehicle Rebate program shall not revert on June 30 each fiscal year and is appropriated to the Department of Agriculture and Consumer Services for the subsequent fiscal year to implement the Heavy Transportation Industry Natural Gas Rebate program under s. 377.811, Florida Statutes, as created by this act.

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

Remove line 16 and insert:

providing an appropriation; providing an

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1205 Regulation of Oil and Gas Resources
SPONSOR(S): Agriculture & Natural Resources Subcommittee; Rodrigues and Pigman
TIED BILLS: HB 1207, CS/CS/HB 1209 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	10 Y, 2 N, As CS	Moore	Blalock
2) Agriculture & Natural Resources Appropriations Subcommittee		Helpling	Massengale
3) State Affairs Committee			

SUMMARY ANALYSIS

The Department of Environmental Protection's (DEP) Mining and Minerals Regulation Program in the Division of Water Resource Management (Division) oversees permitting for oil and gas drilling, production, and exploration within Florida through its Oil and Gas Program (Program). The Program's primary responsibilities include conservation of oil and gas resources, correlative rights protection, maintenance of health and human safety, and environmental protection.

The bill makes the following revisions related to the Program:

- Empowers DEP to issue a single permit that authorizes multiple Program activities;
- Requires the Division, when determining whether to issue a permit, to consider the history of past adjudicated violations committed by the applicant or an affiliated entity of any rule or law pertaining to the regulation of oil or gas, including violations that occurred outside the state;
- Allows information about past violations to be used as a basis for permit denial or imposition of permit conditions, including increased monitoring or increasing the required surety amount to up to five times the standard amount;
- Requires DEP to conduct inspections during specified Program activities;
- Defines "high-pressure well stimulation" as a well intervention performed by injecting more than 100,000 gallons of fluid into a rock formation at high pressure that exceeds the fracture gradient of the rock formation in order to propagate fractures in such formation to increase production at an oil or gas well by improving the flow of hydrocarbons from the formation into the wellbore;
- Requires a well operator to obtain a permit, pay a fee, and provide a surety to DEP prior to performing a high-pressure well stimulation;
- Requires DEP to conduct a study on the potential effects of performing high-pressure well stimulations;
- Requires certain individuals to report information relating to high-pressure well stimulations to DEP, including each chemical ingredient used in the well stimulation fluid, within 60 days of initiating the well stimulation;
- Requires DEP to designate the national chemical registry, known as FracFocus, as the state's registry for chemical disclosure for all wells on which high-pressure well stimulations are performed;
- Prohibits a county, municipality, or other political subdivision of the state from adopting or establishing programs to issue permits for any activity related to oil and gas drilling, exploration, or production;
- Increases the maximum civil penalty for violation of any provision of the laws governing energy resources, including any rule, regulation, or order of the Division, or an oil or gas permit from $10,000 to $25,000 per offense; and
- Authorizes DEP to adopt rules to implement these changes.

The bill may have a significant negative fiscal impact on the state, an indeterminate negative fiscal impact on the private sector, and no fiscal impact on local government. (See Fiscal Analysis & Economic Impact Statement.)

The bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. (See Constitutional Issues section.)

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Oil and Gas Production in Florida

There are two major areas in Florida that produce oil and gas: the Sunniland Trend in South Florida and the Jay Field in the western panhandle.[1] The Sunniland Trend began producing in 1943 and is located in Lee, Hendry, Collier, and Dade counties.[2] The Jay Field, located in Escambia and Santa Rosa counties, began producing in 1970.[3] Oil production from the two regions peaked at 48 million barrels (MBbls) in 1978, but has steadily declined over the years, producing only 2.2 MBbls in 2014.[4] Natural gas production has decreased as well, from 52 billion cubic feet (BCF) in 1978 to approximately 21 BCF in 2014.[5] There are currently 161 active oil and gas wells in Florida.[6]

The Oil and Gas Program

The Department of Environmental Protection's (DEP) Mining and Minerals Regulation Program in the Division of Water Resource Management (Division) oversees permitting for oil and gas drilling, production, and exploration within Florida through its Oil and Gas Program (Program).[7] The Program's primary responsibilities include conserving and controlling the state's oil and gas resources and products; protecting the correlative rights of landowners, owners and producers of oil and gas resources and products, and others interested in these resources and products; safeguarding the health, property, and public welfare of the state's residents; and protecting the environment.[8] These concerns are addressed through a system of permits and field inspections to ensure compliance.

DEP is required to adopt rules and issue orders to implement and enforce the Program.[9] The rules and orders must ensure that all precautions are taken to prevent the spillage of oil or any other pollutant in all phases of the drilling for, and extracting of, oil, gas, or other petroleum products, or during the injection of gas into and recovery of gas from a natural gas storage reservoir.[10] The statutes enumerate various purposes for which DEP must adopt rules.[11]

Permitting

DEP is vested with the power and authority to issue permits:

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[1] Jacqueline M. Lloyd, *Florida Geological Survey Information Circular No. 107*, June 1991, *available at* http://ufdcweb1.uflib.ufl.edu/UF00001168/00001/3x.
[2] *Id.*
[3] *Id.*
[4] DEP Presentation on Oil and Gas Regulation, Agriculture and Natural Resources Subcommittee, February 18, 2014, *available at* http://myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?CommitteeId=2852.
[5] *Id.;* DEP, Oil and Gas Annual Production Reports, http://www.dep.state.fl.us/water/mines/oil_gas/production.htm (last accessed March 13, 2015).
[6] DEP Presentation on Oil and Gas Regulation, Agriculture and Natural Resources Subcommittee, February 18, 2014, *available at* http://myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?CommitteeId=2852.
[7] The Oil and Gas Program is governed by part 1 of chapter 377, F.S., and chapters 62C-25 through 62C-30, F.A.C.
[8] Section 377.06, F.S.
[9] Section 377.22(2), F.S.
[10] *Id.*
[11] *Id.*

- For the drilling for, exploring for, or production of oil, gas, or other petroleum products that are to be extracted from below the surface of the land, including submerged land, only through the well hole drilled for oil, gas, and other petroleum products.[12]
- To explore for and extract minerals that are subject to extraction from the land by means other than through a well hole.[13]
- To establish natural gas storage facilities or construct wells for the injection and recovery of any natural gas for storage in natural gas storage reservoirs.[14]

Before any geophysical operation in search of oil, gas, or minerals may be conducted, the person desiring to conduct the operation must apply for a permit from DEP and pay a processing fee.[15] Geophysical operations consist of using various methods to locate geologic structures in the ground that could contain oil or gas.[16] These methods include gravity surveys, magnetic surveys, and seismic surveys.[17] Seismic surveys are the industry's primary tool for locating areas containing oil or gas, and they consist of using explosives or heavy vibrations to create sound pulses in the ground that reflect off geologic structures and are then captured by specialized microphones.[18] The collected data is then used to establish drilling targets.

After a drilling target is established, a person who would like to drill a well in search of oil or gas or drill a well to inject gas into and recover gas from a natural gas storage reservoir must notify the Division, pay a fee,[19] and obtain a separate permit authorizing the drilling before the drilling commences.[20] These drilling permits are valid for one year and may be renewed for an additional year provided no substantive changes are requested.[21] After a well is drilled, a separate operating permit must be obtained and fee paid[22] before a person may use the well for its intended purpose, such as producing oil, disposing of saltwater, or injecting fluids for pressure maintenance.[23] An operating permit is valid for the life of the well, but both the well and permit must be re-certified every five years.[24] A separate permit is also required before a person may store gas in or recover gas from a natural gas storage reservoir.[25]

When evaluating a permit application, the Division must consider:

- The nature, character, and location of the lands involved; and whether the lands are rural, such as farms, groves, or ranches, or urban property vacant or presently developed for residential or business purposes or are in such a location or of such a nature as to make such improvements and developments a probability in the near future.
- The nature, type, and extent of ownership of the applicant, including such matters as the length of time the applicant has owned the rights claimed without having performed any of the exploratory operations so granted or authorized.
- The proven or indicated likelihood of the presence of oil, gas, or related minerals in such quantities as to warrant the exploration and extraction of such products on a commercially profitable basis.

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[12] Section 377.242(1), F.S.
[13] Section 377.242(2), F.S.
[14] Section 377.242(3), F.S.
[15] Section 377.2408(1), F.S.
[16] DEP, *Oil & Gas: Geophysical Prospecting, available at* http://www.dep.state.fl.us/water/mines/oil_gas/docs/OilGasGeophysicalProspectingFactSheet.pdf.
[17] *Id.*
[18] *Id.*
[19] The fee to apply for a drilling permit is currently $2,000. Chapter 62C-26.003(8), F.A.C.
[20] Sections 377.24 and 377.2407, F.S.
[21] Rule 62C-26.007(4), F.A.C.
[22] The fee to apply for an operating permit is currently $2,000. Chapter 62C-26.008(3), F.A.C.
[23] Chapter 62C-26.008, F.A.C.
[24] *Id.*
[25] Section 377.24(1), F.S.

- For activities and operations concerning a natural gas storage facility, whether the nature, structure, and proposed use of the natural gas storage reservoir is suitable for the storage and recovery of gas without adverse effect to public health or safety or the environment.[26]

DEP must weigh these criteria and balance environmental interests against the applicant's right to explore for oil.[27]

Payment of Surety

Before DEP may grant a permit, the permit applicant is required to provide surety that the exploration, drilling, or production activity requested in the application will be conducted in a safe and environmentally compatible manner.[28] An applicant for a drilling, production, or injection well permit or a geophysical permit may provide the following types of surety to meet this requirement:

- A deposit of cash or other securities made payable to the Minerals Trust Fund;
- A bond of a surety company authorized to do business in the state; or
- A surety in the form of an irrevocable letter of credit guaranteed by an acceptable financial institution.[29]

For geophysical operations, the required surety is $25,000 per field crew or $100,000 per operation.[30] For wells, the amount of the required surety varies based on the depth of the well drilled and whether the well becomes an operating well.[31] Currently, the initial surety required for a well that is drilled between zero and 9,000 feet deep is $50,000, and the surety required for a well that is drilled 9,001 feet deep or more is $100,000.[32] If a drilled well becomes an operating well, the required surety for the well is twice the initial surety amount.[33] When all drilling, exploration, and production activities have ceased, the operator will be reimbursed up to the surety amount.

Alternatively, an applicant for a drilling, production, or injection well permit, or a permittee who intends to continue participating in long-term production activities, has the option to meet the surety requirement by paying an annual fee to the Minerals Trust Fund based on the following amounts:

- For the first year, or part of a year, the fee is $4,000 per permitted well.
- For each subsequent year, or part of a year, the fee is $1,500 per permitted well.[34]

The maximum fee that an applicant or permittee may be required to pay into the Minerals Trust Fund is $30,000 per calendar year, regardless of the number of permits applied for or in effect.[35]

Inspections

DEP is responsible for monitoring and inspecting all drilling operations, producing wells, or injecting wells.[36] All permitted activities are inspected by Division staff working out of two field offices. Each permit issued by DEP must contain an agreement that the permit holder will not prevent inspection by Division personnel at any time.[37]

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[26] Section 377.241, F.S.
[27] *Coastal Petroleum Co. v. Florida Wildlife Federation, Inc.*, 766 So. 2d 226, 228 (Fla. 1st DCA 1999).
[28] Section 377.2425(1), F.S.
[29] *Id.*
[30] Chapter 62C-26.007(5), F.A.C.
[31] Chapter 62C-26.002, F.A.C.
[32] *Id.*
[33] *Id.*
[34] Section 377.2425(1)(b), F.S.
[35] *Id.*
[36] Section 377.22(2)(g), F.S.
[37] Section 377.242, F.S.

Penalties

A person who violates any statute, rule, regulation, order, or permit of the Program is liable to the state for any damage caused to the air, waters, or property, including animal, plant, or aquatic life, of the state and for reasonable costs and expenses of the state in tracing the source of the discharge, in controlling and abating the source and the pollutants, and in restoring the air, waters, and property of the state.[38] Further, such person is subject to the judicial imposition of a civil penalty not to exceed $10,000 per offense.[39] Each day during any portion of which a violation occurs constitutes a separate offense.[40] These penalties also apply to a person who refuses inspection by the Division.[41]

Well Stimulation

Underground oil and gas often forms in certain rock formations resistant to conventional methods of drilling. Some of these rock formations are less permeable than traditional reservoirs of oil and gas. A traditional reservoir of oil and/or gas will be permeable enough to naturally allow the migration of oil and/or gas out of the reservoir rock. However, the decreased permeability of some reservoir rock formations traps oil and gas within the reservoir. The most common types of rock formations trapping oil and gas in this fashion are shale, sandstone, and methane coalbeds.[42]

Well stimulation refers to any action taken by a well operator to increase the inherent productivity of an oil or gas well.[43] Common examples of well stimulation treatments are hydraulic fracturing and acid fracturing. Both hydraulic fracturing and acid fracturing involve the pressurized injection of fluids and chemicals to create fractures within a rock formation. The fractures then allow for more oil and gas to escape the rock formation and migrate up the well.

Hydraulic Fracturing

Hydraulic fracturing consists of using fluid and material to create or restore fractures in a rock formation to stimulate production. A hydraulic fracturing well is first drilled vertically. Then the well is drilled horizontally directly into the reservoir rock. The fracturing fluid and materials are pressurized and released through small perforations in the well casing. The pressurized mixture causes the rock layer to fracture. The fissures are held open by the proppants to allow natural gas and oil to flow into and out of the well. Fractured rock formations may be refractured to allow for continued flow of any remaining oil and gas. This process allows for future productivity of older wells.[44]

The composition of a fracturing fluid varies with the nature of the formation, but typically contains large amounts of water, a proppant to keep the fractures open (typically sand), and chemical additives. Each hydraulic fracturing well can require between one and seven million gallons of water. The chemical additives include a friction reducer, biocides (to kill bacteria), a scale inhibitor, surfactants, and breakers.[45] Scale inhibitors prevent the buildup of scale[46] on the drilling equipment. The breakers and friction reducer help to transport the proppants into the fracture, as well as remove them. The surfactants help control water's reaction with other fluids (in this case, oil and/or gas). A typical fracture treatment will use between three and 12 additive chemicals depending on the characteristics of the water and the shale formation being fractured; most often, either 10 or 11 are used. These chemicals

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[38] Section 377.37(1)(a), F.S.
[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] *See generally* Hannah Wiseman & Francis Gradijan, *Regulation of Shale Gas Development, Including Hydraulic Fracturing* (Univ. of Tulsa Legal Studies, Research Paper No. 2011-11), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1953547.
[43] Keith B. Hall, *Recent Developments in Hydraulic Fracturing Regulation and Litigation*, 29 J. LAND USE & ENVTL. L. 29, 22 (2013).
[44] *See generally* Hannah Wiseman & Francis Gradijan, *Regulation of Shale Gas Development, Including Hydraulic Fracturing* (Univ. of Tulsa Legal Studies, Research Paper No. 2011-11), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1953547.
[45] *Id.*
[46] "Scale" are inorganic soluble salts that form when incompatible types of water are mixed. Scale buildup can cause costly damage to equipment parts.

are selected from a list of over 250 chemicals.[47] The chemicals typically make up between 0.5 percent and 1 percent of the hydraulic fracturing fluid, by weight.

Acid Fracturing

Acid fracturing, also known as acidizing, is most often used in limestone formations and other carbonate formations because the permeability of limestone varies and is too complex for conventional hydraulic fracturing. Carbonate formations can be dissolved by acid. Acid fracturing is similar to hydraulic fracturing with some differences. A fluid is still injected at fracturing pressures, but it also includes a diluted acid, either hydrocholoric acid or formic acid, to "etch" channels into the rock formation. The channels created through the rock formation can either let oil and gas escape as is, or can also be propped open with sand, as with hydraulic fracturing. "The effective fracture length is a function of the type of acid used, the acid reaction rate, and the fluid loss from the fracture into the formation."[48]

Well Stimulation in Florida

DEP's rules currently require an operator to notify DEP before beginning any workover operation on an oil or gas well.[49] A workover is defined as "an operation involving a deepening, plug back, repair, cement squeeze, perforation, hydraulic fracturing, acidizing, or other chemical treatment which is performed in a production, disposal, or injection well in order to restore, sustain, or increase production, disposal, or injection rates."[50] Thus, an operator performing a well stimulation need not apply for a separate permit authorizing the well stimulation, but must only provide notification to DEP before beginning the operation.

Both hydraulic fracturing and acid fracturing have been utilized in Florida. According to DEP, the last hydraulic fracturing on record was conducted in the Jay Field in 2003.[51] Acid fracturing was used for the first time in Florida in Collier County in 2013, but the operation was halted by a cease and desist order from DEP based on concerns about groundwater contamination.[52]

Disclosure of Well Stimulation Chemicals

Currently, there is no federal law or regulation that requires the disclosure of the chemicals added to the fluid used in well stimulations. In May 2012, the Bureau of Land Management (BLM), part of the U.S. Department of the Interior, published a proposed rule that would require disclosures about chemicals used in hydraulic fracturing on federal and Indian lands.[53] BLM received a high volume of comments and published an updated proposed rule in May 2013,[54] but has yet to publish a final rule.[55]

Of the states that produce oil, natural gas, or both, at least 15 require some disclosure of information about the chemicals added to the hydraulic fracturing fluid used to stimulate a particular well. These provisions vary widely, but generally indicate: (1) which parties must disclose information about

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[47] For a list of the chemicals most often used, see *What Chemicals Are Used*, FRAC FOCUS, https://fracfocus.org/chemical-use/what-chemicals-are-used (last visited March 11, 2015).
[48] THE SOCIETY OF PETROLEUM ENGINEERS, *Continuous Improvements in Acid Fracturing at Lake Maracaibo*, J. PETROLEUM TECH. 54 (2006), *available at* http://www.slb.com/~/media/Files/stimulation/industry_articles/200607_cont_imp.pdf.
[49] Chapter 62C-29.006, F.A.C.
[50] Chapter 62C-25.002, F.A.C.
[51] DEP, *Frequent Questions about the Oil and Gas Permitting Process*, *available at* http://www.dep.state.fl.us/water/mines/oil_gas/docs/faq_og.pdf.
[52] DEP, Collier Oil Drilling, http://www.dep.state.fl.us/secretary/oil/collier_oil.htm (last accessed March 13, 2015).
[53] BLM, U.S. Department of the Interior, *Interior Releases Draft Rule Requiring Public Disclosure of Chemicals Used in Hydraulic Fracturing on Public and Indian Lands* (May 4, 2012), *available at* http://www.blm.gov/wo/st/en/info/newsroom/2012/may/NR_05_04_2012.html.
[54] BLM, U.S. Department of the Interior, *Interior Releases Updated Draft Rule for Hydraulic Fracturing on Public and Indian Lands for Public Comment* (May 16, 2013), *available at* http://www.blm.gov/wo/st/en/info/newsroom/2013/may/nr_05_16_2013.html.
[55] Jennifer Dlouhy, *Interior Secretary: Feds won't overrule tougher state fracturing regulations*, MIDLAND REPORTER-TELEGRAM (March 3, 2015), *available at* http://www.mrt.com/business/oil/article_6e6b6c10-c10c-11e4-9e76-6f89418469c0.html.

chemical additives and whether these disclosures must be made to the public or a state agency; (2) what information about chemicals added to a hydraulic fracturing fluid must be disclosed, including how specifically parties must describe the chemical makeup of the hydraulic fracturing fluid and the additives that are combined with it; (3) what protections, if any, will be given to trade secrets; and (4) at what time disclosure must be made in relation to when fracturing takes place.[56]

Effect of Proposed Changes

Permits for Oil and Gas Exploring, Drilling, and Extracting

The bill requires the Division, when determining whether to issue a permit for activities related to oil and gas, to consider the history of past adjudicated violations committed by the applicant or an affiliated entity of any substantive and material rule or law pertaining to the regulation of oil or gas, including violations that occurred outside the state. This information may be used as a basis for permit denial or imposition of specific permit conditions, including increased monitoring or increasing the amount of the required surety to up to five times the standard amount. The bill authorizes DEP to adopt rules to implement this requirement.

The bill also empowers DEP, when issuing a permit for activities related to oil and gas drilling and extracting, to authorize multiple activities in a single permit.

Inspections

The bill specifies that DEP must conduct inspections during the testing of blowout preventers, during the pressure testing of the casing and casing shoe, and during the integrity testing of the cement plugs in plugging and abandonment operations. The bill requires each permit to contain an agreement that the permit holder will not prevent inspections during these activities.

High-Pressure Well Stimulation Permits

The bill defines "high-pressure well stimulation" as a well intervention performed by injecting more than 100,000 gallons of fluid into a rock formation at high pressure that exceeds the fracture gradient of the rock formation in order to propagate fractures in such formation to increase production at an oil or gas well by improving the flow of hydrocarbons from the formation into the wellbore.

The bill imposes on high-pressure well stimulations the same permitting requirements that apply to drilling an oil or gas well. Thus, a person who would like to perform a high-pressure well stimulation must first apply for and obtain a permit from DEP that authorizes the activity and must also pay a fee not to exceed the actual cost of processing and inspecting for each well. While the permitting criteria in current law that apply to all oil and gas permits will now apply to high-pressure well stimulation permits, the bill also creates additional criteria that apply only to permits for high-pressure well stimulation. Specifically, the bill directs the Division, when issuing a permit, to consider whether the high-pressure well stimulation is designed to ensure that:

- The groundwater through which the well will be or has been drilled is not contaminated by the high-pressure well stimulation; and
- The high-pressure well stimulation is consistent with the public policy of the state.

The bill also applies to high-pressure well stimulation permits the requirement that an applicant or operator provide surety to DEP that the activity will be conducted in a safe and environmentally compatible manner before DEP may grant a permit. An applicant may provide the following types of surety to meet this requirement:

[56] Brandon J. Murrill and Adam Vann, *Hydraulic Fracturing: Chemical Disclosure Requirements*, Congressional Research Service (June 19, 2012), *available at* http://fas.org/sgp/crs/misc/R42461.pdf.

- A deposit of cash or other securities made payable to the Minerals Trust Fund;
- A bond of a surety company authorized to do business in the state in an amount provided by rule; or
- A surety in the form of an irrevocable letter of credit in an amount provided by rule that is guaranteed by an acceptable financial institution.

Alternatively, an applicant has the option to provide surety to DEP by paying an annual fee to the Minerals Trust Fund as follows:

- For the first year, or part of a year, the fee is $4,000 per permitted well.
- For each subsequent year, or part of a year, the fee is $1,500 per permitted well.
- The maximum fee that an applicant may be required to pay into the Minerals Trust Fund is $30,000 per calendar year, regardless of the number of permits applied for or in effect.

The bill specifically authorizes DEP to issue permits for performance of a high-pressure well stimulation. The bill also requires DEP to issue orders and adopt rules to implement the permitting requirements for high-pressure well stimulations and to ensure that all precautions are taken to prevent the spillage of oil or any other pollutant during these operations.

Study on High-Pressure Well Stimulation

The bill requires DEP to conduct a study on high-pressure well stimulation that:

- Evaluates the underlying geologic features present in the counties where oil wells have been permitted and analyzes the potential impact that high-pressure well stimulation and wellbore construction may have on the underlying geologic features;
- Evaluates the potential hazards and risks that high-pressure well stimulation poses to surface water or groundwater resources, including an assessment of the potential impacts on drinking water resources, identification of the main factors affecting the severity and frequency of impacts, and an analysis of the potential for the use or reuse of recycled water in well stimulation fluids while meeting appropriate water quality standards;
- Reviews and evaluates the potential for groundwater contamination from conducting high-pressure well stimulation under wells that have been previously abandoned and plugged and identifies a setback radius from previously plugged and abandoned wells that could be impacted by high-pressure well stimulation; and
- Reviews and evaluates the ultimate disposition of well stimulation after use in well stimulation processes.

The bill specifies that DEP must continue normal oil and gas business operations during the performance of the study and prohibits a moratorium on the evaluation and issuance of permits for conventional drilling, exploration, conventional completions, or conventional workovers during the study.

The bill requires the findings of the study to be posted on DEP's website and submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by March 1, 2016.

The bill also requires DEP to adopt rules to implement the findings of the study if it is warranted and DEP determines that additional legislation is not needed. If additional legislation is needed, DEP must provide recommendations for such legislation to the Legislature. *See* CONSTITUTIONAL ISSUES: Other.

High-Pressure Well Stimulation Chemical Disclosure Registry

The bill requires DEP to designate the national chemical registry, known as FracFocus, as the state's registry for chemical disclosure for all wells on which high-pressure well stimulations are performed. DEP must provide a link to FracFocus on its website. The bill requires a service provider, vendor, or well owner or operator to report to DEP, at a minimum, the following information:

- The name of the service provider, vendor, or well owner or operator;
- The date of completion of the high-pressure well stimulation;
- The county in which the well is located;
- The API number for the well;
- The well name and number;
- The longitude and latitude of the wellhead;
- The total vertical depth of the well;
- The total volume of water used in the high-pressure well stimulation; and
- Each chemical ingredient that is subject to 29 C.F.R. s. 1910.1200(g)(2)[57] and the ingredient concentration in the high-pressure well stimulation fluid by mass for each well on which a high-pressure well stimulation is performed.

If FracFocus cannot accept and make publicly available any of the required information, the bill requires DEP to post the information on its website.

The bill requires a service provider, vendor, or well owner or operator to report the required information to DEP within 60 days after the initiation of the high-pressure well stimulation for each well on which it is performed. The service provider, vendor, or well owner or operator is also required to notify DEP if any chemical ingredient not previously reported is intentionally included and used for the purpose of performing a high-pressure well stimulation.

The bill specifies that the chemical disclosure requirements do not apply to an ingredient that is not intentionally added to the high-pressure well stimulation or that occurs incidentally or is otherwise unintentionally present in a high-pressure well stimulation.

The bill authorizes DEP to adopt rules to implement the chemical disclosure requirements.

Preemption

The bill prohibits a county, municipality, or other political subdivision of the state from adopting or establishing programs to issue permits for any activity related to oil and gas drilling, exploration, or production for which DEP has permitting authority.

Penalties

The bill increases the maximum civil penalty that may be imposed on a person who violates any provision of chapter 377, F.S., or any rule, regulation, or order of the Division made under the chapter or who violates the terms of an oil or gas permit from $10,000 to $25,000 per offense. Each day during any portion of which a violation occurs constitutes a separate offense.

B. SECTION DIRECTORY:

Section 1. amends s. 377.19, F.S., relating to Oil and Gas Program definitions.

Section 2. amends s. 377.22, F.S., relating to DEP rules and orders.

[57] 29 C.F.R. s. 1910.1200(g)(2) specifies the information that must be included in reports that chemical manufacturers and importers are required to prepare for the purpose of alerting employers and employees to chemical hazards in the workplace.

Section 3. amends s. 377.44, F.S., relating to oil and gas well drilling permits.

Section 4. amends s. 377.241, F.S., relating to criteria for issuance of permits.

Section 5. amends s. 377.242, F.S., relating to permits for oil and gas drilling, exploration, and extraction.

Section 6. amends s. 377.2425, F.S., relating to providing surety for oil and gas operations.

Section 7. creates s. 377.2436, F.S., relating to a study on high-pressure well stimulation.

Section 8. amends s. 377.37, F.S., relating to penalties for oil and gas law violations.

Section 9. creates s. 377.45, F.S., relating to disclosure of high-pressure well stimulation chemicals.

Section 10. provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill may have an indeterminate positive fiscal impact on the state because it requires oil and gas well operators to pay a permit fee, which will be determined by DEP, before performing a high-pressure well stimulation.

   The bill may also have an indeterminate positive fiscal impact on the state because it raises the maximum fine that may be imposed for violation of any oil and gas law, rule, regulation, or order from $10,000 to $25,000 per offense.

2. Expenditures:

   The bill may have a significant negative fiscal impact on the state because it requires DEP to conduct a study on the potential effects of performing high-pressure well stimulations. According to DEP, this study will cost approximately $1 million.[58]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See CONSTITUTIONAL ISSUES: Applicability of Municipality/County Mandates Provision.

2. Expenditures:

   See CONSTITUTIONAL ISSUES: Applicability of Municipality/County Mandates Provision.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate negative fiscal impact on the private sector because it requires oil and gas well operators to pay a permit fee, which will be determined by DEP, before performing a high-pressure well stimulation.

The bill may also have an indeterminate negative fiscal impact on the private sector because it raises the maximum fine that may be imposed for violation of any oil and gas law, rule, regulation, or order from $10,000 to $25,000 per offense.

[58] According to an email from DEP staff received on March 18, 2015.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18(b) of the Florida Constitution may apply because this bill may reduce the authority of counties and municipalities to raise total aggregate revenues as such authority existed on February 1, 1989, by prohibiting them from adopting or establishing programs to issue permits for any activity related to oil and gas drilling, exploration, or production for which DEP has permitting authority. According to DEP, no counties or municipalities currently operate such permitting programs.[59] Therefore, an exemption to the mandates provision may apply because the fiscal impact of the reduced authority is likely insignificant.

An exception to the mandates provision may also apply because the bill applies to all persons similarly situated. However, the Legislature would have to make a formal determination that the bill fulfills an important state interest.

If the exemption and exception do not apply and the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

2. Other:

Separation of Powers

The separation of powers doctrine prevents the Legislature from delegating its constitutional duties.[60] Legislative power involves the exercise of policy-related discretion over the content of law.[61] Thus, the Legislature must promulgate standards sufficient to guide administrative agencies in the performance of their duties.[62] The Florida Supreme Court has stated, "administration of legislative programs must be pursuant to some minimal standards and guidelines ascertainable by reference to the enactment establishing the program."[63] In addition, the Court has held that the Legislature may delegate confined rule-making authority to agencies, but the Legislature may not give agencies authority to determine what the law should be.[64]

The bill may implicate the separation of powers doctrine because it requires DEP to adopt rules to implement the findings of the study on the effects of high-pressure well stimulations, if the department determines that additional legislation is not needed.

B. RULE-MAKING AUTHORITY:

The bill requires DEP to adopt rules to implement the permitting requirements for high-pressure well stimulations and to ensure that all precautions are taken to prevent the spillage of oil or any other pollutant during these operations. The bill also authorizes DEP to adopt rules to evaluate previous violations of permit applicants, conduct specific inspection activities, require reports for high-pressure well stimulations, and require chemical disclosure to FracFocus for high-pressure well stimulations.

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[59] According to a phone conversation with DEP staff on March 13, 2015.
[60] *Florida State Bd. Of Architecture v. Wasserman*, 377 So. 2d 653 (Fla. 1979).
[61] *State ex rel. Taylor v. City of Tallahassee*, 177 So. 719 (Fla. 1937).
[62] *Florida Dep't. of State, Div. of Elections v. Martin*, 916 So.2d 763 (Fla. 2005); *Avatar Dev. Corp. v. State*, 723 So. 2d 199 (Fla. 1998).
[63] *Askew v. Cross Key Waterways*, 372 So.2d 913 (Fla. 1978).
[64] *Sarasota Cnty. v. Barg*, 302 So.2d 737 (Fla. 1974); *Florida Welding & Erection Serv., Inc. v. American Mut. Ins. Co. of Boston*, 285 So.2d 386 (Fla. 1973); *Mahon v. County of Sarasota*, 177 So.2d 665 (Fla. 1965).

In addition, the bill requires DEP to adopt rules to implement the findings of the study on the effects of high-pressure well stimulations. *See* CONSTITUTIONAL ISSUES: Other.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On line 56 of the bill, the definition of "Division" means the Division of Resource Management. There is no such Division in DEP.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 17, 2015, the Agriculture & Natural Resources Subcommittee adopted four amendments and reported the bill favorably as a committee substitute. The amendments:

- Remove provisions that revise the distribution of proceeds in the Oil and Gas Tax Trust Fund;
- Remove language that created a public records exemption not intended by the bill;
- Remove the requirement for DEP to notify a county when a permit is issued that authorizes activities in that county; and
- Add a service provider and vendor as individuals who must report information related to high-pressure well stimulations to DEP.

This analysis is drafted to the committee substitute as passed by the Agriculture & Natural Resources Subcommittee.

A bill to be entitled

An act relating to the regulation of oil and gas resources; amending s. 377.19, F.S.; applying the definitions of certain terms to additional sections of chapter 377, F.S.; conforming a cross-reference; defining the term "high-pressure well stimulation"; amending s. 377.22, F.S.; revising the rulemaking authority of the Department of Environmental Protection; amending s. 377.24, F.S.; requiring that a permit be obtained before the performance of a high-pressure well stimulation; specifying that a permit may authorize single or multiple activities; amending s. 377.241, F.S.; requiring the Division of Resource Management to give consideration to and be guided by certain additional criteria when issuing permits; amending s. 377.242, F.S.; authorizing the department to issue permits for the performance of a high-pressure well stimulation; revising permit requirements that permitholders agree not to prevent division inspections; prohibiting a county, municipality, or other political subdivision of the state from adopting or establishing permitting programs for certain oil and gas activities; amending s. 377.2425, F.S.; requiring an applicant or operator to provide surety that performance of a high-pressure well stimulation will be conducted in a safe and

environmentally compatible manner; creating s. 377.2436, F.S.; directing the Department of Environmental Protection to conduct a study on high-pressure well stimulation; providing study criteria; requiring the study to be submitted to the Governor and Legislature; requiring rulemaking under certain circumstances; amending s. 377.37, F.S.; increasing the maximum amount of a civil penalty; creating s. 377.45, F.S.; requiring the department to designate the national chemical registry as the state's registry; requiring service providers, vendors, and well owners or operators to report certain information to the department; providing applicability; requiring the department to adopt rules; providing an effective date.

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

Section 1. Section 377.19, Florida Statutes, is amended to read:

377.19 Definitions.—As used in ss. 377.06, 377.07, and 377.10-377.45 ~~377.10-377.40~~, the term:

(1) "Completion date" means the day, month, and year that a new productive well, a previously shut-in well, or a temporarily abandoned well is completed, repaired, or recompleted and the operator begins producing oil or gas in

commercial quantities.

(2) "Department" means the Department of Environmental Protection.

(3) "Division" means the Division of Resource Management of the Department of Environmental Protection.

(4) "Field" means the general area that is underlaid, or appears to be underlaid, by at least one pool. The term includes the underground reservoir, or reservoirs, containing oil or gas, or both. The terms "field" and "pool" mean the same thing if only one underground reservoir is involved; however, the term "field," unlike the term "pool," may relate to two or more pools.

(5) "Gas" means all natural gas, including casinghead gas, and all other hydrocarbons not defined as oil in subsection (16) ~~(15)~~.

(6) "High-pressure well stimulation" means a well intervention performed by injecting more than 100,000 gallons of fluid into a rock formation at high pressure that exceeds the fracture gradient of the rock formation in order to propagate fractures in such formation to increase production at an oil or gas well by improving the flow of hydrocarbons from the formation into the wellbore.

(7) ~~(6)~~ "Horizontal well" means a well completed with the wellbore in a horizontal or nearly horizontal orientation within 10 degrees of horizontal within the producing formation.

(8) ~~(7)~~ "Illegal gas" means gas that has been produced

within the state from any well or wells in excess of the amount allowed by any rule, regulation, or order of the division, as distinguished from gas produced within the State of Florida from a well not producing in excess of the amount so allowed, which is "legal gas."

(9) ~~(8)~~ "Illegal oil" means oil that has been produced within the state from any well or wells in excess of the amount allowed by rule, regulation, or order of the division, as distinguished from oil produced within the state from a well not producing in excess of the amount so allowed, which is "legal oil."

(10) ~~(9)~~ "Illegal product" means a product of oil or gas, any part of which was processed or derived, in whole or in part, from illegal gas or illegal oil or from any product thereof, as distinguished from "legal product," which is a product processed or derived to no extent from illegal oil or illegal gas.

(11) ~~(10)~~ "Lateral storage reservoir boundary" means the projection up to the land surface of the maximum horizontal extent of the gas volume contained in a natural gas storage reservoir.

(12) ~~(11)~~ "Native gas" means gas that occurs naturally within this state and does not include gas produced outside the state, transported to this state, and injected into a permitted natural gas storage facility.

(13) ~~(12)~~ "Natural gas storage facility" means an underground reservoir from which oil or gas has previously been

produced and which is used or to be used for the underground storage of natural gas, and any surface or subsurface structure, or infrastructure, except wells. The term also includes a right or appurtenance necessary or useful in the operation of the facility for the underground storage of natural gas, including any necessary or reasonable reservoir protective area as designated for the purpose of ensuring the safe operation of the storage of natural gas or protecting the natural gas storage facility from pollution, invasion, escape, or migration of gas, or any subsequent extension thereof. The term does not mean a transmission, distribution, or gathering pipeline or system that is not used primarily as integral piping for a natural gas storage facility.

(14) ~~(13)~~ "Natural gas storage reservoir" means a pool or field from which gas or oil has previously been produced and which is suitable for or capable of being made suitable for the injection, storage, and recovery of gas, as identified in a permit application submitted to the department under s. 377.2407.

(15) ~~(14)~~ "New field well" means an oil or gas well completed after July 1, 1997, in a new field as designated by the Department of Environmental Protection.

(16) ~~(15)~~ "Oil" means crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods, and which are not the result of condensation of gas after it leaves the

reservoir.

(17)~~(16)~~ "Oil and gas" has the same meaning as the term "oil or gas."

(18)~~(17)~~ "Oil and gas administrator" means the State Geologist.

(19)~~(18)~~ "Operator" means the entity who:

(a) Has the right to drill and to produce a well; or

(b) As part of a natural gas storage facility, injects, or is engaged in the work of preparing to inject, gas into a natural gas storage reservoir; or stores gas in, or removes gas from, a natural gas storage reservoir.

(20)~~(19)~~ "Owner" means the person who has the right to drill into and to produce from any pool and to appropriate the production for the person or for the person and another, or others.

(21)~~(20)~~ "Person" means a natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind.

(22)~~(21)~~ "Pool" means an underground reservoir containing or appearing to contain a common accumulation of oil or gas or both. Each zone of a general structure which is completely separated from any other zone on the structure is considered a separate pool as used herein.

(23)~~(22)~~ "Producer" means the owner or operator of a well or wells capable of producing oil or gas, or both.

(24)~~(23)~~ "Product" means a commodity made from oil or gas

and includes refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casinghead gasoline, natural gas gasoline, naphtha, distillate, condensate, gasoline, waste oil, kerosene, benzine, wash oil, blended gasoline, lubricating oil, blends or mixtures of oil with one or more liquid products or byproducts derived from oil or gas, and blends or mixtures of two or more liquid products or byproducts derived from oil or gas, whether hereinabove enumerated or not.

(25) ~~(24)~~ "Reasonable market demand" means the amount of oil reasonably needed for current consumption, together with a reasonable amount of oil for storage and working stocks.

(26) ~~(25)~~ "Reservoir protective area" means the area extending up to and including 2,000 feet surrounding a natural gas storage reservoir.

(27) ~~(26)~~ "Shut-in bottom hole pressure" means the pressure at the bottom of a well when all valves are closed and no oil or gas has been allowed to escape for at least 24 hours.

(28) ~~(27)~~ "Shut-in well" means an oil or gas well that has been taken out of service for economic reasons or mechanical repairs.

(29) ~~(28)~~ "State" means the State of Florida.

(30) ~~(29)~~ "Temporarily abandoned well" means a permitted well or wellbore that has been abandoned by plugging in a manner that allows reentry and redevelopment in accordance with oil or

gas rules of the Department of Environmental Protection.

(31) ~~(30)~~ "Tender" means a permit or certificate of clearance for the transportation or the delivery of oil, gas, or products, approved and issued or registered under the authority of the division.

(32) ~~(31)~~ "Waste," in addition to its ordinary meaning, means "physical waste" as that term is generally understood in the oil and gas industry. The term "waste" includes:

(a) The inefficient, excessive, or improper use or dissipation of reservoir energy; and the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner that results, or tends to result, in reducing the quantity of oil or gas ultimately to be stored or recovered from any pool in this state.

(b) The inefficient storing of oil; and the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner that causes, or tends to cause, unnecessary or excessive surface loss or destruction of oil or gas.

(c) The producing of oil or gas in a manner that causes unnecessary water channeling or coning.

(d) The operation of any oil well or wells with an inefficient gas-oil ratio.

(e) The drowning with water of any stratum or part thereof capable of producing oil or gas.

(f) The underground waste, however caused and whether or

not defined.

(g) The creation of unnecessary fire hazards.

(h) The escape into the open air, from a well producing both oil and gas, of gas in excess of the amount that is necessary in the efficient drilling or operation of the well.

(i) The use of gas for the manufacture of carbon black.

(j) Permitting gas produced from a gas well to escape into the air.

(k) The abuse of the correlative rights and opportunities of each owner of oil and gas in a common reservoir due to nonuniform, disproportionate, and unratable withdrawals, causing undue drainage between tracts of land.

(33) ~~(32)~~ "Well site" means the general area around a well, which area has been disturbed from its natural or existing condition, as well as the drilling or production pad, mud and water circulation pits, and other operation areas necessary to drill for or produce oil or gas, or to inject gas into and recover gas from a natural gas storage facility.

Section 2. Subsection (2) of section 377.22, Florida Statutes, is amended to read:

377.22 Rules and orders.—

(2) The department shall issue orders and adopt rules pursuant to ss. 120.536 and 120.54 to implement and enforce ~~the provisions of~~ this chapter. Such rules and orders shall ensure that all precautions are taken to prevent the spillage of oil or any other pollutant in all phases of the drilling for, and

extracting of, oil, gas, or other petroleum products, including high-pressure well stimulations, or during the injection of gas into and recovery of gas from a natural gas storage reservoir. The department shall revise such rules from time to time as necessary for the proper administration and enforcement of this chapter. Rules adopted and orders issued in accordance with this section are for, but not limited to, the following purposes:

(a) To require the drilling, casing, and plugging of wells to be done in such a manner as to prevent the pollution of the fresh, salt, or brackish waters or the lands of the state and to protect the integrity of natural gas storage reservoirs.

(b) To prevent the alteration of the sheet flow of water in any area.

(c) To require that appropriate safety equipment be installed to minimize the possibility of an escape of oil or other petroleum products in the event of accident, human error, or a natural disaster during drilling, casing, or plugging of any well and during extraction operations.

(d) To require the drilling, casing, and plugging of wells to be done in such a manner as to prevent the escape of oil or other petroleum products from one stratum to another.

(e) To prevent the intrusion of water into an oil or gas stratum from a separate stratum, except as provided by rules of the division relating to the injection of water for proper reservoir conservation and brine disposal.

(f) To require a reasonable bond, or other form of

security acceptable to the department, conditioned upon properly drilling, casing, producing, and operating each well, and properly plugging ~~the performance of the duty to plug properly~~ each dry and abandoned well and the full and complete restoration by the applicant of the area over which geophysical exploration, drilling, or production is conducted to the similar contour and general condition in existence before ~~prior to~~ such operation.

(g) To require and carry out a reasonable program of monitoring and inspecting ~~or inspection of~~ all drilling operations, high-pressure well stimulations, producing wells, ~~or~~ injecting wells, and well sites, including regular inspections by division personnel. Inspections will be required during the testing of blowout preventers, during the pressure testing of the casing and casing shoe, and during the integrity testing of the cement plugs in plugging and abandonment operations.

(h) To require the making of reports showing the location of all oil and gas wells; the making and filing of logs; the taking and filing of directional surveys; the filing of electrical, sonic, radioactive, and mechanical logs of oil and gas wells; if taken, the saving of cutting and cores, the cuts of which shall be given to the Bureau of Geology; and the making of reports with respect to drilling and production records. However, such information, or any part thereof, at the request of the operator, shall be exempt from ~~the provisions of~~ s. 119.07(1) and held confidential by the division for ~~a period of~~

1 year after the completion of a well.

(i) To prevent wells from being drilled, operated, or produced in such a manner as to cause injury to neighboring leases, property, or natural gas storage reservoirs.

(j) To prevent the drowning by water of any stratum, or part thereof, capable of producing oil or gas in paying quantities and to prevent the premature and irregular encroachment of water which reduces, or tends to reduce, the total ultimate recovery of oil or gas from any pool.

(k) To require the operation of wells with efficient gas-oil ratio, and to fix such ratios.

(l) To prevent "blowouts," "caving," and "seepage," in the sense that conditions indicated by such terms are generally understood in the oil and gas business.

(m) To prevent fires.

(n) To identify the ownership of all oil or gas wells, producing leases, refineries, tanks, plants, structures, and storage and transportation equipment and facilities.

(o) To regulate the "shooting," perforating, ~~and~~ chemical treatment, and high-pressure stimulations of wells.

(p) To regulate secondary recovery methods, including the introduction of gas, air, water, or other substance into producing formations.

(q) To regulate gas cycling operations.

(r) To regulate the storage and recovery of gas injected into natural gas storage facilities.

(s) If necessary for the prevention of waste, as herein defined, to determine, limit, and prorate the production of oil or gas, or both, from any pool or field in the state.

(t) To require, either generally or in or from particular areas, certificates of clearance or tenders in connection with the transportation or delivery of oil or gas, or any product.

(u) To regulate the spacing of wells and to establish drilling units.

(v) To prevent, so far as is practicable, reasonably avoidable drainage from each developed unit which is not equalized by counterdrainage.

(w) To require that geophysical operations requiring a permit be conducted in a manner which will minimize the impact on hydrology and biota of the area, especially environmentally sensitive lands and coastal areas.

(x) To regulate aboveground crude oil storage tanks in a manner which will protect the water resources of the state.

(y) To act in a receivership capacity for fractional mineral interests for which the owners are unknown or unlocated and to administratively designate the operator as the lessee.

(z) To evaluate the history of past adjudicated violations committed by permit applicants or the applicants' affiliated entities of any substantive and material rule or law pertaining to the regulation of oil or gas.

Section 3. Subsections (1), (2), and (4) of section 377.24, Florida Statutes, are amended to read:

377.24 Notice of intention to drill well; permits; abandoned wells and dry holes.—

(1) Before drilling a well in search of oil or gas, before performing a high-pressure well stimulation, or before storing gas in or recovering gas from a natural gas storage reservoir, the person who desires to drill for, store, or recover gas, ~~or~~ drill for oil or gas, or perform a high-pressure well stimulation shall notify the division upon such form as it may prescribe and shall pay a reasonable fee set by rule of the department not to exceed the actual cost of processing and inspecting for each well or reservoir. The drilling of any well, the performance of any high-pressure well stimulation, and the storing and recovering of gas are prohibited until such notice is given, the fee is paid, and a ~~the~~ permit is granted. A permit may authorize a single activity or multiple activities.

(2) An application for the drilling of a well in search of oil or gas, for the performance of a high-pressure well stimulation, or for the storing of gas in and recovering of gas from a natural gas storage reservoir~~,~~ in this state must include the address of the residence of the applicant~~,~~ or applicants, which must be the address of each person involved in accordance with the records of the Division of Resource Management until such address is changed on the records of the division after written request.

(4) Application for permission to drill or abandon any well or perform a high-pressure well stimulation may be denied

by the division for only just and lawful cause.

Section 4. Subsections (5) and (6) are added to section 377.241, Florida Statutes, to read:

377.241 Criteria for issuance of permits.—The division, in the exercise of its authority to issue permits as hereinafter provided, shall give consideration to and be guided by the following criteria:

(5) For high-pressure well stimulations, whether the high-pressure well stimulation as proposed is designed to ensure that:

(a) The groundwater through which the well will be or has been drilled is not contaminated by the high-pressure well stimulation; and

(b) The high-pressure well stimulation is consistent with the public policy of this state as specified in s. 377.06.

(6) As a basis for permit denial or imposition of specific permit conditions, including increased bonding up to five times the applicable limits and increased monitoring, the history of past adjudicated violations committed by the applicant or an affiliated entity of the applicant of any substantive and material rule or law pertaining to the regulation of oil or gas, including violations that occurred outside the state.

Section 5. Section 377.242, Florida Statutes, is amended to read:

377.242 Permits for drilling or exploring and extracting through well holes or by other means.—The department is vested

with the power and authority:

(1)(a) To issue permits for the drilling for, exploring for, performance of a high-pressure well stimulation, or production of, oil, gas, or other petroleum products that ~~which~~ are to be extracted from below the surface of the land, including submerged land, only through the well hole drilled for oil, gas, and other petroleum products.

1. No structure intended for the drilling for, or production of, oil, gas, or other petroleum products may be permitted or constructed on any submerged land within any bay or estuary.

2. No structure intended for the drilling for, or production of, oil, gas, or other petroleum products may be permitted or constructed within 1 mile seaward of the coastline of the state.

3. No structure intended for the drilling for, or production of, oil, gas, or other petroleum products may be permitted or constructed within 1 mile of the seaward boundary of any state, local, or federal park or aquatic or wildlife preserve or on the surface of a freshwater lake, river, or stream.

4. No structure intended for the drilling for, or production of, oil, gas, or other petroleum products may be permitted or constructed within 1 mile inland from the shoreline of the Gulf of Mexico, the Atlantic Ocean, or any bay or estuary or within 1 mile of any freshwater lake, river, or stream unless

the department is satisfied that the natural resources of such bodies of water and shore areas of the state will be adequately protected in the event of accident or blowout.

5. Without exception, after July 1, 1989, no structure intended for the drilling for, or production of, oil, gas, or other petroleum products may be permitted or constructed south of 26°00'00" north latitude off Florida's west coast and south of 27°00'00" north latitude off Florida's east coast, within the boundaries of Florida's territorial seas as defined in 43 U.S.C. s. 1301. After July 31, 1990, no structure intended for the drilling for, or production of, oil, gas, or other petroleum products may be permitted or constructed north of 26°00'00" north latitude off Florida's west coast to the western boundary of the state bordering Alabama as set forth in s. 1, Art. II of the State Constitution, or located north of 27°00'00" north latitude off Florida's east coast to the northern boundary of the state bordering Georgia as set forth in s. 1, Art. II of the State Constitution, within the boundaries of Florida's territorial seas as defined in 43 U.S.C. s. 1301.

(b) Subparagraphs (a)1. and 4. do not apply to permitting or construction of structures intended for the drilling for, or production of, oil, gas, or other petroleum products pursuant to an oil, gas, or mineral lease of such lands by the state under which lease any valid drilling permits are in effect on the effective date of this act. In the event that such permits contain conditions or stipulations, such conditions and

stipulations shall govern and supersede subparagraphs (a)1. and 4.

(c) The prohibitions of subparagraphs (a)1.-4. ~~in this subsection~~ do not include "infield gathering lines," provided no other placement is reasonably available and all other required permits have been obtained.

(2) To issue permits to explore for and extract minerals which are subject to extraction from the land by means other than through a well hole.

(3) To issue permits to establish natural gas storage facilities or construct wells for the injection and recovery of any natural gas for storage in natural gas storage reservoirs.

Each permit shall contain an agreement by the permitholder that the permitholder will not prevent inspection by division personnel at any time, including during installation and cementing of casing, testing of blowout preventers, pressure testing of the casing and casing shoe, and integrity testing of the cement plugs in plugging and abandonment operations. The provisions of this section prohibiting permits for drilling or exploring for oil in coastal waters do not apply to any leases entered into before June 7, 1991.

(4) To avoid unnecessary duplication, a county, municipality, or other political subdivision of the state may not adopt or establish programs to accomplish the purposes of this section.

Section 6. Subsection (1) of section 377.2425, Florida Statutes, is amended to read:

377.2425 Manner of providing security for geophysical exploration, drilling, and production.—

(1) Before ~~Prior to~~ granting a permit for conducting ~~to conduct~~ geophysical operations; drilling of exploratory, injection, or production wells; producing oil and gas from a wellhead; performing a high-pressure well stimulation; or transporting oil and gas through a field-gathering system, the department shall require the applicant or operator to provide surety that these operations will be conducted in a safe and environmentally compatible manner.

(a) The applicant for a drilling, production, high-pressure well stimulation, or injection well permit or a geophysical permit may provide the following types of surety to the department for this purpose:

1. A deposit of cash or other securities made payable to the Minerals Trust Fund. Such cash or securities so deposited shall be held at interest by the Chief Financial Officer to satisfy safety and environmental performance provisions of this chapter. The interest shall be credited to the Minerals Trust Fund. Such cash or other securities shall be released by the Chief Financial Officer upon request of the applicant and certification by the department that all safety and environmental performance provisions established by the department for permitted activities have been fulfilled.

2. A bond of a surety company authorized to do business in the state in an amount as provided by rule.

3. A surety in the form of an irrevocable letter of credit in an amount as provided by rule guaranteed by an acceptable financial institution.

(b) An applicant for a drilling, production, high-pressure well stimulation, or injection well permit, or a permittee who intends to continue participating in long-term production activities of such wells, has the option to provide surety to the department by paying an annual fee to the Minerals Trust Fund. For an applicant or permittee choosing this option the following shall apply:

1. For the first year, or part of a year, of a drilling, production, or injection well permit, or change of operator, the fee is $4,000 per permitted well.

2. For each subsequent year, or part of a year, the fee is $1,500 per permitted well.

3. The maximum fee that an applicant or permittee may be required to pay into the trust fund is $30,000 per calendar year, regardless of the number of permits applied for or in effect.

4. The fees set forth in subparagraphs 1., 2., and 3. shall be reviewed by the department on a biennial basis and adjusted for the cost of inflation. The department shall establish by rule a suitable index for implementing such fee revisions.

(c) An applicant for a drilling or operating permit for operations planned in coastal waters that by their nature warrant greater surety shall provide surety only in accordance with paragraph (a), or similar proof of financial responsibility other than as provided in paragraph (b). For all such applications, including applications pending at the effective date of this act and notwithstanding ~~the provisions of~~ paragraph (b), the Governor and Cabinet in their capacity as the Administration Commission, at the recommendation of the department ~~of Environmental Protection~~, shall set a reasonable amount of surety required under this subsection. The surety amount shall be based on the projected cleanup costs and natural resources damages resulting from a maximum oil spill and adverse hydrographic and atmospheric conditions that would tend to transport the oil into environmentally sensitive areas, as determined by the department ~~of Environmental Protection~~.

Section 7. Section 377.2436, Florida Statutes, is created to read:

377.2436 Study on high-pressure well stimulation.—

(1) The department shall conduct a study on high-pressure well stimulation. The study shall:

(a) Evaluate the underlying geologic features present in the counties where oil wells have been permitted and analyze the potential impact that high-pressure well stimulation and wellbore construction may have on the underlying geologic features.

(b) Evaluate the potential hazards and risks that high-pressure well stimulation poses to surface water or groundwater resources. The study shall assess the potential impacts of high-pressure well stimulation on drinking water resources and identify the main factors affecting the severity and frequency of impacts and shall analyze the potential for the use or reuse of recycled water in well stimulation fluids while meeting appropriate water quality standards.

(c) Review and evaluate the potential for groundwater contamination from conducting high-pressure well stimulation under wells that have been previously abandoned and plugged and identify a setback radius from previously plugged and abandoned wells that could be impacted by high-pressure well stimulation.

(d) Review and evaluate the ultimate disposition of well stimulation after use in well stimulation processes.

(2) The department shall continue normal oil and gas business operations during the performance of the study. There shall not be a moratorium on the evaluation and issuance of permits for conventional drilling, exploration, conventional completions, or conventional workovers during the performance of the study.

(3) The study is subject to independent scientific peer review.

(4) The findings of the study shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by March 1, 2016, and shall be

prominently posted on the department website.

(5) The department shall adopt rules to implement the findings of the study if such rules are warranted by the study and the department determines that additional legislation is not needed. If the department determines legislation is needed to protect groundwater or surface water resources, the department shall provide recommendations for such legislation to the Legislature.

Section 8. Paragraph (a) of subsection (1) of section 377.37, Florida Statutes, is amended to read:

377.37 Penalties.—

(1)(a) A ~~Any~~ person who violates any provision of this law or any rule, regulation, or order of the division made under this chapter or who violates the terms of any permit to drill for or produce oil, gas, or other petroleum products referred to in s. 377.242(1) or to store gas in a natural gas storage facility, or any lessee, permitholder, or operator of equipment or facilities used in the exploration for, drilling for, or production of oil, gas, or other petroleum products, or storage of gas in a natural gas storage facility, who refuses inspection by the division as provided in this chapter, is liable to the state for any damage caused to the air, waters, or property, including animal, plant, or aquatic life, of the state and for reasonable costs and expenses of the state in tracing the source of the discharge, in controlling and abating the source and the pollutants, and in restoring the air, waters, and property,

including animal, plant, and aquatic life, of the state. Furthermore, such person, lessee, permitholder, or operator is subject to the judicial imposition of a civil penalty ~~in an amount~~ of not more than $25,000 ~~$10,000~~ for each offense. However, the court may receive evidence in mitigation. Each day during any portion of which such violation occurs constitutes a separate offense. Nothing herein shall give the department the right to bring an action on behalf of any private person.

Section 9. Section 377.45, Florida Statutes, is created to read:

377.45 High-pressure well stimulation chemical disclosure registry.—

(1)(a) The department shall designate the national chemical registry, known as FracFocus, developed by the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission, as the state's registry for chemical disclosure for all wells on which high-pressure well stimulations are performed. The department shall provide a link to FracFocus through the department's website.

(b) In accordance with department rule, a service provider, vendor, or well owner or operator shall report to the department, at a minimum, the following information:

1. The name of the service provider, vendor, or owner or operator;

2. The date of completion of the high-pressure well stimulation;

3. The county in which the well is located;

4. The API number for the well;

5. The well name and number;

6. The longitude and latitude of the wellhead;

7. The total vertical depth of the well;

8. The total volume of water used in the high-pressure well stimulation; and

9. Each chemical ingredient that is subject to 29 C.F.R. s. 1910.1200(g)(2) and the ingredient concentration in the high pressure well stimulation fluid by mass for each well on which a high-pressure well stimulation is performed.

(c) If the chemical disclosure registry cannot accept and make publicly available any information specified in this section, the department shall post the information on the department's website.

(2) A service provider, vendor, or well owner or operator shall:

(a) Report the information required under subsection (1) to the department within 60 days after the initiation of the high-pressure well stimulation for each well on which such high-pressure well stimulation is performed; and

(b) Notify the department if any chemical ingredient not previously reported is intentionally included and used for the purpose of performing a high-pressure well stimulation.

(3) This section does not apply to an ingredient that:

(a) Is not intentionally added to the high-pressure well

stimulation; or

(b) Occurs incidentally or is otherwise unintentionally present in a high-pressure well stimulation.

(4) The department shall adopt rules to administer this section.

Section 10. This act shall take effect July 1, 2015.

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: Agriculture & Natural Resources Appropriations Subcommittee

Representative Rodrigues, R. offered the following:

Amendment (with title amendment)

Between lines 580 and 581, insert:

(6) For the 2015-2016 fiscal year, the sum of $1,000,000 in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Environmental Protection for the purpose of performing the study pursuant to s. 377.2436, Florida Statutes, as created by this act.

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

Remove line 33 and insert:

circumstances; providing an appropriation; amending s. 377.37, F.S.; increasing