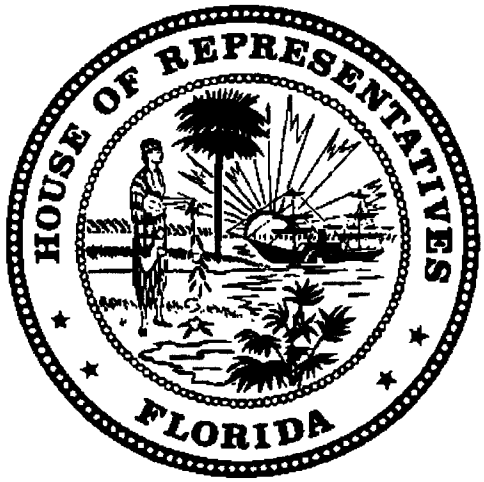

Government Operations Appropriations Subcommittee

Meeting Packet

April 7, 2015
10:30 a.m. – 12:30 p.m.
Morris Hall

Steve Crisafulli
Speaker

Jeanette Nuñez
Chair

The Florida House of Representatives

Appropriations Committee

Government Operations Appropriations Subcommittee

Steve Crisafulli
Speaker

Jeanette Nuñez
Chair

April 7, 2015

AGENDA
10:30 a.m. – 12:30 p.m.
Morris Hall

I. **Call to Order/Roll Call**

II. **Consideration of Bills**

CS/HB 435 Administrative Procedures by Rulemaking Oversight & Repeal Subcommittee, Adkins

CS/HB 491 Property Insurance Appraisal Umpires and Property Insurance Appraisers by Insurance & Banking Subcommittee, Artiles

HB 801 The Beirut Memorial by Taylor

CS/HB 915 Building Codes by Business & Professions Subcommittee, Eagle

CS/HB 1147 Honor and Remember Flag by Government Operations Subcommittee, Burgess

CS/HB 1219 Public Food Service Establishments by Business & Professions Subcommittee, Raulerson

III. **Closing Remarks/Adjourn**

221 The Capitol, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4813 Fax: (850) 488-9633

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 435 Administrative Procedures
SPONSOR(S): Adkins
TIED BILLS: **IDEN./SIM. BILLS:** SB 718

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Rulemaking Oversight & Repeal Subcommittee	12 Y, 0 N, As CS	Stranburg	Rubottom
2) Government Operations Appropriations Subcommittee		White CCW	Topp BDT
3) State Affairs Committee			

SUMMARY ANALYSIS

The Administrative Procedure Act (APA) provides uniform procedures for the exercise of specified administrative authority. The bill amends eight provisions of the APA to enhance the opportunities for substantially affected parties to challenge rules, and be awarded attorney fees in certain successful administrative matters. Specifically, the bill makes the following changes to the APA, including, but not limited to:

- Revising rulemaking procedures based on petitions to initiate rulemaking alleging an unadopted rule;
- Expanding the listing of information that must be published on the Florida Administrative Register to include rules filed for adoption in the previous seven days and a listing of all rules filed for adoption but awaiting legislative ratification;
- Revising the pleading requirements and burden of going forward with evidence in challenges to proposed and unadopted rules;
- Removing a defense to an award of fees and costs that an agency did not know or should not have known that an agency statement or policy was an unadopted rule in cases where notice is actually provided;
- Extending the time to appeal certain final orders when notice to the party was delayed;
- Authorizing rule challenges in challenges to agency actions on similar terms as petitions challenging rules and unadopted rules, including the award of reasonable attorney fees to prevailing challengers;
- Requiring agencies to identify and certify all of the rules the violation of which would be a minor violation.

The bill also provides conditions for when an agency action is not substantially justified for purposes of an award of attorney fees under the Florida Equal Access to Justice Act.

The bill may have an indeterminate negative fiscal impact to the state. *See* Fiscal Comments section for further discussion.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current situation

Rulemaking

The Administrative Procedure Act (APA)[1] sets forth a uniform set of procedures that agencies must follow when exercising delegated rulemaking authority. A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency.[2] Rulemaking authority is delegated by the Legislature through statute and authorizes an agency to "adopt, develop, establish, or otherwise create" a rule.[3] Agencies do not have discretion whether or not to engage in rulemaking.[4] To adopt a rule, an agency must have a general grant of authority to implement a specific law through rulemaking.[5] The grant of rulemaking authority itself need not be detailed. The specific statute being implemented or interpreted through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.

Petitions to Initiate Rulemaking

The APA authorizes a substantially interested party to file a petition to adopt, amend or repeal a rule.[6] The agency must initiate rulemaking or provide a written explanation why the petition is denied. If the petition is directed to an unadopted rule, the agency must hold a workshop before it may deny the petition.[7] If, after the workshop, the agency does not initiate rulemaking, the agency is required to publish in the Florida Administrative Register (F.A.R.) a notice explaining why the agency is denying the petition and explaining any changes it will make in the scope or application of the statement asserted in the petition to be an unadopted rule.[8] However, the APA does not require rulemaking before an agency has had sufficient time to acquire the knowledge and experience reasonably necessary, or otherwise resolved matters sufficiently to address a statement by rulemaking.[9] The clear implication is that an agency may apply law and establish procedures by statements of general applicability without adopting the statement as a rule until adoption is feasible and practicable.[10]

Small Business

The APA provides certain accommodations for small businesses[11] but does not provide a definition of "small business". In rulemaking, an agency must consider the impact on small businesses defined for that purpose as employing less than 200 employees and having a net worth less than $5 million,[12] but agencies are authorized to define "small business" to include businesses having more than 200 employees. By contrast, Florida's Equal Access to Justice Act provides for attorney fees to be awarded in administrative proceedings to prevailing parties who are small businesses, defined as having not more than 25 employees with a net worth of no more than $2 million.[13]

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[1] Chapter 120, F.S.
[2] Section 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1st DCA 2007).
[3] Section 120.52(17), F.S.
[4] Section 120.54(1)(a), F.S.
[5] Section 120.52(8) and 120.536(1), F.S.
[6] Section 120.54(7)(a), F.S.
[7] Section 120.54(7)(b), F.S.
[8] Section 120.54(7)(c), F.S.
[9] Section 120.54(1)(a)1., F.S.
[10] *See* s. 120.52(16), F.S.
[11] Sections 120.54, 120.541, and 120.74, F.S.
[12] Section 120.54(3)(b), F.S., incorporates by reference the definition of "small business" in s. 288.703(6), F.S.
[13] Section 57.111, F.S.

Notice of Rules

Presently, the only notice of adopted rules is the filing with the Department of State (DOS). DOS publishes such rules in the Florida Administrative Code (F.A.C.). A rule requiring ratification as a condition of effectiveness[14] is not published in the F.A.C. until ratified. However, as a courtesy, DOS, once each week, lists newly adopted rules in the F. A. R., and includes a cumulative list of rules filed for adoption pending legislative ratification.

Attorney Fees

In addition to the special attorney fee provisions in the Equal Access to Justice Act, the APA provides for the recovery of attorney fees when an agency's actions are not substantially justified; when an agency relies upon an unadopted rule and is successfully challenged after 30 days' notice of the need to adopt rules; and when an agency loses an appeal in a proceeding challenging an unadopted rule.[15] These attorney fee provisions supplement the attorney fee provisions provided by other laws.[16]

In addition, the APA authorizes attorney fees awards when the non-prevailing party challenged an agency action for an "improper purpose".[17] It establishes a rebuttable presumption of improper purposes in certain circumstances involving two or more unfounded administrative challenges.[18] "Improper purpose" means participation primarily to harass or to cause unnecessary delay or for frivolous purpose or to needlessly increase the cost of administrative action.[19]

For purposes of awarding attorney fees to small businesses under the Equal Access to Justice Act, an agency action is reasonably justified if it has a reasonable basis in law and fact at the time the agency acted. In such cases, no fees are allowable.

Attorney fees are also awardable in administrative proceedings for baseless or frivolous litigation on the same grounds as in civil court cases.[20]

Burden of Proof

In general, laws carry a presumption of validity, and as such, those challenging the validity of a law carry the burden of proving invalidity. The APA retains this presumption of validity by requiring those challenging adopted rules to carry the burden of proving that a rule constitutes an invalid exercise of delegated authority.[21] However, in the case of proposed rules, the APA places the burden on the agency to demonstrate the validity of the rule as proposed, once the challenger has raised specific objections to the rule's validity.[22] In addition, a proposed rule may not be filed for adoption until any pending challenge is resolved.[23]

In the case of a statement or policy in force that was not adopted as a rule, a challenger must prove that the statement or policy meets the definition of a rule under the APA. If so, and if the statement or policy has not been validly adopted, the agency must prove that rulemaking is not feasible or practicable.[24]

Proceedings Involving Rule Challenges

The APA presently applies different procedures when proposed rules, existing rules, and statements defined as rules ("unadopted rules") are challenged by petition, as compared to a challenge to the

[14] *See* s. 120.541(3), F.S. (requiring ratification of rules having an economic impact beyond a particular threshold).
[15] Section 120.595, F.S.
[16] See, for example, ss. 57.105 and 57.111, F.S. These sections are specifically preserved in s. 120.595(6), F.S.
[17] Section 120.595(1), F.S.
[18] Section 120.595(1)(c), F.S.
[19] Section 120.595(1)(e)1., F.S.
[20] Section 57.105(5), F.S.
[21] Section 120.56(3), F.S. Section 120.52(8), F.S., defines "invalid exercise of delegated legislative authority."
[22] Section 120.56(2), F.S.
[23] Section 120.54(3)(e)2., F.S.
[24] Section 120.56(4), F.S.

validity of an existing rule or an unadopted rule when raised defensively in a proceeding initiated as a result of agency action. In addition to the attorney fees awardable to small businesses under the Equal Access to Justice Act, the APA provides attorney fee awards when a party petitions for invalidation of a rule, proposed rule or unadopted rule, but not when the same successful legal case is made in defense of an enforcement action or challenging a grant or denial of a permit or license.

The APA does provide that a Division of Administrative Hearings (DOAH) judge may determine that an agency has attempted to rely on an unadopted rule in proceedings initiated by agency action. However, this is qualified by a provision that an agency may overrule the DOAH determination if clearly erroneous, and if the agency rejects the DOAH determination and is later reversed on appeal, the challenger is awarded attorney fees for the entire proceeding.[25] Additionally, in proceedings initiated by agency action, when a DOAH judge determines that a rule constitutes an invalid exercise of delegated legislative authority, the agency has full de novo authority to reject or modify such conclusions of law, provided the final order states with particularity the reasons for rejecting or modifying such determination.[26]

In proceedings initiated by a party challenging a rule or unadopted rule, the DOAH judge enters a final order that cannot be overturned by the agency. The only appeal is to the District Court of Appeals.

Final Orders

An agency has 90 days to render a final order in any proceeding after the hearing if the agency conducts the hearing, or after the recommended order is submitted to the agency if DOAH conducts the hearing (except for the rule challenge proceedings described above in which the DOAH judge enters the final order).

Declaratory Statements

The APA provides for the opportunity to request, for notice and opportunity for public input, and for the issuance of a "declaratory statement" of an agency's opinion on the applicability of a law or rule over which the agency has authority to a particular set of facts set forth in the petition.[27] When issued, a declaratory statement is the agency's legal opinion that binds the agency under principles of estoppel. An agency has the option to deny the petition, and will typically do so if a live enforcement action is pending with respect to similar facts.

Anecdotal evidence indicates that the declaratory statement process in the APA has not proven productive in Florida in some agency situations. By contrast, the Internal Revenue Service and the Florida Department of Revenue each frequently issue binding opinions upon request of taxpayers. Profession and trade licensing boards, for example, the Construction Industry Licensing Board and Board of Architecture, have shown a willingness to issue declaratory statements to clarify matters relating to compliance with the rules and laws enforced by those Boards.[28]

Declaratory statements are considered final agency action, subject to judicial review. Declaratory statements have the effect of stare decisis.

Judicial Review

A notice of appeal of an appealable order under the APA must be filed within 30 days of the rendering of the order.[29] An order, however, is rendered when filed with the agency clerk.[30] On occasion, a party may not receive notice of the order in time to meet the 30-day appeal deadline. Under the current

[25] Section 120.57(1)(e)3., F.S.
[26] Section 120.57(1)(k-*l*), F.S.
[27] Section 120.565, F.S.
[28] See, e.g., Notice of Declaratory Statement, Department of Business and Professional Regulation, Board of Architecture, vol. 40, no. 3, F.A.R. (Feb. 13, 2014), Notice of Declaratory Statement, Department of Business and Professional Regulation, Construction Industry Licensing Board, vol. 40, no. 27 (Feb. 10, 2014).
[29] Section 120.68(2)(a), F.S.
[30] Sections 120.52(7), 120.68(2)(a), F.S.

statute, a party may not seek judicial review of the validity of a rule by appealing its adoption but authorizes an appeal from a final order in a rule challenge.[31]

Minor Violations

The APA directs agencies to issue a "notice of noncompliance" as the first response when the agency encounters a first minor violation of a rule.[32] The law provides that a violation is a minor violation if it "does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm." Agencies are authorized to designate those rules for which a violation would be a minor violation. An agency's designation of rules under the provision is excluded from challenge under the APA but may be subject to review and revision by the Governor or Governor and Cabinet.[33] An agency under the direction of a cabinet officer has the discretion not to use the "notice of noncompliance" once each licensee is provided a copy of all rules upon issuance of a license, and annually thereafter.

Rules Ombudsman

Section 288.7015, F.S., requires the Governor to appoint a rules ombudsman in the Executive Office of the Governor, for considering the impact of agency rules on the state's citizens and businesses. The rules ombudsman must carry out the duties related to rule adoption procedures with respect to small businesses; review state agency rules that adversely or disproportionately impact businesses, particularly those relating to small and minority businesses; and make recommendations on any existing or proposed rules to alleviate unnecessary or disproportionate adverse effects to business. Each state agency must cooperate fully with the rules ombudsman in identifying such rules, and take the necessary steps to waive, modify, or otherwise minimize such adverse effects of any such rules.

Effect of the Bill

Agency Action

Section 1 amends s. 57.111(3), F.S., which awards attorney fees and costs to small businesses that prevail in an administrative proceeding when the agency was not substantially justified. The bill provides particular circumstances when an agency proceeding is not substantially justified. The bill provides that an agency may not establish that its action is substantially justified if it acts in contradiction to its own declaratory statement or the agency denies a petition for declaratory statement and thereafter pursues enforcement on facts submitted in the petition. This will only apply when the agency is wrong on the application of the law. While agencies do not like to issue declaratory statements on facts that have already occurred, the change should motivate an agency to review its legal position carefully before denying the petition and thereafter attempting to punish the circumstances raised by the petition.

Petition to Initiate Rulemaking

Section 2 amends s. 120.54(7) to add new rulemaking requirements when an agency initiates rulemaking after a workshop on a petition to initiate rulemaking that alleges an unadopted rule. The provision will require the agency to file its Notice of Rule Development within 30 days of a mandatory hearing on the petition. Unless the agency publishes a notice explaining the reasons it cannot do so, the Notice of Proposed Rule must be filed within 180 days after the Notice of Rule Development. Lastly, unless the agency publishes a statement explaining why rulemaking is not feasible or practicable under s. 120.54(1), F.S., the bill prohibits the agency from relying on the unadopted rule until rulemaking is complete. This limitation mirrors that applicable when an agency loses a formal challenge to an unadopted rule.[34]

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[31] Section 120.68(9), F.S.

[32] Section 120.695, F.S. The statute contains the following legislative intent: "It is the intent of the Legislature that an agency charged with enforcing rules shall issue a notice of noncompliance as its first response to a minor violation of a rule in any instance in which it is reasonable to assume that the violator was unaware of the rule or unclear as to how to comply with it."

[33] Section 120.695(2)(c), (d), F.S. The statute provides for final review and revision of these agency designations to be at the discretion of elected constitutional officers.

[34] *See*, s. 120.56(4)(c) and (e), F.S.

Rulemaking Publication and Notification Requirements
Section 3 amends s. 120.55, F.S., to expand the list of information that must be published on the Florida Administrative Register. The bill requires DOS to publish in the Florida Administrative Register a listing of rules filed for adoption in the previous seven days and a listing of all rules filed for adoption but pending legislative ratification.

The bill also requires those agencies with e-mail alert services that provide regulatory information to interested parties to use such services to notify recipients of each notice required under s. 120.54(2) and (3)(a), F.S., including, but not limited to, notice of rule development, notice of proposed rules, and notice of adoption of rules. The notices must provide Internet links to either the rule page on the Secretary of State's website or an agency website that contains the proposed rule or final rule.

Challenges to Rules
Section 4 amends s. 120.56(1), (2) and (4), F.S., relating to petitions challenging the validity of rules, proposed rules and statements defined as rules ("unadopted rules"). The changes clarify the pleading requirements for the petitions. It also clarifies the parties' respective burdens of proof in challenges to proposed rules and unadopted rules.

The Committee Substitute preserves the presumption of validity in challenges to existing adopted rules. (The original bill proposed to change the burden of proof in such cases to the agency.)

Final Orders
Section 5 amends s. 120.569(2)(l)2., F.S., to extend the 90-day time for entry of final orders in proceedings relating to agency actions to allow, at the agency's discretion, for the completion of any appeal of an order on a rule challenge which may be concurrent with the enforcement action. An agency will have 10 days after the determination of the appeal to enter the final order on the related matter. The provisions of Section 6 make this extension of time beneficial to a clear final resolution of certain matters.

Disputes
Section 6 amends s. 120.57, F.S., relating to DOAH hearings of agency-initiated actions involving disputed issues of material fact. The bill incorporates many of the rule challenge provisions of s. 120.56, F.S., allowing the administrative law judge to enter a final order on a challenge to the validity of a rule or to an unadopted rule in all contests before DOAH. This would treat a challenge to a rule in defending against or attacking an agency action much as a challenge in an action initiated solely to challenge the rule. Notably, the decision on the rule challenge in the DOAH proceeding would be binding on the agency.

The bill allows the agency, within 15 days of notice of the rule challenge in such matters, to waive its reliance on an unadopted rule or a rule alleged to be invalid, and thereby eliminate that aspect of the litigation, without prejudice to the agency reasserting its position in another matter or rule challenge. This will help an agency advance a proceeding beyond a weak legal position on the rule issue, particularly in matters initiated by field investigators who often do not enjoy the benefit of legal deliberation by counsel prior to initiation of the action.

The bill also revises the procedures for raising challenges to the validity of rules and unadopted rules in many proceedings where there is no dispute of material fact, staying the agency's non-DOAH proceeding during a related DOAH challenge to a rule.

Attorney Fees
Section 7 amends s. 120.595, F.S., relating to attorney fees in APA proceedings, to clarify the statute with respect to participating in a proceeding for improper purposes. The bill amends s. 120.595(1)(c), F.S., to increase the clarity of the paragraph. The bill adds a new paragraph (d) to s. 120.595(1), F.S.,

extending the capped attorney fee awards available for successful rule challenges under s. 120.56, F.S., to rule challenges in other cases when the agency does not waive its reliance on the challenged rule or unadopted rule. This provision would obviate any necessity to file separate rule challenge petitions to gain an attorney fee award while challenging an agency action that relies on an invalid or unadopted rule. It also reinforces the changes to s. 120.57, F.S., in Section 6 of the CS authorizing rule challenges in particular proceedings.

The bill also recodifies the right to fees for improper purposes when an agency prevails in a rule challenge by deleting three duplicative sentences[35] and adding the affected cases to the scope of the improper purposes provision. The revision does not change the substance of the law.

The bill eliminates the defense that an agency's action can be "substantially justified" when a rule or unadopted rule is successfully challenged. It also eliminates a defense that the agency "did not know or should not have known" that it was relying on an unadopted rule. The bill retains an equitable defense against an attorney fee award in those rule challenges in case of "special circumstances."

The bill adds a new subsection (6) to s. 120.595, F.S., revising the provisions for pre-petition notice of an invalid rule or proposed rule, or of an unadopted rule for rule challenges under s. 120.56, F.S. The bill requires notice 30 days prior to filing of a petition challenging a rule or unadopted rule, and five days prior to filing the petition challenging a proposed rule. Reasonable costs and attorney fees may be awarded only for the period beginning after notice. The agency may avoid an award of attorney fees and costs if, within the notice period provided, the agency provides notice that it will not adopt the proposed rule or will not rely upon the adopted rule or statement challenged as an unadopted rule until after the agency has complied with the rulemaking procedures of the APA to ensure its rules conform to the law. The bill also provides that taking such steps to cure its faults would constitute "special circumstances" protecting the agency from an attorney fees judgment on the rule challenge.

The bill does not impose pre-petition notice provisions to rule challenges included in other challenges to agency actions, those challenges authorized in Section 6 of the CS.

The bill adds a new subsection (7) to s. 120.595 providing that reasonable costs and reasonable attorney fees incurred in proving and prosecuting a claim for attorney fees under the statute are not subject to the fee cap applicable to costs and fees awardable in an underlying action. Agencies are excluded from such supplemental awards. This provision may deter some agencies from aggressively litigating attorney fees due to increased risk of incurring additional fees when the fee cap has otherwise been exceeded.

Appeals

Section 8 alters the appellate provisions to clarify that a final order on a rule challenge litigated with other challenges to agency action under s. 120.57(1)(e), F.S. will be directly appealable in the same manner as a final order in a petition challenging a rule under s. 120.56, F.S. The section also allows 10 additional days to file an appeal if the appellant did not receive notice of the rendering of the final order within 25 days. The section also makes conforming technical changes.

Minor Violations

Section 9 amends s. 120.695, F.S., to direct each agency to timely review its rules and certify to the President of the Senate, the Speaker of the House of Representatives, the Administrative Procedures Committee, and the rules ombudsman those rules that have been designated as rules the violation of which would be a minor violation no later than June 30, 2016. Each agency that fails to timely complete the review and file the certification will be reported by the rules ombudsman to the Governor, the President of the Senate, the Speaker of the House of Representatives and the Administrative Procedures Committee.

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[35] *See* s. 120.595(2) (next to last sentence), s. 120.595(3) (next to last sentence), and s. 120.595(4)(d) (final sentence)(this sentence also contains a provision that is unnecessarily duplicative of s. 57.105(5), F.S.).

Beginning July 1, 2016, each agency will be required to publish all rules of that agency designated as rules the violation of which would be a minor violation either as a complete list on the agency's Internet webpage or by incorporation of the designations in the agency's disciplinary guidelines adopted as a rule. Each agency must ensure that all investigative and enforcement personnel are knowledgeable of the agencies designations of these rules. The agency head must certify for each rule filed for adoption whether any part of the rule is designated as one the violation of which would be a minor violation and update the listing on the webpage or disciplinary guidelines.

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

B. SECTION DIRECTORY:

Section 1 amends s. 57.111(3)(e), F.S.

Section 2 amends s. 120.54(7)(c), F.S., and creates paragraph (7)(d) of that section.

Section 3 amends s. 120.55, F.S.

Section 4 amends s. 120.56(1), (2) and (4), F.S.

Section 5 amends s. 120.569(2)(l), F.S.

Section 6 amends s. 120.57(1)(e) and (h), F.S. and subsection (2) of that section.

Section 7 amends s. 120.595, F.S.

Section 8 amends s. 120.68(1), (2) and (9), F.S.

Section 9 amends s. 120.695, F.S.

Section 10 provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
   See Fiscal Comments.

2. Expenditures:
   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
   None.

2. Expenditures:
   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The private sector may benefit slightly by the increased incentives for agencies to conform their rules to the law, thereby increasing clarity and certainty in the application of the law.

D. FISCAL COMMENTS:

The bill has an indeterminate negative fiscal impact to the state. The bill allows for the recovery of reasonable attorney fees and reasonable costs incurred in litigating entitlement to, and the determination or quantification of, attorney fees and costs. This could potentially have a negative fiscal impact to the state when a state agency is the non-prevailing party. However, the appellate courts have already upheld awards of fees and costs incurred in litigating fees and costs, so the bill conforms the APA to existing case law. The fiscal impact to the state would be limited to those few cases in which the fees and costs are capped by the authorizing law but litigating fees and costs result in supplemental awards above those caps.

The bill also allows attorney fees for successfully challenging invalid rules or unadopted rules in cases that arise outside s. 120.56, F.S. Those fees, however, are only awardable when the agency has notice of the challenge and persists in relying on the invalid rule to support an agency action. Thus, the costs are generally avoidable by taking heed to diligent legal counsel and diligence in maintaining the validity of rules. Note also that the same exposure to fee awards would be incurred under current law by the challenger filing a separate challenge under s. 120.56, F.S.

The bill removes the ability for the agency to be awarded reasonable costs and attorney fees if the appellate court or administrative law judge determined that the challenging party participated in the proceedings for an improper purpose or that the party or the party's attorney knew or should have known that a claim was not supported by the material facts necessary to establish a claim or would not be supported by the application of then-existing law to those material facts. This could increase the number of frivolous rule challenges.

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:

B. RULE-MAKING AUTHORITY:

The bill enhances the procedures provided by the APA for challenging rules, particularly in the defense against agency actions that are not based on valid rules. As such, it provides incentives and opportunities for private parties to keep agency rulemaking accountable under the law. The bill also increases requirements relating to identifying rules the violation of which should be classified as minor violations.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

The Rulemaking Oversight & Repeal Subcommittee adopted a strike-all amendment, as amended by one technical amendment, deleting two sections of the original bill relating to declaratory statements and mediation. The amendment also altered four other sections of the bill. The substance of the strike-all is explained in the full analysis above.

A bill to be entitled

An act relating to administrative procedures; amending s. 57.111, F.S.; providing conditions under which a proceeding is not substantially justified for purposes of an award under the Florida Equal Access to Justice Act; amending s. 120.54, F.S.; providing procedures for agencies to follow when initiating rulemaking after certain public hearings; limiting reliance upon an unadopted rule in certain circumstances; amending s. 120.55, F.S.; providing for publication of notices of rule development and of rules filed for adoption; providing for additional notice of rule development, proposals, and adoptions in the Florida Administrative Register; requiring certain agencies to provide additional e-mail notifications concerning specified rulemaking and rule development activities; amending s. 120.56, F.S.; specifying the burden of proof necessary for a petitioner to challenge a proposed rule or unadopted agency statement; amending s. 120.569, F.S.; granting agencies additional time to render final orders in certain circumstances; amending s. 120.57, F.S.; conforming proceedings that oppose agency action based on an invalid or unadopted rule to proceedings used for challenging rules; requiring the agency to issue a notice stating whether the agency will rely on the challenged rule or alleged unadopted

rule; authorizing the administrative law judge to make certain findings on the validity of certain alleged unadopted rules; authorizing the administrative law judge to issue a separate final order on certain rules and alleged unadopted rules; prohibiting agencies from rejecting specific conclusions of law in certain final orders rendered by an administrative law judge; providing for the stay of proceedings not involving disputed issues of fact upon timely filing of a rule challenge; providing that the final order terminates the stay; amending s. 120.595, F.S.; requiring a final order in rule challenges to award all reasonable costs and all reasonable attorney fees to a prevailing party under certain circumstances; revising the criteria used by an administrative law judge to determine whether a party participated in a proceeding for an improper purpose; removing certain exceptions from requirements that attorney fees and costs be rendered against the agency in proceedings in which the petitioner prevails in a rule challenge; requiring service of notice of invalidity to an agency before bringing a rule challenge as a condition precedent to the award of attorney fees and costs; authorizing the recovery of reasonable attorney fees and costs incurred by a prevailing party in litigating entitlement to or quantification of underlying

attorney fees and costs; removing certain limitations on such attorney fees and costs; correcting a cross-reference; amending s. 120.68, F.S.; providing for judicial review of orders rendered in challenges to specified rules or unadopted rules; authorizing extensions for filing certain appeals or petitions for review under certain circumstances; amending s. 120.695, F.S.; removing obsolete provisions with respect to required agency review and designation of minor violations; requiring agency review and certification of minor violation rules by a specified date; requiring the reporting of agency failure to complete the review and file certification of such rules; requiring minor violation certification for all rules adopted after a specified date; requiring public notice; providing applicability; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Paragraph (e) of subsection (3) of section 57.111, Florida Statutes, is amended to read:

57.111 Civil actions and administrative proceedings initiated by state agencies; attorney ~~attorneys'~~ fees and costs.—

(3) As used in this section:

(e) A proceeding is "substantially justified" if it had a reasonable basis in law and fact at the time it was initiated by a state agency. A proceeding is not substantially justified if the specified law, rule, or order at issue in the current agency action is the subject upon which the prevailing small business party previously petitioned the agency for a declaratory statement under s. 120.565; the current agency action involves identical or substantially similar facts and circumstances as those raised in the previous petition; and:

1. The agency action contradicts the declaratory statement issued by the agency upon the previous petition; or

2. The agency denied the previous petition under s. 120.565 before initiating the current agency action against the prevailing small business party.

Section 2. Paragraph (c) of subsection (7) of section 120.54, Florida Statutes, is amended, and paragraph (d) is added to that subsection, to read:

120.54 Rulemaking.—

(7) PETITION TO INITIATE RULEMAKING.—

(c) If the agency does not initiate rulemaking or otherwise comply with the requested action within 30 days after ~~following~~ the public hearing provided for in ~~by~~ paragraph (b), ~~if the agency does not initiate rulemaking or otherwise comply with the requested action,~~ the agency shall publish in the Florida Administrative Register a statement of its reasons for

not initiating rulemaking or otherwise complying with the requested action~~,~~ and of any changes it will make in the scope or application of the unadopted rule. The agency shall file the statement with the committee. The committee shall forward a copy of the statement to the substantive committee with primary oversight jurisdiction of the agency in each house of the Legislature. The committee or the committee with primary oversight jurisdiction may hold a hearing directed to the statement of the agency. The committee holding the hearing may recommend to the Legislature the introduction of legislation making the rule a statutory standard or limiting or otherwise modifying the authority of the agency.

(d) If the agency initiates rulemaking after a public hearing provided for in paragraph (b), the agency shall publish a notice of rule development within 30 days after the hearing and file a notice of proposed rule within 180 days after the notice of rule development unless, before the 180th day, the agency publishes in the Florida Administrative Register a statement explaining its reasons for not having filed the notice. If rulemaking is initiated under this paragraph, the agency may not rely on the unadopted rule unless the agency publishes in the Florida Administrative Register a statement explaining why rulemaking under paragraph (1)(a) is not feasible or practicable until conclusion of the rulemaking proceeding.

Section 3. Section 120.55, Florida Statutes, is amended to read:

120.55 Publication.—

(1) The Department of State shall:

(a)1. Through a continuous revision and publication system, compile and publish electronically, on an Internet website managed by the department, the "Florida Administrative Code." The Florida Administrative Code shall contain all rules adopted by each agency, citing the grant of rulemaking authority and the specific law implemented pursuant to which each rule was adopted, all history notes as authorized in s. 120.545(7), complete indexes to all rules contained in the code, and any other material required or authorized by law or deemed useful by the department. The electronic code shall display each rule chapter currently in effect in browse mode and allow full text search of the code and each rule chapter. The department may contract with a publishing firm for a printed publication; however, the department shall retain responsibility for the code as provided in this section. The electronic publication shall be the official compilation of the administrative rules of this state. The Department of State shall retain the copyright over the Florida Administrative Code.

2. Rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or state university rules relating to internal personnel or business and finance shall not be published in the Florida Administrative Code. Exclusion from publication in the Florida Administrative Code shall not affect the validity or

effectiveness of such rules.

3. At the beginning of the section of the code dealing with an agency that files copies of its rules with the department, the department shall publish the address and telephone number of the executive offices of each agency, the manner by which the agency indexes its rules, a listing of all rules of that agency excluded from publication in the code, and a statement as to where those rules may be inspected.

4. Forms shall not be published in the Florida Administrative Code; but any form which an agency uses in its dealings with the public, along with any accompanying instructions, shall be filed with the committee before it is used. Any form or instruction which meets the definition of "rule" provided in s. 120.52 shall be incorporated by reference into the appropriate rule. The reference shall specifically state that the form is being incorporated by reference and shall include the number, title, and effective date of the form and an explanation of how the form may be obtained. Each form created by an agency which is incorporated by reference in a rule notice of which is given under s. 120.54(3)(a) after December 31, 2007, must clearly display the number, title, and effective date of the form and the number of the rule in which the form is incorporated.

5. The department shall allow adopted rules and material incorporated by reference to be filed in electronic form as prescribed by department rule. When a rule is filed for adoption

with incorporated material in electronic form, the department's publication of the Florida Administrative Code on its Internet website must contain a hyperlink from the incorporating reference in the rule directly to that material. The department may not allow hyperlinks from rules in the Florida Administrative Code to any material other than that filed with and maintained by the department, but may allow hyperlinks to incorporated material maintained by the department from the adopting agency's website or other sites.

(b) Electronically publish on an Internet website managed by the department a continuous revision and publication entitled the "Florida Administrative Register," which shall serve as the official publication and must contain:

1. All notices required by s. 120.54(2) and (3)(a) ~~120.54(3)(a)~~, showing the text of all rules proposed for consideration.

2. All notices of public meetings, hearings, and workshops conducted in accordance with s. 120.525, including a statement of the manner in which a copy of the agenda may be obtained.

3. A notice of each request for authorization to amend or repeal an existing uniform rule or for the adoption of new uniform rules.

4. Notice of petitions for declaratory statements or administrative determinations.

5. A summary of each objection to any rule filed by the Administrative Procedures Committee.

6. A list of rules filed for adoption in the previous 7 days.

7. A list of all rules filed for adoption pending legislative ratification under s. 120.541(3). A rule shall be taken off the list once notice of ratification or withdrawal of such rule is received.

8.~~6.~~ Any other material required or authorized by law or deemed useful by the department.

The department may contract with a publishing firm for a printed publication of the Florida Administrative Register and make copies available on an annual subscription basis.

(c) Prescribe by rule the style and form required for rules, notices, and other materials submitted for filing.

(d) Charge each agency using the Florida Administrative Register a space rate to cover the costs related to the Florida Administrative Register and the Florida Administrative Code.

(e) Maintain a permanent record of all notices published in the Florida Administrative Register.

(2) The Florida Administrative Register Internet website must allow users to:

(a) Search for notices by type, publication date, rule number, word, subject, and agency.

(b) Search a database that makes available all notices published on the website for a period of at least 5 years.

(c) Subscribe to an automated e-mail notification of

selected notices to be sent out before or concurrently with publication of the electronic Florida Administrative Register. Such notification must include in the text of the e-mail a summary of the content of each notice.

(d) View agency forms and other materials submitted to the department in electronic form and incorporated by reference in proposed rules.

(e) Comment on proposed rules.

(3) Publication of material required by paragraph (1)(b) on the Florida Administrative Register Internet website does not preclude publication of such material on an agency's website or by other means.

(4) Each agency shall provide copies of its rules upon request, with citations to the grant of rulemaking authority and the specific law implemented for each rule.

(5) Each agency that provides an e-mail notification service to inform licensees or other registered recipients of notices shall use that service to notify recipients of each notice required under s. 120.54(2) and (3) and provide Internet links to the appropriate rule page on the Secretary of State's website or Internet links to an agency website that contains the proposed rule or final rule.

(6) ~~(5)~~ Any publication of a proposed rule promulgated by an agency, whether published in the Florida Administrative Register or elsewhere, shall include, along with the rule, the name of the person or persons originating such rule, the name of

the agency head who approved the rule, and the date upon which the rule was approved.

(7) ~~(6)~~ Access to the Florida Administrative Register Internet website and its contents, including the e-mail notification service, shall be free for the public.

(8) ~~(7)~~ (a) All fees and moneys collected by the Department of State under this chapter shall be deposited in the Records Management Trust Fund for the purpose of paying for costs incurred by the department in carrying out this chapter.

(b) The unencumbered balance in the Records Management Trust Fund for fees collected pursuant to this chapter may not exceed $300,000 at the beginning of each fiscal year, and any excess shall be transferred to the General Revenue Fund.

Section 4. Subsection (1), paragraph (a) of subsection (2), and subsection (4) of section 120.56, Florida Statutes, are amended to read:

120.56 Challenges to rules.—

(1) GENERAL PROCEDURES ~~FOR CHALLENGING THE VALIDITY OF A RULE OR A PROPOSED RULE~~.—

(a) Any person substantially affected by a rule or a proposed rule may seek an administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of delegated legislative authority.

(b) The petition challenging the validity of a proposed or adopted rule under this section ~~seeking an administrative determination~~ must state: ~~with particularity~~

1. The particular provisions alleged to be invalid and a statement ~~with sufficient explanation~~ of the facts or grounds for the alleged invalidity. ~~and~~

2. Facts sufficient to show that the petitioner ~~person challenging a rule~~ is substantially affected by the challenged adopted rule ~~it,~~ or ~~that the person challenging a proposed rule~~ would be substantially affected by the proposed rule ~~it~~.

(c) The petition shall be filed by electronic means with the division which shall, immediately upon filing, forward by electronic means copies to the agency whose rule is challenged, the Department of State, and the committee. Within 10 days after receiving the petition, the division director shall, if the petition complies with ~~the requirements of~~ paragraph (b), assign an administrative law judge who shall conduct a hearing within 30 days thereafter, unless the petition is withdrawn or a continuance is granted by agreement of the parties or for good cause shown. Evidence of good cause includes, but is not limited to, written notice of an agency's decision to modify or withdraw the proposed rule or a written notice from the chair of the committee stating that the committee will consider an objection to the rule at its next scheduled meeting. The failure of an agency to follow the applicable rulemaking procedures or requirements set forth in this chapter shall be presumed to be material; however, the agency may rebut this presumption by showing that the substantial interests of the petitioner and the fairness of the proceedings have not been impaired.

(d) Within 30 days after the hearing, the administrative law judge shall render a decision and state the reasons therefor in writing. The division shall forthwith transmit by electronic means copies of the administrative law judge's decision to the agency, the Department of State, and the committee.

(e) Hearings held under this section shall be de novo in nature. The standard of proof shall be the preponderance of the evidence. Hearings shall be conducted in the same manner as provided by ss. 120.569 and 120.57, except that the administrative law judge's order shall be final agency action. The petitioner and the agency whose rule is challenged shall be adverse parties. Other substantially affected persons may join the proceedings as intervenors on appropriate terms which shall not unduly delay the proceedings. Failure to proceed under this section does ~~shall~~ not constitute failure to exhaust administrative remedies.

(2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.—

(a) A substantially affected person may seek an administrative determination of the invalidity of a proposed rule by filing a petition seeking such a determination with the division within 21 days after the date of publication of the notice required by s. 120.54(3)(a); within 10 days after the final public hearing is held on the proposed rule as provided by s. 120.54(3)(e)2.; within 20 days after the statement of estimated regulatory costs or revised statement of estimated regulatory costs, if applicable, has been prepared and made

available as provided in s. 120.541(1)(d); or within 20 days after the date of publication of the notice required by s. 120.54(3)(d). The petition must state with particularity the objections to the proposed rule and the reasons that the proposed rule is an invalid exercise of delegated legislative authority. The petitioner has the burden of going forward with evidence sufficient to support the petition. The agency then has the burden to prove by a preponderance of the evidence that the proposed rule is not an invalid exercise of delegated legislative authority as to the objections raised. ~~A person who is substantially affected by a change in the proposed rule may seek a determination of the validity of such change.~~ A person who is not substantially affected by the proposed rule as initially noticed, but who is substantially affected by the rule as a result of a change, may challenge any provision of the resulting proposed rule ~~and is not limited to challenging the change to the proposed rule~~.

(4) CHALLENGING AGENCY STATEMENTS DEFINED AS UNADOPTED RULES; SPECIAL PROVISIONS.—

(a) Any person substantially affected by an agency statement that is an unadopted rule may seek an administrative determination that the statement violates s. 120.54(1)(a). The petition shall include the text of the statement or a description of the statement and shall state ~~with particularity~~ facts sufficient to show that the statement constitutes an unadopted ~~a~~ rule ~~under s. 120.52 and that the agency has not~~

~~adopted the statement by the rulemaking procedure provided by s. 120.54~~.

(b) The administrative law judge may extend the hearing date beyond 30 days after assignment of the case for good cause. Upon notification to the administrative law judge provided before the final hearing that the agency has published a notice of rulemaking under s. 120.54(3), such notice shall automatically operate as a stay of proceedings pending adoption of the statement as a rule. The administrative law judge may vacate the stay for good cause shown. A stay of proceedings pending rulemaking shall remain in effect so long as the agency is proceeding expeditiously and in good faith to adopt the statement as a rule.

(c) The petitioner has the burden of going forward with evidence sufficient to support the petition. The agency then has the burden to prove by a preponderance of the evidence that the statement does not meet the definition of an unadopted rule, the statement was adopted as a rule in compliance with s. 120.54, or ~~If a hearing is held and the petitioner proves the allegations of the petition, the agency shall have the burden of proving~~ that rulemaking is not feasible or not practicable under s. 120.54(1)(a).

(d) ~~(c)~~ The administrative law judge may determine whether all or part of a statement violates s. 120.54(1)(a). The decision of the administrative law judge shall constitute a final order. The division shall transmit a copy of the final

order to the Department of State and the committee. The Department of State shall publish notice of the final order in the first available issue of the Florida Administrative Register.

(e) ~~(d)~~ If an administrative law judge enters a final order that all or part of an unadopted rule ~~agency statement~~ violates s. 120.54(1)(a), the agency must immediately discontinue all reliance upon the unadopted rule ~~statement~~ or any substantially similar statement as a basis for agency action.

(f) ~~(e)~~ If proposed rules addressing the challenged unadopted rule ~~statement~~ are determined to be an invalid exercise of delegated legislative authority as defined in s. 120.52(8)(b)-(f), the agency must immediately discontinue reliance upon ~~on~~ the unadopted rule ~~statement~~ and any substantially similar statement until rules addressing the subject are properly adopted, and the administrative law judge shall enter a final order to that effect.

(g) ~~(f)~~ All proceedings to determine a violation of s. 120.54(1)(a) shall be brought pursuant to this subsection. A proceeding pursuant to this subsection may be consolidated with a proceeding under subsection (3) or under any other section of this chapter. This paragraph does not prevent a party whose substantial interests have been determined by an agency action from bringing a proceeding pursuant to s. 120.57(1)(e).

Section 5. Paragraph (l) of subsection (2) of section 120.569, Florida Statutes, is amended to read:

120.569 Decisions which affect substantial interests.—

(2)

(1) Unless the time period is waived or extended with the consent of all parties, the final order in a proceeding which affects substantial interests must be in writing and include findings of fact, if any, and conclusions of law separately stated, and it must be rendered within 90 days:

1. After the hearing is concluded, if conducted by the agency;

2. After a recommended order is submitted to the agency and mailed to all parties, if the hearing is conducted by an administrative law judge, except that, at the election of the agency, the time for rendering the final order may be extended up to 10 days after entry of a mandate from any appeal following entry of a final order under s. 120.57(1)(e)4.; or

3. After the agency has received the written and oral material it has authorized to be submitted, if there has been no hearing.

Section 6. Paragraphs (e) and (h) of subsection (1) and subsection (2) of section 120.57, Florida Statutes, are amended to read:

120.57 Additional procedures for particular cases.—

(1) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS INVOLVING DISPUTED ISSUES OF MATERIAL FACT.—

(e)1. An agency or an administrative law judge may not base agency action that determines the substantial interests of

a party on an unadopted rule or a rule that is an invalid exercise of delegated legislative authority. ~~The administrative law judge shall determine whether an agency statement constitutes an unadopted rule.~~ This subparagraph does not preclude application of valid adopted rules and applicable provisions of law to the facts.

2. In a matter initiated as a result of agency action proposing to determine the substantial interests of a party, the party's timely petition for hearing may challenge the proposed agency action based on a rule that is an invalid exercise of delegated legislative authority or based on an alleged unadopted rule. For challenges brought under this subparagraph:

a. The challenge shall be pled as a defense using the procedures set forth in s. 120.56(1)(b).

b. Section 120.56(3)(a) applies to a challenge alleging that a rule is an invalid exercise of delegated legislative authority.

c. Section 120.56(4)(c) applies to a challenge alleging an unadopted rule.

d. The agency has 15 days after the date of receipt of a challenge under this subparagraph to serve the challenging party with a notice stating whether the agency will continue to rely upon the rule or the alleged unadopted rule as a basis for the action determining the party's substantive interests. Failure to timely serve the notice constitutes a binding stipulation that the agency shall not rely upon the rule or unadopted rule

further in the proceeding. The agency shall include a copy of this notice upon referral of the matter to the division under s. 120.569(2)(a).

e. This subparagraph does not preclude the consolidation of any proceeding under s. 120.56 with any proceeding under this paragraph.

3.~~2.~~ Notwithstanding subparagraph 1., if an agency demonstrates that the statute being implemented directs it to adopt rules, that the agency has not had time to adopt those rules because the requirement was so recently enacted, and that the agency has initiated rulemaking and is proceeding expeditiously and in good faith to adopt the required rules, then the agency's action may be based upon those unadopted rules if~~, subject to de novo review by~~ the administrative law judge determines that rulemaking is neither feasible nor practicable and the unadopted rules would not constitute an invalid exercise of delegated legislative authority if adopted as rules. An unadopted rule ~~The agency action~~ shall not be presumed valid ~~or invalid~~. The agency must demonstrate that the unadopted rule:

a. Is within the powers, functions, and duties delegated by the Legislature or, if the agency is operating pursuant to authority vested in the agency by ~~derived from~~ the State Constitution, is within that authority;

b. Does not enlarge, modify, or contravene the specific provisions of law implemented;

c. Is not vague, establishes adequate standards for agency

decisions, or does not vest unbridled discretion in the agency;

d. Is not arbitrary or capricious. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational;

e. Is not being applied to the substantially affected party without due notice; and

f. Does not impose excessive regulatory costs on the regulated person, county, or city.

4. If the agency timely serves notice of continued reliance upon a challenged rule or an alleged unadopted rule under sub-subparagraph 2.d., the administrative law judge shall determine whether the challenged rule is an invalid exercise of delegated legislative authority or whether the challenged agency statement constitutes an unadopted rule and if that unadopted rule meets the requirements of subparagraph 3. The determination shall be rendered as a separate final order no earlier than the date on which the administrative law judge serves the recommended order.

5.~~3.~~ The recommended and final orders in any proceeding shall be governed by ~~the provisions of~~ paragraphs (k) and (l), except that the administrative law judge's determination ~~regarding an unadopted rule~~ under subparagraph 4. ~~1. or subparagraph 2.~~ shall be included as a conclusion of law that the agency may not reject ~~not be rejected by the agency unless the agency first determines from a review of the complete~~

~~record, and states with particularity in the order, that such determination is clearly erroneous or does not comply with essential requirements of law. In any proceeding for review under s. 120.68, if the court finds that the agency's rejection of the determination regarding the unadopted rule does not comport with the provisions of this subparagraph, the agency action shall be set aside and the court shall award to the prevailing party the reasonable costs and a reasonable attorney's fee for the initial proceeding and the proceeding for review~~.

(h) Any party to a proceeding in which an administrative law judge ~~of the Division of Administrative Hearings~~ has final order authority may move for a summary final order when there is no genuine issue as to any material fact. A summary final order shall be rendered if the administrative law judge determines from the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, that no genuine issue as to any material fact exists and that the moving party is entitled as a matter of law to the entry of a final order. A summary final order shall consist of findings of fact, if any, conclusions of law, a disposition or penalty, if applicable, and any other information required by law to be contained in the final order. <u>This paragraph does not apply to proceedings authorized in paragraph (e).</u>

(2) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT.—In any case to which

subsection (1) does not apply:

(a) The agency shall:

1. Give reasonable notice to affected persons of the action of the agency, whether proposed or already taken, or of its decision to refuse action, together with a summary of the factual, legal, and policy grounds therefor.

2. Give parties or their counsel the option, at a convenient time and place, to present to the agency or hearing officer written or oral evidence in opposition to the action of the agency or to its refusal to act, or a written statement challenging the grounds upon which the agency has chosen to justify its action or inaction.

3. If the objections of the parties are overruled, provide a written explanation within 7 days.

(b) An agency may not base agency action that determines the substantial interests of a party on an unadopted rule or a rule that is an invalid exercise of delegated legislative authority. No later than the date provided by the agency under subparagraph (a)2. for presenting material in opposition to the agency's proposed action or refusal to act, the party may file a petition under s. 120.56 challenging the rule, portion of rule, or unadopted rule upon which the agency bases its proposed action or refusal to act. The filing of a challenge under s. 120.56 pursuant to this paragraph shall stay all proceedings on the agency's proposed action or refusal to act until entry of the final order by the administrative law judge. The final order

shall provide additional notice that the stay of the pending agency action is terminated and that any further stay pending appeal of the final order must be sought from the appellate court.

(c) ~~(b)~~ The record shall only consist of:

1. The notice and summary of grounds.

2. Evidence received.

3. All written statements submitted.

4. Any decision overruling objections.

5. All matters placed on the record after an ex parte communication.

6. The official transcript.

7. Any decision, opinion, order, or report by the presiding officer.

Section 7. Section 120.595, Florida Statutes, is amended to read:

120.595 Attorney ~~Attorney's~~ fees and costs.—

(1) CHALLENGES ~~TO AGENCY ACTION~~ PURSUANT TO SECTION 120.56 OR SECTION 120.57(1).—

(a) This ~~The provisions of this~~ subsection is ~~are~~ supplemental to, and does ~~do~~ not abrogate, other provisions allowing the award of fees or costs in administrative proceedings.

(b) The final order in a proceeding conducted pursuant to s. 120.56 or s. 120.57(1) shall award all reasonable costs and all ~~a~~ reasonable attorney fees ~~attorney's fee~~ to the prevailing

party only if the administrative law judge determines that ~~only where~~ the nonprevailing adverse party ~~has been determined by the administrative law judge to have~~ participated in the proceeding for an improper purpose.

(c) In proceedings conducted pursuant to s. 120.57(1), it shall be rebuttably presumed that a nonprevailing adverse party participated in the current proceeding for an improper purpose if the administrative law judge determines that:

1. The nonprevailing adverse party participated as an adverse party in two or more other such proceedings involving the same prevailing party and project and in which the nonprevailing adverse party did not establish either the factual or legal merits of its position.

2. The factual or legal position asserted in the current proceeding would have been cognizable in the previous proceeding ~~and upon motion, the administrative law judge shall determine whether any party participated in the proceeding for an improper purpose as defined by this subsection~~. ~~In making such determination, the administrative law judge shall consider whether the nonprevailing adverse party has participated in two or more other such proceedings involving the same prevailing party and the same project as an adverse party and in which such two or more proceedings the nonprevailing adverse party did not establish either the factual or legal merits of its position, and shall consider whether the factual or legal position asserted in the instant proceeding would have been cognizable in~~

~~the previous proceedings. In such event, it shall be rebuttably presumed that the nonprevailing adverse party participated in the pending proceeding for an improper purpose~~.

(d) In a ~~any~~ proceeding in which the administrative law judge determines that a party participated in the proceeding for an improper purpose, the recommended order shall ~~so~~ designate that party and shall determine the award of costs and attorney ~~attorney's~~ fees.

(e) For purposes ~~the purpose~~ of this subsection, the term:

1. "Improper purpose" means participation in a proceeding pursuant to s. 120.57(1) primarily to harass or to cause unnecessary delay or for frivolous purpose or to needlessly increase the cost of litigation, licensing, or securing the approval of an activity.

2. "Costs" has the same meaning as the costs allowed in civil actions in this state as provided in chapter 57.

3. "Nonprevailing adverse party" means a party that has failed to have substantially changed the outcome of the proposed or final agency action which is the subject of a proceeding. If ~~In the event that~~ a proceeding results in any substantial modification or condition intended to resolve the matters raised in a party's petition, it shall be determined that the party having raised the issue addressed is not a nonprevailing adverse party. The recommended order shall state whether the change is substantial for purposes of this subsection. ~~In no event shall~~ The term "nonprevailing party" or "prevailing party" does not ~~be~~

~~deemed to~~ include a ~~any~~ party that has intervened in a previously existing proceeding to support the position of an agency.

(f) For challenges brought under s. 120.57(1)(e), when the agency relies on a challenged rule or an alleged unadopted rule pursuant to s. 120.57(1)(e)2.d., if the appellate court or the administrative law judge declares the rule or portion of the rule to be invalid or that the agency statement is an unadopted rule that does not meet the requirements of s. 120.57(1)(e)4., a judgment or order shall be rendered against the agency for reasonable costs and reasonable attorney fees unless the agency demonstrates that special circumstances exist that make the award unjust. An award of attorney fees as provided by this paragraph may not exceed $50,000.

(2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO SECTION 120.56(2).—If the appellate court or administrative law judge declares a proposed rule or portion of a proposed rule invalid pursuant to s. 120.56(2), a judgment or order shall be rendered against the agency for reasonable costs and reasonable attorney ~~attorney's~~ fees~~,~~ unless the agency demonstrates that ~~its actions were substantially justified or~~ special circumstances exist that ~~which would~~ make the award unjust. An ~~agency's actions are "substantially justified" if there was a reasonable basis in law and fact at the time the actions were taken by the agency. If the agency prevails in the proceedings, the appellate court or administrative law judge shall award~~

~~reasonable costs and reasonable attorney's fees against a party if the appellate court or administrative law judge determines that a party participated in the proceedings for an improper purpose as defined by paragraph (1)(e). No~~ award of attorney ~~attorney's~~ fees as provided by this subsection may not ~~shall~~ exceed $50,000.

(3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO SECTION 120.56(3) AND (5).—If the appellate court or administrative law judge declares a rule or portion of a rule invalid pursuant to s. 120.56(3) or (5), a judgment or order shall be rendered against the agency for reasonable costs and reasonable attorney ~~attorney's~~ fees~~,~~ unless the agency demonstrates that ~~its actions were substantially justified or~~ special circumstances exist that ~~which would~~ make the award unjust. An ~~agency's actions are "substantially justified" if there was a reasonable basis in law and fact at the time the actions were taken by the agency. If the agency prevails in the proceedings, the appellate court or administrative law judge shall award reasonable costs and reasonable attorney's fees against a party if the appellate court or administrative law judge determines that a party participated in the proceedings for an improper purpose as defined by paragraph (1)(e). No~~ award of attorney ~~attorney's~~ fees as provided by this subsection may not ~~shall~~ exceed $50,000.

(4) CHALLENGES TO UNADOPTED RULES ~~AGENCY ACTION~~ PURSUANT TO SECTION 120.56(4).—

(a) If the appellate court or administrative law judge determines that all or part of an unadopted rule ~~agency statement~~ violates s. 120.54(1)(a), or that the agency must immediately discontinue reliance upon ~~on~~ the unadopted rule ~~statement~~ and any substantially similar statement pursuant to s. 120.56(4)(f) ~~120.56(4)(c)~~, a judgment or order shall be entered against the agency for reasonable costs and reasonable attorney ~~attorney's~~ fees~~,~~ unless the agency demonstrates that the statement is required by the Federal Government to implement or retain a delegated or approved program or to meet a condition to receipt of federal funds.

(b) Upon notification to the administrative law judge provided before the final hearing that the agency has published a notice of rulemaking under s. 120.54(3)(a), such notice shall automatically operate as a stay of proceedings pending rulemaking. The administrative law judge may vacate the stay for good cause shown. A stay of proceedings under this paragraph remains in effect so long as the agency is proceeding expeditiously and in good faith to adopt the statement as a rule. The administrative law judge shall award reasonable costs and reasonable attorney ~~attorney's~~ fees incurred ~~accrued~~ by the petitioner before ~~prior to~~ the date the notice was published~~, unless the agency proves to the administrative law judge that it did not know and should not have known that the statement was an unadopted rule. Attorneys' fees and costs under this paragraph and paragraph (a) shall be awarded only upon a finding that the~~

~~agency received notice that the statement may constitute an unadopted rule at least 30 days before a petition under s. 120.56(4) was filed and that the agency failed to publish the required notice of rulemaking pursuant to s. 120.54(3) that addresses the statement within that 30-day period. Notice to the agency may be satisfied by its receipt of a copy of the s. 120.56(4) petition, a notice or other paper containing substantially the same information, or a petition filed pursuant to s. 120.54(7)~~. An award of attorney ~~attorney's~~ fees as provided by this paragraph may not exceed $50,000.

(c) Notwithstanding ~~the provisions of~~ chapter 284, an award shall be paid from the budget entity of the secretary, executive director, or equivalent administrative officer of the agency, and the agency is ~~shall~~ not ~~be~~ entitled to payment of an award or reimbursement for payment of an award under any provision of law.

~~(d) If the agency prevails in the proceedings, the appellate court or administrative law judge shall award reasonable costs and attorney's fees against a party if the appellate court or administrative law judge determines that the party participated in the proceedings for an improper purpose as defined in paragraph (1)(e) or that the party or the party's attorney knew or should have known that a claim was not supported by the material facts necessary to establish the claim or would not be supported by the application of then-existing law to those material facts.~~

(5) APPEALS.—When there is an appeal, the court in its discretion may award reasonable attorney ~~attorney's~~ fees and reasonable costs to the prevailing party if the court finds that the appeal was frivolous, meritless, or an abuse of the appellate process, or that the agency action which precipitated the appeal was a gross abuse of the agency's discretion. Upon review of agency action that precipitates an appeal, if the court finds that the agency improperly rejected or modified findings of fact in a recommended order, the court shall award reasonable attorney ~~attorney's~~ fees and reasonable costs to a prevailing appellant for the administrative proceeding and the appellate proceeding.

(6) NOTICE OF INVALIDITY.—A party failing to serve a notice of proposed challenge under this subsection is not entitled to an award of reasonable costs and reasonable attorney fees under this section.

(a) Before filing a petition challenging the validity of a proposed rule under s. 120.56(2), an adopted rule under s. 120.56(3), or an agency statement defined as an unadopted rule under s. 120.56(4), a substantially affected person shall serve the agency head with notice of the proposed challenge. The notice shall identify the proposed or adopted rule or the unadopted rule that the person proposes to challenge and a brief explanation of the basis for that challenge. The notice must be received by the agency head at least 5 days before the filing of a petition under s. 120.56(2) and at least 30 days before the

filing of a petition under s. 120.56(3) or s. 120.56(4).

(b) This subsection does not apply to defenses raised and challenges authorized by s. 120.57(1)(e) or s. 120.57(2)(b).

(7) DETERMINATION OF RECOVERABLE FEES AND COSTS.—For purposes of this chapter, s. 57.105(5), and s. 57.111, in addition to an award of reasonable attorney fees and costs, the prevailing party, if the prevailing party is not a state agency, shall also recover reasonable attorney fees and costs incurred in litigating entitlement to, and the determination or quantification of, reasonable attorney fees and costs for the underlying matter. Reasonable attorney fees and costs awarded for litigating entitlement to, and the determination or quantification of, reasonable attorney fees and costs for the underlying matter are not subject to the limitations on amounts provided in this chapter or s. 57.111.

(8) ~~(6)~~ OTHER SECTIONS NOT AFFECTED.—Other provisions, including ss. 57.105 and 57.111, authorize the award of attorney ~~attorney's~~ fees and costs in administrative proceedings. ~~Nothing in~~ This section does not ~~shall~~ affect the availability of attorney ~~attorney's~~ fees and costs as provided in those sections.

Section 8. Subsections (1), (2), and (9) of section 120.68, Florida Statutes, are amended to read:

120.68 Judicial review.—

(1)(a) A party who is adversely affected by final agency action is entitled to judicial review.

(b) A preliminary, procedural, or intermediate order of the agency or of an administrative law judge of the Division of Administrative Hearings, or a final order under s. 120.57(1)(e)4., is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(2)(a) Judicial review shall be sought in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.

(b) All proceedings shall be instituted by filing a notice of appeal or petition for review in accordance with the Florida Rules of Appellate Procedure within 30 days after the date that ~~rendition of~~ the order being appealed is filed with the agency clerk. If a party receives notice of the filing of the order later than the 25th day after the filing of the order with the agency clerk, the time by which the party must file a notice of appeal or petition for review is extended for 10 days after the date that the party received the notice of the filing of the order. If the appeal is of an order rendered in a proceeding initiated under s. 120.56 or a final order under s. 120.57(1)(e)4., the agency whose rule is being challenged shall transmit a copy of the notice of appeal to the committee.

(c) ~~(b)~~ When proceedings under this chapter are consolidated for final hearing and the parties to the consolidated proceeding seek review of final or interlocutory orders in more than one district court of appeal, the courts of appeal are authorized to transfer and consolidate the review

proceedings. The court may transfer such appellate proceedings on its own motion, upon motion of a party to one of the appellate proceedings, or by stipulation of the parties to the appellate proceedings. In determining whether to transfer a proceeding, the court may consider such factors as the interrelationship of the parties and the proceedings, the desirability of avoiding inconsistent results in related matters, judicial economy, and the burden on the parties of reproducing the record for use in multiple appellate courts.

(9) A ~~No~~ petition challenging an agency rule as an invalid exercise of delegated legislative authority shall not be instituted pursuant to this section, except to review an order entered pursuant to a proceeding under s. 120.56, s. 120.57(1)(e)5., or s. 120.57(2)(b) or an agency's findings of immediate danger, necessity, and procedural fairness prerequisite to the adoption of an emergency rule pursuant to s. 120.54(4), unless the sole issue presented by the petition is the constitutionality of a rule and there are no disputed issues of fact.

Section 9. Section 120.695, Florida Statutes, is amended to read:

120.695 Notice of noncompliance; designation of minor violation of rules.—

(1) It is the policy of the state that the purpose of regulation is to protect the public by attaining compliance with the policies established by the Legislature. Fines and other

penalties may be provided in order to assure compliance; however, the collection of fines and the imposition of penalties are intended to be secondary to the primary goal of attaining compliance with an agency's rules. It is the intent of the Legislature that an agency charged with enforcing rules shall issue a notice of noncompliance as its first response to a minor violation of a rule in any instance in which it is reasonable to assume that the violator was unaware of the rule or unclear as to how to comply with it.

(2)(a) Each agency shall issue a notice of noncompliance as a first response to a minor violation of a rule. A "notice of noncompliance" is a notification by the agency charged with enforcing the rule issued to the person or business subject to the rule. A notice of noncompliance may not be accompanied with a fine or other disciplinary penalty. It must identify the specific rule that is being violated, provide information on how to comply with the rule, and specify a reasonable time for the violator to comply with the rule. A rule is agency action that regulates a business, occupation, or profession, or regulates a person operating a business, occupation, or profession, and that, if not complied with, may result in a disciplinary penalty.

(b) Each agency shall review all of its rules and designate those for which a violation would be a minor violation and for which a notice of noncompliance must be the first enforcement action taken against a person or business subject to

regulation. A violation of a rule is a minor violation if it does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm. ~~If an agency under the direction of a cabinet officer mails to each licensee a notice of the designated rules at the time of licensure and at least annually thereafter, the provisions of paragraph (a) may be exercised at the discretion of the agency. Such notice shall include a subject-matter index of the rules and information on how the rules may be obtained.~~

(c)1. No later than June 30, 2016, and after such date within 3 months after any request of the rules ombudsman in the Executive Office of the Governor, ~~The agency's review and designation must be completed by December 1, 1995;~~ each agency shall review ~~under the direction of the Governor shall make a report to the Governor, and each agency under the joint direction of the Governor and Cabinet shall report to the Governor and Cabinet by January 1, 1996, on which of~~ its rules and certify to the President of the Senate, the Speaker of the House of Representatives, the committee, and the rules ombudsman those rules that have been designated as rules the violation of which would be a minor violation under paragraph (b), consistent with the legislative intent stated in subsection (1). The rules ombudsman shall promptly report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and

the committee the failure of any agency to timely complete the review and file the certification as required by this section.

2. Beginning July 1, 2016, each agency shall:

a. Publish all rules that the agency has designated as rules the violation of which would be a minor violation, either as a complete list on the agency's website or by incorporation of the designations in the agency's disciplinary guidelines adopted as a rule.

b. Ensure that all investigative and enforcement personnel are knowledgeable about the agency's designations under this section.

3. For each rule filed for adoption, the agency head shall certify whether any part of the rule is designated as a rule the violation of which would be a minor violation and shall update the listing required by sub-subparagraph 2.a.

(d) The Governor or the Governor and Cabinet, as appropriate ~~pursuant to paragraph (c)~~, may evaluate the review and designation effects of each agency subject to the direction and supervision of such authority and may direct ~~apply~~ a different designation than that applied by such ~~the~~ agency.

(e) Notwithstanding s. 120.52(1)(a), this section does not apply to:

1. The Department of Corrections;

2. Educational units;

3. The regulation of law enforcement personnel; or

4. The regulation of teachers.

(f) Designation pursuant to this section is not subject to challenge under this chapter.

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: Government Operations Appropriations Subcommittee

Representative Adkins offered the following:

Amendment (with title amendment)

Remove lines 74-93

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

Remove lines 1-6 and insert:

An act relating to administrative procedures; amending s. 120.54,F.S.; providing procedures

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: Government Operations Appropriations Subcommittee

Representative Adkins offered the following:

Amendment (with title amendment)

Remove lines 587-801

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

Remove lines 37-55 and insert:

the stay; amending s. 120.68, F.S.; providing for

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 491 Property Insurance Appraisal Umpires and Property Insurance Appraisers
SPONSOR(S): Insurance & Banking Subcommittee; Artiles
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 744

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	10 Y, 2 N, As CS	Peterson	Cooper
2) Government Operations Appropriations Subcommittee		Keith	Topp
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

An appraisal clause is commonly found in insurance policies. The purpose of the appraisal clause is to establish a procedure to allow disputed amounts to be resolved by disinterested parties. The appraisal clause is used only to determine disputed values. An appraisal cannot be used to determine what is covered under an insurance policy. Coverage issues are litigated and determined by the courts.

The appraisal process generally works as follows:

- The insurance company and the policyholder each appoint an independent, disinterested appraiser.
- Each appraiser evaluates the loss independently.
- The appraisers negotiate and reach an agreed amount of the damages.
- If the appraisers agree as to the amount of the claim, the insurer pays the claim.
- If the appraisers cannot agree on the amount, they together choose a mutually acceptable umpire.
- Once the umpire has been chosen, the appraisers each present their loss assessment to the umpire.
- The umpire will subsequently provide a written decision to both parties.
- Either party may challenge the umpire's impartiality and disqualify a proposed umpire based on criteria set forth in statute.

Current law does not limit or restrict who may act as a property insurance appraisal umpire or property insurance loss appraiser.

The bill creates parts XVII and XVIII of chapter 468, F.S., establishing a licensing program for "property insurance appraisal umpires" and "property insurance loss appraisers" within the Department of Business and Professional Regulation (DBPR). The bill creates definitions and requirements for licensure, including fees, background screening, examination, and education; continuing education; mandatory and discretionary grounds for refusal, suspension, or revocation; and a code of conduct.

DBPR estimates that the bill will generate $2.5 million in licensing fees during the first year of implementation. Further, DBPR indicates the need for ten full-time equivalent positions and expenditures of $1,043,351 to begin implementation of the bill. The bill should have no fiscal impact on local government. The bill will have a negative fiscal impact on the private sector to the extent that it imposes licensing fees and ongoing costs of licensure in order to practice as an umpire or loss appraiser, and the cost to obtain those services, but it may improve appraisal results, which will benefit both insurers and policyholders.

The bill takes effect July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Property Insurance Appraisers and Umpires

An appraisal clause is commonly found in insurance policies.[1] The purpose of the appraisal clause is to establish a procedure to allow disputed amounts to be resolved by disinterested parties. The appraisal clause is used only to determine disputed values. An appraisal cannot be used to determine what is covered under an insurance policy. Coverage issues are litigated and determined by the courts. The appraisal process generally works as follows:

- The insurance company and the policyholder each appoint an independent, disinterested appraiser.
- Each appraiser evaluates the loss independently.
- The appraisers negotiate and reach an agreed amount of the damages.
- If the appraisers agree as to the amount of the claim, the insurer pays the claim.
- If the appraisers cannot agree on the amount, they together choose a mutually acceptable umpire.
- Once the umpire has been chosen, the appraisers each present their loss assessment to the umpire.
- The umpire will subsequently provide a written decision to both parties. The umpire's decision becomes binding only by a majority agreement between the two appraisers and the umpire.
- Either party may challenge the umpire's impartiality and disqualify a proposed umpire based on criteria set forth in statute.[2]

Current law does not limit or restrict who may act as a property insurance appraisal umpire or property insurance loss appraiser.

Public Adjusters

A public adjuster is a person, other than a licensed attorney, who, for compensation, prepares or files an insurance claim form for an insured or third-party claimant in negotiating or settling an insurance claim on behalf of the insured or third party.[3] The responsibilities of property insurance public adjusters include inspecting the loss site, analyzing damages, assembling claim support data, reviewing the insured's coverage, determining current replacement costs, and conferring with the insurer's representatives to adjust the claim. Public adjusters are licensed by the Department of Financial Services (DFS) and must meet specified age, residency, examination, and surety bond requirements.[4] The conduct of a public adjuster is governed by statute and by rule.[5] A company employee adjuster (known as a "company adjuster") performs the same services as a public adjuster except he or she is employed by the insurer.[6]

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[1] *Citizens Property Insurance Corporation v. Mango Hill Condominium Association 12 Inc.*, 54 So.3d 578 (Fla.3d DCA 2011) and *Intracoastal Ventures Corp. v. Safeco Ins. Co. of America,* 540 So.2d 162 (Fla. 3d DCA 1989), contain examples of appraisal provisions.
[2] *See* s. 627.70151, F.S.
[3] s. 626.854(1), F.S.
[4] s. 626.865, F.S.
[5] *See generally,* ss. 626.854, 626.8698, 626.876, 626.878, 626.8795 and 626.8796, F.S., and Rule 69B-220, F.A.C.
[6] s. 626.856, F.S.

Department of Business and Professional Regulation

The Department of Business and Professional Regulation (DBPR) was established in 1993 with the merger of the Department of Business Regulation and the Department of Professional Regulation.[7] The DBPR is created in s. 20.165, F.S., and includes the following eleven divisions:

- Division of Administration
- Division of Alcoholic Beverages and Tobacco
- Division of Certified Public Accounting
- Division of Florida Condominiums, Timeshares, and Mobile Homes
- Division of Hotels and Restaurants
- Division of Pari-mutuel Wagering
- Division of Professions
- Division of Real Estate
- Division of Regulation
- Division of Technology
- Division of Service Operations
- Division of Drugs, Devices and Cosmetics

The following boards and professions are established within the Division of Professions:

- Board of Architecture and Interior Design, created under part I of ch. 481, F.S.
- Florida Board of Auctioneers, created under part VI of ch. 468, F.S.
- Barbers' Board, created under ch. 476, F.S.
- Florida Building Code Administrators and Inspectors Board, created under part XII of ch. 468, F.S.
- Construction Industry Licensing Board, created under part I of ch. 489, F.S.
- Board of Cosmetology, created under ch. 477, F.S.
- Electrical Contractors' Licensing Board, created under part II of ch. 489, F.S.
- Board of Employee Leasing Companies, created under part XI of ch. 468, F.S.
- Board of Landscape Architecture, created under part II of ch. 481, F.S.
- Board of Pilot Commissioners, created under ch. 310, F.S.
- Board of Professional Engineers, created under ch. 471, F.S.
- Board of Professional Geologists, created under ch. 492, F.S.
- Board of Veterinary Medicine, created under ch. 474, F.S.
- Home Inspection Services Licensing Program, created under part XV of ch. 468, F.S.
- Mold-Related Services Licensing Program, created under part XVI of ch. 468, F.S.

The following board and commissions are established within the Division of Real Estate:

- Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S.
- Florida Real Estate Commission, created under part I of ch. 475, F.S.
- Florida Building Commission under ch. 553, F.S.

The Board of Accountancy, created under ch. 473, F.S., is established within the Division of Certified Public Accounting.

In addition to administering the professional boards, the DPBR processes applications for licensure and license renewal. The department also receives and investigates complaints made against licensees and, if necessary, brings administrative charges.

[7] Ch. 93-220, Laws of Florida.

Chapter 455, F.S., provides the general powers of the department and sets forth the procedural and administrative framework for all of the professional boards housed under the DBPR and the Divisions of Certified Public Accounting, Professions, and Real Estate.

The Sunrise Act

Florida does not currently license or regulate property insurance appraisal umpires or property insurance appraisers. A proposal for new regulation of a profession must meet the requirements of s. 11.62, F.S., the Sunrise Act.

The act sets forth policy and minimum requirements for legislative review of bills proposing regulation of an unregulated function. In general, the act states that regulation should not occur unless it is:

- Necessary to protect the public health, safety, or welfare from significant and discernible harm or damage;
- Exercised only to the extent necessary to prevent the harm; and
- Limited so as not to unnecessarily restrict entry into the practice of the profession or adversely affect public access to the professional services.

In determining whether to regulate a profession of occupation, the act requires the Legislature to consider the following:

- Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;
- Whether the practice of the profession or occupation requires specialized skill or training and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;
- Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment;
- Whether the public is or can be effectively protected by other means; and
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

The act requires proponents of legislation proposing new regulation to provide the following information to document the need for regulation:

- The number of individuals or businesses that would be subject to the regulation;
- The name of each association that represents members of the profession or occupation, together with a copy of its codes of ethics or conduct;
- Documentation of the nature and extent of the harm to the public caused by the unregulated practice of the profession or occupation, including a description of any complaints that have been lodged against persons who have practiced the profession or occupation in this state during the preceding three years;
- A list of states that regulate the profession or occupation, and the dates of enactment of each law providing for such regulation and a copy of each law;
- A list and description of state and federal laws that have been enacted to protect the public with respect to the profession or occupation and a statement of the reasons why these laws have not proven adequate to protect the public;
- A description of the voluntary efforts made by members of the profession or occupation to protect the public and a statement of the reasons why these efforts are not adequate to protect the public;
- A copy of any federal legislation mandating regulation;

- An explanation of the reasons why other types of less restrictive regulation would not effectively protect the public;
- The cost, availability, and appropriateness of training and examination requirements;
- The cost of regulation, including the indirect cost to consumers, and the method proposed to finance the regulation;
- The cost imposed on applicants or practitioners or on employers of applicants or practitioners as a result of the regulation; and
- The details of any previous efforts in this state to implement regulation of the profession or occupation.

In determining whether to recommend regulation, the legislative committee reviewing the proposal is directed to assess whether the proposed regulation is:

- Justified based on the statutory criteria and the information provided by both the proponents of regulation and the agency responsible for its implementation;
- The least restrictive and most cost-effective regulatory scheme necessary to protect the public; and
- Technically sufficient and consistent with the regulation of other professions under existing law.

Proponents' Response to the Sunrise Act
The sponsor of the bill has submitted a response[8] in support of the need for regulation. It states that the unregulated profession poses a substantial harm to the public health, safety, or welfare. In pertinent part, the response provides:

> Currently, the state licenses adjusters in three categories, company adjuster, independent adjuster and public adjuster, if an individual is unable to pass these tests, or if they lose their license, they are able to become an insurance property appraisers [sic] and/or an insurance property umpire with no regulation. Further, convicted felons are able to become insurance property appraisers and/or insurance property umpires.
>
> The Courts have ruled that a decision of the insurance appraisal panel (any 2 of the 3 members of the panel) is binding on the parties unless fraud is involved, (appraisals are for the dollar amount of the insurance loss and the panels are not empowered to determine coverage).
>
> In the past, the public has been harmed when roofers, contractors and non-insurance people are involved and they don't properly appraise the amount of damages, for example, roofers have been known to appraise the roof of a home only without considering the interior of a home thus injuring the public in that they don't receive the proper insurance funds for the interior of their home and thus they fail to repair the interior making the damages worse and affecting the value of the home.

Licensing of Property Insurance Appraisal Umpires and Property Insurance Loss Appraisers

The bill creates parts XVII and XVIII of chapter 468, F.S., establishing licensing programs for "property insurance appraisal umpires" and "property insurance loss appraisers" within the DBPR. The regulatory requirements are the same for both, as provided below, and apply to residential and commercial residential property insurance contracts with appraisal clauses and to umpires and appraisers who participate in the appraisals.

[8] On file with the House Insurance & Banking Subcommittee.

- *Definitions*

The bill provides definitions of terms, including "property insurance appraisal umpire "and "property insurance loss appraiser."

- *Licensure Requirements*

The bill establishes licensure requirements for an applicant, which include:

- A completed application;
- Payment of fees;
- Background screening;
- Successful completion of an examination; and,
- Satisfaction of one of the following conditions:

Option 1

- Has taught or successfully completed four hours of classroom coursework, approved by the DBPR, specifically related to construction, building codes, appraisal procedures, appraisal preparation, and any other related material deemed appropriate by the DBPR and is
- A licensed or retired engineer;
- Has, within the preceding two years, been licensed as a general contractor, building contractor, residential contractor, architect, geologist, certified public accountant, attorney; or
- Has received a baccalaureate degree from an accredited four-year college or university in the field of engineering, architecture, or building construction.

Option 2

- Has been licensed as an adjuster for a minimum of two years whose license covers all lines of insurance, except life and annuities.

Option 3

- Has received a minimum of eight semester hours / 12 quarter hours of credit from an accredited college or university in the field of accounting, geology, engineering, architecture, or building construction.

Option 4

- Has successfully completed 40 hours of classroom coursework, approved by the DBPR, specifically related to construction, building codes, appraisal procedure, appraisal preparation, property insurance, and any other related material deemed appropriate by the DBPR.

- *Continuing Education*

The bill requires a minimum of 30 hours of approved continuing education (CE) and five hours of ethics biennially, prior to renewal and authorizes the DBPR to establish standards for CE providers and courses.

- *Inactive Status*

The bill allows a licensee to place a license on inactive status and to reactivate the license upon filing an application, paying a fee, and completing a maximum of 14 hours of CE.

- *Certification of Corporation*

The bill authorizes licensees to offer services through a partnership, corporation, or other business entity, but prohibits the entity, itself, from being licensed. The entity remains responsible for the conduct of its employees; the licensees remain liable for their individual performance and are not relieved of responsibility by reason of employment.

- *Grounds for Refusal, Suspension, or Revocation of a License.*

The bill establishes conditions for mandatory and discretionary denial, suspension, or revocation of licensure.

- *Code of Conduct*

The bill establishes ethical standards related to confidentiality; recordkeeping; fees and expenses; maintenance of records; advertising; integrity and impartiality; skill and experience; gifts and solicitation; and, with respect to property insurance loss appraisal licensees, communications with parties.

B. SECTION DIRECTORY:

Section 1: Creates Part XVII of chapter 468, Florida Statutes, consisting of sections 468.85 through 468.8519, F.S., relating to property insurance appraisal umpires.

Section 2: Creates Part XVIII of chapter 468, Florida Statutes, consisting of sections 468.86 through 468.8619, F.S., relating to property insurance appraisal umpires.

Section 3: Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Provisions of the bill authorize license fees for property insurance appraisal umpires and appraisers up to the following caps:[9]

- Application: $200 (nonrefundable)
- Examination: $200
- Initial license: $250
- Initial certificate of authorization: $250
- Biennial license renewal: $500
- Application for inactive status: $125
- Reactivation of an inactive license: $250
- Continuing education providers: $600

The DBPR estimates receiving approximately 4,000 applications the first year, 3,000 the second year, and 2,000 per year thereafter for an estimated license base of 10,000.[10] According to the DBPR, using the maximum allowable fee amount will result in estimated revenues from licensing fees that total $2,467,000 for FY 2015-2016; $1,850,250 for FY 2016-2017; and $2,304,500 for FY 2017-2018.

[9] Section 455.219, F.S., requires the DBPR to develop a long-range estimate of the revenue required to implement a professional licensing program and fees must be set accordingly. Fees must be sufficient to cover costs and provide for a reasonable cash balance and adjusted if the balance in the profession's trust fund becomes too low or high.

[10] These estimates are based on estimates provided by the Department of Financial Services to the Florida Department of Law Enforcement when a similar bill was filed in 2011. (Florida Department of Business & Professional Regulation, Agency Analysis of 2015 House Bill 491, p. 10 (March 11, 2015).

2. Expenditures:

   The DBPR estimates the need for ten full-time equivalent positions and expenditures of $1,043,351, to also include technology updates to the Versa system utilized by the department, for FY 2015-2016 to begin implementation of the provisions included in the bill. Furthermore, the DBPR estimates that the ongoing cost of implementing the bill beyond FY 2015-2016 will be $922,186, annualized for all remaining out years.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have a negative fiscal impact on the private sector to the extent that it imposes licensing fees and ongoing costs of licensure in order to practice as an umpire of loss appraiser and the cost to obtain those services, but it may improve appraisal results which will benefit both insurers and policyholders.

D. FISCAL COMMENTS:

FDLE recommends[11] including the fingerprints in the state's and federal fingerprint retention program to ensure that all arrests occurring after the initial criminal history screening. Both the FDLE and the Federal Bureau of Investigation (when the federal program becomes operational) will retain the fingerprints, search the fingerprints against incoming arrests and notify the DBPR if the retained fingerprints match an incoming arrest. The fiscal impact along with language necessary to participate in the program is provided below.

To facilitate level 2 background checks and the retention of fingerprints, the FDLE recommends replacing lines 183 – 210 and 672 – 699 with the following language:[12]

(4) An applicant must submit a full set of fingerprints to the department or to a vendor, entity, or agency authorized by s. 943.053(13). The department, vendor, entity, or agency shall forward the fingerprints to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing.

(5) Fees for state and federal fingerprint processing and retention shall be borne by the applicant. The state cost for fingerprint processing shall be as provided in s. 943.053(3)(b) for records provided to persons or entities other than those specified as exceptions therein.

[11] Florida Department of Law Enforcement, Agency Analysis of 2015 Senate Bill 744, p. 4 (Feb. 24, 2015).

[12] The DBPR notes that the bill includes the cost of the background screening within the application fee. The preferred method is to have applicants use an FDLE approved vendor and pay the vendor directly. The DBPR does not currently have an FDLE approved vendor under contract. (Florida Department of Business & Professional Regulation, Agency Analysis of 2015 House Bill 491, p. 11 (March 11, 2015).

(6) Fingerprints submitted to the Department of Law Enforcement pursuant to this paragraph shall be retained by the Department of Law Enforcement as provided in s. 943.05(2)(g) and (h) and, when the Department of Law Enforcement begins participation in the program, enrolled in the Federal Bureau of Investigation's national retained print arrest notification program. The fingerprints shall be submitted to the Department of Law Enforcement for a state criminal history record check and to the Federal Bureau of Investigation for a national criminal history check. Any arrest record identified shall be reported to the department.

The FDLE notes that while the impact of this bill does not necessitate additional FTE or other resources, this bill in combination with additional background screening bills could rise to the level requiring additional staffing and other resources.

FDLE Fiscal Impact – Revenue, if fingerprints retained at federal level:

The current cost for a state record check is $24 + $6.00 for state retention (first year included in the cost of the record check).

Fiscal Impact – Private Sector, if fingerprints retained at federal level:

The cost for a state and national criminal history record check is $38.75. $24 goes into the FDLE Operating Trust Fund and $14.75 from each request is forwarded to the Federal Bureau of Investigation. $13.00 lifetime federal fingerprint retention fee and $6.00 for state retention (first year included with record check)

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill provides the DBPR with rulemaking authority to:

- Establish fees, up to maximum amounts established in statute, for: initial licensure ($650); biennial renewal ($500); certificate of authorization ($250); inactivation ($125); reactivation ($250); certificate of authorization ($250); background screening; certification of continuing education providers ($600); and a delinquency fee.
- Establish a process for determining compliance with the pre-licensure requirements.
- Adopt forms.
- Prescribe procedures for biennial renewal and inactivating or reactivating a license.
- Establish standards for CE providers and courses, a process for determining compliance with the pre-licensure requirements, and rules prescribing the forms necessary to administer the pre-licensure requirements.

- Requiring CE and additional CE hours for failure to complete the required CE hours by the end of the renewal period and prescribing CE requirements as a condition for the reactivation of an inactive license.
- Adopt the uniform application.
- Adopt any rules as may be necessary to administer the respective parts.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 138 – 139 and 627 - 628 reference a fee cap for initial certificate of authorization of $250; however, the fee is not included within the DBPR's rulemaking authority to adopt.

The bill does not protect the title of "property insurance loss appraiser" or "property insurance appraisal umpire," and does not expressly prohibit the unlicensed practice of loss appraising or umpiring. Even if it is construed as prohibiting unlicensed practice, it is limited only to appraisals required by residential or commercial residential property insurance contracts. It would not cover other loss appraisals, such as commercial property or motor vehicle loss appraisals.

The DBPR notes the following operational issues:

- Lines 113-116 and 602-605 reference the use of a uniform application for nonresident licensure of the National Association of Insurance Commissioners for nonresident agent licensing. The DBPR was unable to locate such a form on the association's website. The available form related to individual producer license/registration and did not contain a category applicable to insurance appraisers or umpires or any category or licensee/registrant regulated by the DBPR; or an option to disclose native language or highest level of education, as required by the bill.
- Lines 152-160 and 641-649 reference a written application, which suggests that online application may not be allowed.
- Lines 282-284 and 770-772 create a licensing option for a licensed adjuster "whose license covers all lines of insurance except the life and annuities class." This appears to have the unintended consequence of disqualifying those adjusters whose licenses do include this class.
- Lines 321-326 and 809-814 require that an applicant for licensure via endorsement not be approved pending the outcome of any ongoing licensure investigation in the licensing state. The DBPR is concerned with its ability to verify licensure status and whether the obligation to hold an application in abeyance violates ch.120, F.S.
- The DBPR will not have adequate time to make the licensing program operational by July 1, 2015. It requests that the rulemaking be authorized effective July 1, 2015, but that implementation of licensure be delayed until March 1, 2016.
- Lines 302 and 790 describe an applicant who is "untrustworthy" or "incompetent" as unqualified for licensure,[13] but do not define those terms or the criteria for making the determination.
- In lines 417 and 905 the phrase "or will be used" should be removed since it would require discipline based on conduct that has not happened.
- Either ch. 20, F.S., or newly-created s. 468.85(1), F.S., should be amended to put the licensing programs under the Division of Professions.

[13] Likewise, the bill defines both umpires and loss appraisers as "competent, licensed, and independent and impartial third part[ies]," which is not a standard licensing construct. Instead, those characteristics would more typically be included as required standards of practice. The Department of Financial Services notes "While conceptually the premise of having impartial appraisers is ideal, if the claimant and insurer each chose their own appraiser it will be difficult to achieve impartiality. Currently, a public adjuster can also be the appraiser on the same claim as long as the public adjuster does not charge for their services as an appraiser. When the public adjuster's compensation is based on a percentage of the claim it would seem impossible to reach total impartiality; however the claimant does not incur additional expenses for the appraiser services. If the public adjuster were not allowed to perform both duties it is likely they would recommend another public adjuster with whom they have a working relationship as the insured's appraiser. This would still limit their ability to be impartial and cause the claimant to pay more in fees which are not regulated in this legislation." . (Florida Department of Financial Services, Agency Analysis of 2015 House Bill 491, p. 1 (March 23, 2015).

The Department of Financial Services notes the following:[14]

- The bill requires adjusters who seek licensure as a property insurance loss appraiser or property insurance appraisal umpire to have been licensed for five years. It does not impose a similar obligation on other licensed professionals, e.g. attorneys, engineers. Adjusting is more like appraising than any of the other professions who are required only to take a four-hour class.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 25, 2015, the Insurance & Banking Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The first amendment removed the language creating a mandatory appraisal process. The second and third amendments reduced the period of time that a separately-licensed professional (general contractor, residential contractor, architect, geologist, certified public accountant, attorney, or adjuster) must have held the separate professional license in order to be eligible for licensure as a property insurance appraisal umpire or property insurance loss appraiser.

The staff analysis is drafted to reflect the committee substitute as passed by the Insurance and Banking Subcommittee.

[14] *Id.*

A bill to be entitled

An act relating to property insurance appraisal umpires and property insurance appraisers; creating part XVII of chapter 468, F.S., relating to property insurance appraisal umpires; creating the property insurance appraisal umpire licensing program within the Department of Business and Professional Regulation; providing legislative findings; providing applicability; authorizing the department to adopt rules; providing definitions; authorizing the department to establish fees; providing licensing application requirements; providing authority and procedures regarding submission and processing of fingerprints; providing examination requirements; providing application requirements for licensure as a property insurance appraisal umpire; providing licensure renewal requirements; authorizing the department to adopt rules; providing continuing education requirements; providing requirements for the inactivation of a license by a licensee; providing requirements for renewing an inactive license; establishing license reactivation fees; providing for certification of partnerships and corporations offering property insurance appraisal umpire services; providing grounds for compulsory refusal, suspension, or revocation of an umpire's license; providing

grounds for discretionary denial, suspension, or revocation of an umpire's license; providing ethical standards for property insurance appraisal umpires; creating part XVIII of chapter 468, F.S., relating to property insurance appraisers; creating the property insurance appraiser licensing program within the Department of Business and Professional Regulation; providing legislative findings; providing applicability; authorizing the department to adopt rules; providing definitions; authorizing the department to establish fees; limiting fee amounts; providing licensing application requirements; providing authority and procedures regarding submission and processing of fingerprints; providing examination requirements; providing application requirements for licensure as a property insurance appraiser; providing licensure renewal requirements; authorizing the department to adopt rules; providing continuing education requirements; providing requirements for the inactivation of a license by a licensee; providing requirements for renewing an inactive license; establishing license reactivation fees; providing for certification of partnerships and corporations offering property insurance appraiser services; providing grounds for compulsory refusal, suspension, or revocation of an appraiser's license;

providing grounds for discretionary denial, suspension, or revocation of an appraiser's license; providing ethical standards; providing an effective date.

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

Section 1. Part XVII of chapter 468, Florida Statutes, consisting of sections 468.85 through 468.8519, is created to read:

PART XVII

PROPERTY INSURANCE APPRAISAL UMPIRES

468.85 Property insurance appraisal umpire licensing program; legislative purpose; scope of part.—

(1) The property insurance appraisal umpire licensing program is created within the Department of Business and Professional Regulation.

(2) The Legislature finds it necessary in the interest of the public safety and welfare to prevent damage to real and personal property, to avert economic injury to the residents of this state, and to regulate persons and companies that hold themselves out to the public as qualified to perform as property insurance appraisal umpires.

(3) This part applies to residential and commercial residential property insurance contracts and to the umpires and appraisers who participate in the appraisal process.

(4) The department may adopt rules to administer this part.

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

(1) "Appraisal" means the process of estimating or evaluating actual cash value, the amount of loss, or the cost of repair or replacement of property for the purpose of quantifying the monetary value of a property loss claim when an insurer and an insured have failed to mutually agree on the value of the loss pursuant to a residential or commercial residential property insurance contract that is required in such contracts for the resolution of a claim dispute by appraisal.

(2) "Competent" means properly licensed, sufficiently qualified, and capable of performing an appraisal.

(3) "Department" means the Department of Business and Professional Regulation.

(4) "Independent" means not subject to control, restriction, modification, and limitation by the appointing party. An independent umpire shall conduct his or her investigation, evaluation, and estimation without instruction by an appointing party.

(5) "Property insurance appraisal umpire" or "umpire" means a competent, independent, licensed, and impartial third party selected by the licensed appraisers for the insurer and the insured to resolve issues that the licensed appraisers are unable to reach an agreement during the course of the appraisal process pursuant to a residential or commercial property

insurance contract that is required to provide for resolution of a claim dispute by appraisal.

(6) "Property insurance loss appraiser" or "appraiser" means a competent, licensed, and independent and impartial third party selected by an insurer or an insured to develop an appraisal for purposes of the appraisal process under a residential or commercial property insurance contract that provides for resolution of a claim dispute by appraisal.

(7) "Uniform application" means the uniform application of the National Association of Insurance Commissioners for nonresident agent licensing, effective January 15, 2001, or subsequent versions adopted by rule by the department.

468.8511 Fees.—

(1) The department, by rule, may establish fees to be paid for application, examination, reexamination, licensing and renewal, inactive status application, reactivation of inactive licenses, and application for providers of continuing education. The department may also establish by rule a delinquency fee. Fees shall be based on department estimates of the revenue required to implement the provisions of this part. Fees shall be remitted with the application, examination, reexamination, licensing and renewal, inactive status application, and reactivation of inactive licenses, and application for providers of continuing education.

(2) The application fee shall not exceed $200 and is nonrefundable. The examination fee shall not exceed $200 plus

the actual per applicant cost to the department to purchase the examination, if the department chooses to purchase the examination. The examination fee shall be in an amount that covers the cost of obtaining and administering the examination and shall be refunded if the applicant is found ineligible to sit for the examination.

(3) The fee for an initial license shall not exceed $250.

(4) The fee for an initial certificate of authorization shall not exceed $250.

(5) The fee for a biennial license renewal shall not exceed $500.

(6) The fee for application for inactive status shall not exceed $125.

(7) The fee for reactivation of an inactive license shall not exceed $250.

(8) The fee for applications from providers of continuing education may not exceed $600.

(9) The fee for fingerprinting shall be included in the department's costs for each background check.

468.85115 Application for license as a property insurance appraisal umpire.—

(1) The department shall not issue a license as a property insurance appraisal umpire to any person except upon written application previously filed with the department, with qualification and advance payment of all applicable fees. Any such application shall be made under oath or affirmation and

signed by the applicant. The department shall accept the uniform application for a nonresident property insurance appraisal umpire. The department may adopt revised versions of the uniform application by rule.

(2) In the application, the applicant shall set forth:

(a) His or her full name, age, social security number, residence address, business address, mailing address, contact telephone numbers, including a business telephone number, and e-mail address.

(b) Proof that he or she has completed or is in the process of completing any required prelicensing course.

(c) Whether he or she has been refused or has voluntarily surrendered or has had suspended or revoked a professional license by the supervising officials of any state.

(d) Proof that the applicant meets the requirements for licensure as a property insurance appraisal umpire as required under ss. 468.8511 and 468.8512, and this section.

(e) The applicant's gender.

(f) The applicant's native language.

(g) The applicant's highest achieved level of education.

(h) All education requirements that the applicant has completed to qualify as a property insurance appraisal umpire, including the name of the course, the course provider, and the course completion dates.

(3) Each application shall be accompanied by payment of any applicable fee.

(4) At the time of application, the applicant must be fingerprinted by a law enforcement agency or other entity approved by the department and he or she must pay the fingerprint processing fee in s. 468.8511. Fingerprints must be processed by the Department of Law Enforcement.

(5) The Department of Law Enforcement may, to the extent provided for by federal law, exchange state, multistate, and federal criminal history records with the department or office for the purpose of the issuance, denial, suspension, or revocation of a certificate of authority, certification, or license to operate in this state.

(6) The Department of Law Enforcement may accept fingerprints of any other person required by statute or rule to submit fingerprints to the department or office or any applicant or licensee regulated by the department or office who is required to demonstrate that he or she has not been convicted of or pled guilty or nolo contendere to a felony or a misdemeanor.

(7) The Department of Law Enforcement shall, upon receipt of fingerprints from the department or office, submit the fingerprints to the Federal Bureau of Investigation for a federal criminal history records check.

(8) Statewide criminal records obtained through the Department of Law Enforcement, federal criminal records obtained through the Federal Bureau of Investigation, and local criminal records obtained through local law enforcement agencies shall be used by the department and office for the purpose of issuance,

denial, suspension, or revocation of certificates of authority, certifications, or licenses issued to operate in this state.

(9) The department shall develop and maintain as a public record a current list of licensed property insurance appraisal umpires.

468.8512 Examinations.-

(1) A person desiring to be licensed as a property insurance appraisal umpire must apply to the department after satisfying the examination requirements of this part.

(2) An applicant may practice in this state as a property insurance appraisal umpire if he or she passes the required examination, is of good moral character, and meets one of the following requirements:

(a) The applicant is currently licensed, registered, certified, or approved as an engineer as defined in s. 471.005 or as a retired professional engineer as defined in s. 471.005, and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedures, appraisal preparation, and any other related material deemed appropriate by the department.

(b) The applicant is currently or, within the 2 years immediately preceding the date on which the application is filed with the department, has been licensed, registered, certified, or approved as a general contractor, building contractor, or residential contractor as defined in s. 489.105 and has taught

or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(c) The applicant is currently or, within the 2 years immediately preceding the date on which the application is filed with the department, has been licensed or registered as an architect to engage in the practice of architecture pursuant to part I of chapter 481 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(d) The applicant is currently or, within the 2 years immediately preceding the date on which the application is filed with the department, has been a qualified geologist or professional geologist as defined in s. 492.102 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(e) The applicant is currently or, within the 2 years immediately preceding the date on which the application is filed with the department, has been licensed as a certified public

accountant as defined in s. 473.302 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(f) The applicant is currently or, within the 2 years immediately preceding the date on which the application is filed with the department, has been a licensed attorney in this state and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(g) The applicant has received a baccalaureate degree from an accredited 4-year college or university in the field of engineering, architecture, or building construction and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(h) The applicant is a currently licensed adjuster whose license covers all lines of insurance except the life and annuities class. The adjuster's license must include the property and casualty class of insurance. The currently licensed adjuster must be licensed for at least 2 years to qualify for a

property insurance appraisal umpire's license.

(i) The applicant has received a minimum of 8 semester hours or 12 quarter hours of credit from an accredited college or university in the field of accounting, geology, engineering, architecture, or building construction.

(j) The applicant has successfully completed 40 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, property insurance, and any other related material deemed appropriate by the department.

(3) The department shall review and approve courses of study for the continuing education of property insurance appraisal umpires.

(4) The department may not issue a license as a property insurance appraisal umpire to any individual found by it to be untrustworthy or incompetent or who:

(a) Has not filed an application with the department in accordance with s. 485.85115.

(b) Is not a natural person who is at least 18 years of age.

(c) Is not a United States citizen or legal alien who possesses work authorization from the United States Citizenship and Immigration Services.

(d) Has not completed the education, experience, or licensing requirements of this section.

(5) An incomplete application expires 6 months after the

date it is received by the department.

(6) An applicant seeking to become licensed under this part may not be rejected solely by virtue of membership or lack of membership in any particular appraisal organization.

468.8513 Licensure.-

(1) The department shall license any applicant who the department certifies has completed the requirements of ss. 468.8511, 468.85115, and 468.8512.

(2) The department shall not issue a license by endorsement to any applicant for a property insurance appraisal umpire license who is under investigation in another state for any act that would constitute a violation of this part until such time that the investigation is complete and disciplinary proceedings have been terminated.

468.8514 Renewal of license.-

(1) The department shall renew a license upon receipt of the renewal application and fee and upon certification by the department that the licensee has satisfactorily completed the continuing education requirements of s. 468.8515.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

468.8515 Continuing education.-

(1) The department may not renew a license until the licensee submits satisfactory proof to the department that, during the 2 years before his or her application for renewal, the licensee completed at least 30 hours of continuing education

in addition to 5 hours of ethics. Criteria and course content shall be approved by the department by rule.

(2) The department may prescribe by rule additional continuing professional education hours, not to exceed 25 percent of the total required hours, for failure to complete the required hours by the end of the renewal period.

(3) Each umpire course provider, instructor, and classroom course must be approved by and registered with the department before prelicensure courses for property insurance appraisal umpires may be offered. Each classroom course must include a written examination at the conclusion of the course and must cover all of the material contained in the course. A student may not receive credit for the course unless the student achieves a grade of at least 75 on the examination.

(4) The department shall adopt rules establishing:

(a) Standards for the approval, registration, discipline, or removal from registration of course providers, instructors, and courses. The standards must be designed to ensure that instructors have the knowledge, competence, and integrity to fulfill the educational objectives of the prelicensure requirements of this part.

(b) A process for determining compliance with the prelicensure requirements of this part.

The department shall adopt rules prescribing the forms necessary to administer the prelicensure requirements of this part.

(5) Approval to teach prescribed or approved appraisal courses does not entitle the instructor to teach any courses outside the scope of this part.

468.8516 Inactive license.-

(1) A licensee may request that his or her license be placed on inactive status by filing an application with the department.

(2) A license that has become inactive may be reactivated upon application to the department. The department may prescribe by rule continuing education requirements as a condition for reactivation of an inactive license. The continuing education requirements for reactivating a license may not exceed 14 hours for each year the license was inactive.

(3) The department shall adopt rules relating to licenses that have become inactive and for the renewal of inactive licenses. The department shall prescribe by rule a fee not to exceed $250 for the reactivation of an inactive license and a fee not to exceed $250 for the renewal of an inactive license.

468.8517 Certification of partnerships, corporations, and other business entities.-The practice of or the offer to practice as a property insurance appraisal umpire by licensees through a partnership, corporation, or other business entity offering property insurance appraisal umpire services to the public, or by a partnership, corporation, or other business entities through licensees under this part as agents, employees, officers, or partners is permitted, subject to the provisions of

this part. This section does not allow a corporation or other business entities to hold a license to practice property insurance appraisal umpire services. A partnership, corporation, or other business entity is not relieved of responsibility for the conduct or acts of it agents, employees, or officers by reason of its compliance with this section. An individual practicing as a property insurance appraisal umpire is not relieved of responsibility for professional services performed by reason of his or her employment or relationship with a partnership, corporation, or other business entity.

468.8518 Grounds for compulsory refusal, suspension, or revocation of an umpire's license.-The department shall deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, property insurance appraisal umpire or licensee and shall suspend or revoke the eligibility to hold a license or appointment of any such person if it finds that any one or more of the following applicable grounds exist:

(1) Lack of one or more of the qualifications for the license as specified in this part.

(2) Material misstatement, misrepresentation, or fraud in obtaining the license or in attempting to obtain the license or appointment.

(3) Failure to pass to the satisfaction of the department any examination required under this chapter.

(4) That the license or appointment was willfully used, or

will be used, to circumvent any of the requirements or prohibitions of this chapter.

(5) Demonstrated a lack of fitness or trustworthiness to engage as a property insurance appraisal umpire.

(6) Demonstrated a lack of reasonably adequate knowledge and technical competence to engage in the transactions authorized by the license.

(7) Fraudulent or dishonest practices in the conduct of business under the license.

(8) Willful failure to comply with, or willful violation of, any proper order or rule of the department or willful violation of any provision of this chapter.

(9) Having been found guilty of or having plead guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States or of any state thereof or under the law of any other country which involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

(10)(a) Violated a duty imposed upon her or him by law or by the terms of a contract, whether written, oral, expressed, or implied, in an appraisal;

(b) Has aided, assisted, or conspired with any other person engaged in any such misconduct and in furtherance thereof; or

(c) Has formed an intent, design, or scheme to engage in

such misconduct and committed an overt act in furtherance of such intent, design, or scheme.

It is immaterial to a finding that a licensee has committed a violation of this subsection that the victim or intended victim of the misconduct has sustained no damage or loss, that the damage or loss has been settled and paid after the discovery of misconduct, or that such victim or intended victim was a customer or a person in a confidential relationship with the licensee or was an identified member of the general public.

(11)(a) Had a registration, license, or certification as an umpire revoked, suspended, or otherwise acted against;

(b) Has had his or her registration, license, or certificate to practice or conduct any regulated profession, business, or vocation revoked or suspended by this or any other state, any nation, or any possession or district of the United States; or

(c) Has had an application for such registration, licensure, or certification to practice or conduct any regulated profession, business, or vocation denied by this or any other state, any nation, or any possession or district of the United States.

(12)(a) Made or filed a report or record, written or oral, which the licensee knows to be false;

(b) Has willfully failed to file a report or record required by state or federal law;

(c) Has willfully impeded or obstructed such filing; or

(d Has induced another person to impede or obstruct such filing.

(13) Accepted an appointment as an umpire if the appointment is contingent upon the umpire reporting a predetermined result, analysis, or opinion, or if the fee to be paid for the services of the umpire is contingent upon the opinion, conclusion, or valuation reached by the umpire.

468.85185 Grounds for discretionary denial, suspension, or revocation of an umpire's license.-The department may deny an application for and suspend, revoke, or refuse to renew or continue a license as a property insurance appraisal umpire if the applicant or licensee has:

(1) Failed to timely communicate with the appraisers without good cause.

(2) Failed or refused to exercise reasonable diligence in submitting recommendations to the appraisers.

(3) Violated any ethical standard for property insurance appraisal umpires set forth in s. 468.8519.

(4) Failed to inform the department in writing within 30 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, a felony.

(5) Failed to timely notify the department of any change in business location, or has failed to fully disclose all business locations from which he or she operates as a property insurance appraisal umpire.

468.8519 Ethical standards for property insurance appraisal umpires.—

(1) CONFIDENTIALITY.—An umpire shall maintain confidentiality of all information revealed during an appraisal except where disclosure is required by law.

(2) RECORDKEEPING.—An umpire shall maintain confidentiality in the storage and disposal of records and may not disclose any identifying information when materials are used for research, training, or statistical compilations.

(3) FEES AND EXPENSES.—Fees charged for appraisal services shall be reasonable and consistent with the nature of the case. An umpire shall be guided by the following in determining fees:

(a) All charges for services as an umpire based on time may not exceed actual time spent or allocated.

(b) Charges for costs shall be for those actually incurred.

(c) An umpire may not charge, agree to, or accept as compensation or reimbursement any payment, commission, or fee that is based on a percentage basis, or that is contingent upon arriving at a particular value or any future happening or outcome of the assignment.

(4) MAINTENANCE OF RECORDS.—An umpire shall maintain records necessary to support charges for services and expenses, and upon request shall provide an accounting of all applicable charges to the parties. An umpire licensed under this part shall retain original or true copies of any contracts engaging the

umpire's services, appraisal reports, and supporting data assembled and formulated by the umpire in preparing appraisal reports for at least 5 years. The period for retaining the records applicable to each engagement starts on the date of the submission of the appraisal report to the client. The records must be made available by the umpire for inspection and copying by the department upon reasonable notice to the umpire. If an appraisal has been the subject of, or has been admitted as evidence in, a lawsuit, reports, and records the appraisal must be retained for at least 2 years after the date that the trial ends.

(5) ADVERTISING.—An umpire may not engage in marketing practices that contain false or misleading information. An umpire shall ensure that any advertisements of the umpire's qualifications, services to be rendered, or the appraisal process are accurate and honest. An umpire may not make claims of achieving specific outcomes or promises implying favoritism for the purpose of obtaining business.

(6) INTEGRITY AND IMPARTIALITY.—An umpire may not engage in any business, provide any service, or perform any act that would compromise the umpire's integrity or impartiality.

(7) SKILL AND EXPERIENCE.—An umpire shall decline an appointment or selection, withdraw, or request appropriate assistance when the facts and circumstances of the appraisal are beyond the umpire's skill or experience.

(8) GIFTS AND SOLICITATION.—An umpire may not give or

accept any gift, favor, loan, or other item of value in an appraisal process except for the umpire's reasonable fee. During the appraisal process, an umpire may not solicit or otherwise attempt to procure future professional services.

Section 2. Part XVIII of chapter 468, Florida Statutes, consisting of sections 468.86 through 468.8619, is created to read:

PART XVIII

PROPERTY INSURANCE APPRAISERS

468.86 Property insurance appraiser licensing program; legislative purpose; scope of part.—

(1) The property insurance appraiser licensing program is created within the Department of Business and Professional Regulation.

(2) The Legislature finds it necessary and in the interest of the public safety and welfare, to prevent damage to real and personal property, to avert economic injury to the residents of this state, and to regulate persons and companies that hold themselves out to the public as qualified to perform as a property insurance appraiser.

(3) This part applies to residential and commercial residential property insurance contracts and to the umpires and appraisers who participate in the appraisal process.

(4) The department may adopt rules to administer the requirements of this part.

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

(1) "Appraisal" means the process of estimating or evaluating actual cash value, the amount of loss, or the cost of repair or replacement of property for the purpose of quantifying the monetary value of a property loss claim when an insurer and an insured have failed to mutually agree on the value of the loss pursuant to a residential or commercial residential property insurance contract that is required in such contracts for the resolution of a claim dispute by appraisal.

(2) "Competent" means properly licensed, sufficiently qualified, and capable to performing an appraisal.

(3) "Department" means the Department of Business and Professional Regulation.

(4) "Independent" means not subject to control, restriction, modification, and limitation by the appointing party.

(5) "Property insurance appraisal umpire" or "umpire" means a competent, independent, licensed, and impartial third party selected by the licensed appraisers for the insurer and the insured to resolve issues that the licensed appraisers are unable to reach an agreement during the course of the appraisal process pursuant to a residential or commercial property insurance contract that is required to provide for resolution of a claim dispute by appraisal.

(6) "Property insurance loss appraiser" or "appraiser" means a competent, licensed, and independent and impartial third party selected by an insurer or an insured to develop an

appraisal for purposes of the appraisal process under a residential or commercial property insurance contract that provides for resolution of a claim dispute by appraisal.

(7) "Uniform application" means the uniform application of the National Association of Insurance Commissioners for nonresident agent licensing, effective January 15, 2001, or subsequent versions adopted by rule by the department.

468.8611 Fees.—

(1) The department, by rule, may establish fees to be paid for application, examination, reexamination, licensing and renewal, inactive status application, reactivation of inactive licenses, and application for providers of continuing education. The department may also establish by rule a delinquency fee. Fees shall be based on department estimates of the revenue required to implement the provisions of this part. Fees shall be remitted with the application, examination, reexamination, licensing and renewal, inactive status application, and reactivation of inactive licenses, and application for providers of continuing education.

(2) The application fee shall not exceed $200 and is nonrefundable. The examination fee shall not exceed $200 plus the actual per applicant cost to the department to purchase the examination, if the department chooses to purchase the examination. The examination fee shall be in an amount that covers the cost of obtaining and administering the examination and shall be refunded if the applicant is found ineligible to

sit for the examination.

(3) The fee for an initial license shall not exceed $250.

(4) The fee for an initial certificate of authorization shall not exceed $250.

(5) The fee for a biennial license renewal shall not exceed $500.

(6) The fee for application for inactive status shall not exceed $125.

(7) The fee for reactivation of an inactive license shall not exceed $250.

(8) The fee for applications from providers of continuing education may not exceed $600.

(9) The fee for fingerprinting shall be included in the department's costs for the background check.

468.86115 Application for license as a property insurance appraiser.—

(1) The department shall not issue a license as a property insurance appraiser to any person except upon written application previously filed with the department, with qualification and advance payment of all applicable fees. Any such application shall be made under oath or affirmation of and signed by the applicant. The department shall accept the uniform application for a nonresident property insurance appraiser. The department may adopt revised versions of the uniform application by rule.

(2) In the application, the applicant shall set forth:

(a) His or her full name, age, social security number, residence address, business address, mailing address, contact telephone numbers, including a business telephone number, and e-mail address.

(b) Proof that he or she has completed or is in the process of completing any required prelicensing course.

(c) Whether he or she has been refused or has voluntarily surrendered or has had suspended or revoked a professional license by the supervising officials of any state.

(d) Proof that the applicant meets the requirements of licensure as a property insurance appraiser as required under ss. 468.8611 and 468.8612, and this section.

(e) The applicant's gender.

(f) The applicant's native language.

(g) The applicant's highest achieved level of education.

(h) All education requirements that the applicant has completed to qualify as a property insurance appraiser, including the name of the course, the course provider, and the course completion dates.

(3) Each application shall be accompanied by payment of any applicable fee.

(4) At the time of application, the applicant must be fingerprinted by a law enforcement agency or other entity approved by the department and he or she must pay the fingerprint processing fee in s. 468.8611. Fingerprints must be processed by the Department of Law Enforcement.

(5) The Department of Law Enforcement may, to the extent provided for by federal law, exchange state, multistate, and federal criminal history records with the department or office for the purpose of the issuance, denial, suspension, or revocation of a certificate of authority, certification, or license to operate in this state.

(6) The Department of Law Enforcement may accept fingerprints of any other person required by statute or rule to submit fingerprints to the department or office or any applicant or licensee regulated by the department or office who is required to demonstrate that he or she has not been convicted of or pled guilty or nolo contendere to a felony or a misdemeanor.

(7) The Department of Law Enforcement shall, upon receipt of fingerprints from the department or office, submit the fingerprints to the Federal Bureau of Investigation for a federal criminal history records check.

(8) Statewide criminal records obtained through the Department of Law Enforcement, federal criminal records obtained through the Federal Bureau of Investigation, and local criminal records obtained through local law enforcement agencies shall be used by the department and office for the purpose of issuance, denial, suspension, or revocation of certificates of authority, certifications, or licenses issued to operate in this state.

(9) The department shall develop and maintain as a public record a current list of licensed property insurance appraisers.

468.8612 Examinations -

(1) A person desiring to be licensed as a property insurance appraiser must apply to the department after satisfying the examination requirements of this part.

(2) An applicant may practice in this state as a property insurance appraiser if he or she passes the required examination, is of good moral character, and meets one of the following requirements:

(a) The applicant is currently licensed, registered, certified, or approved as an engineer as defined in s. 471.005 or as a retired professional engineer as defined in s. 471.005, and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedures, appraisal preparation, and any other related material deemed appropriate by the department.

(b) The applicant is currently or, within the 2 years immediately preceding the date on which the application is filed with the department, has been licensed, registered, certified, or approved as a general contractor, building contractor, or residential contractor as defined in s. 489.105 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(c) The applicant is currently or, within the 2 years

immediately preceding the date on which the application is filed with the department, has been licensed or registered as an architect to engage in the practice of architecture pursuant to part I of chapter 481 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(d) The applicant is currently or, within the 2 years immediately preceding the date on which the application is filed with the department, has been a qualified geologist or professional geologist as defined in s. 492.102 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(e) The applicant is currently or, within the 2 years immediately preceding the date on which the application is filed with the department, has been licensed as a certified public accountant as defined in s. 473.302 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(f) The applicant is currently or, within the 2 years

immediately preceding the date on which the application is filed with the department, has been a licensed attorney in this state and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(g) The applicant has received a baccalaureate degree from an accredited 4-year college or university in the field of engineering, architecture, or building construction and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(h) The applicant is a currently licensed adjuster whose license covers all lines of insurance except the life and annuities class. The adjuster's license must include the property and casualty class of insurance. The currently licensed adjuster must be licensed for at least 2 years to qualify for a property insurance appraiser's license.

(i) The applicant has received a minimum of 8 semester hours or 12 quarter hours of credit from an accredited college or university in the field of accounting, geology, engineering, architecture, or building construction.

(j) The applicant has successfully completed 40 hours of

classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, property insurance, and any other related material deemed appropriate by the department.

(3) The department shall review and approve courses of study for the continuing education of property insurance appraisers.

(4) The department may not issue a license as a property insurance appraiser to any individual found by it to be untrustworthy or incompetent or who:

(a) Has not filed an application with the department in accordance with s. 485.86115.

(b) Is not a natural person who is at least 18 years of age.

(c) Is not a United States citizen or legal alien who possesses work authorization from the United States Citizenship and Immigration Services.

(d) Has not completed the education, experience, or licensing requirements in this section.

(5) An incomplete application expires 6 months after the date it is received by the department.

(6) An applicant seeking to become licensed under this part may not be rejected solely by virtue of membership or lack of membership in any particular appraisal organization.

468.8613 Licensure.—

(1) The department shall license any applicant who the

department certifies has completed the requirements of ss. 468.8611, 468.86115, and 468.8612.

(2) The department shall not issue a license by endorsement to any applicant for a property insurance appraiser license who is under investigation in another state for any act that would constitute a violation of this part until such time that the investigation is complete and disciplinary proceedings have been terminated.

468.8614 Renewal of license.—

(1) The department shall renew a license upon receipt of the renewal application and fee and upon certification by the department that the licensee has satisfactorily completed the continuing education requirements of s. 468.8615.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

468.8615 Continuing education.—

(1) The department may not renew a license until the licensee submits satisfactory proof to the department that, during the 2 years before his or her application for renewal, the licensee completed at least 30 hours of continuing education in addition to 5 hours of ethics. Criteria and course content shall be approved by the department by rule.

(2) The department may prescribe by rule additional continuing professional education hours, not to exceed 25 percent of the total required hours, for failure to complete the required hours for renewal by the end of the renewal period.

(3) Each appraiser course provider, instructor, and classroom course must be approved by and registered with the department before prelicensure courses for property insurance appraisers may be offered. Each classroom course must include a written examination at the conclusion of the course and must cover all of the material contained in the course. A student may not receive credit for the course unless the student achieves a grade of at least 75 on the examination.

(4) The department shall adopt rules establishing:

(a) Standards for the approval, registration, discipline, or removal from registration of course providers, instructors, and courses. The standards must be designed to ensure that instructors have the knowledge, competence, and integrity to fulfill the educational objectives of the prelicensure requirements of this part.

(b) A process for determining compliance with the prelicensure requirements of this part.

The department shall adopt rules prescribing the forms necessary to administer the prelicensure requirements of this part.

(5) Approval to teach prescribed or approved appraisal courses does not entitle the instructor to teach any courses outside the scope of this part.

468.8616 Inactive license.—

(1) A licensee may request that his or her license be placed on inactive status by filing an application with the

department.

(2) A license that has become inactive may be reactivated upon application to the department. The department may prescribe by rule continuing education requirements as a condition for reactivation of an inactive license. The continuing education requirements for reactivating a license may not exceed 14 hours for each year the license was inactive.

(3) The department shall adopt rules relating to licenses that have become inactive and for the renewal of inactive licenses. The department shall prescribe by rule a fee not to exceed $250 for the reactivation of an inactive license and a fee not to exceed $250 for the renewal of an inactive license.

468.8617 Certification of partnerships, corporations, and other business entities.—The practice of or the offer to practice as a property insurance appraiser by licensees through a partnership, corporation, or other business entity offering property insurance appraiser services to the public, or by a partnership, corporation, or other business entity through licensees under this part as agents, employees, officers, or partners is permitted subject to the provisions of this part. This section does not allow a corporation or other business entity to hold a license to practice property insurance appraiser services. A partnership, corporation, or other business entity is not relieved of responsibility for the conduct or acts of it agents, employees, or officers by reason of its compliance with this section. An individual practicing as

a property insurance appraiser is not relieved of responsibility for professional services performed by reason of his or her employment or relationship with a partnership, corporation, or other business entity.

468.8618 Grounds for compulsory refusal, suspension, or revocation of an appraiser's license.—The department shall deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, property insurance appraiser or licensee and shall suspend or revoke the eligibility to hold a license or appointment of any such person if it finds that any one or more of the following applicable grounds exist:

(1) Lack of one or more of the qualifications for the license as specified in this part.

(2) Material misstatement, misrepresentation, or fraud in obtaining the license or in attempting to obtain the license or appointment.

(3) Failure to pass to the satisfaction of the department any examination required under this act.

(4) That the license or appointment was willfully used, or will be used, to circumvent any of the requirements or prohibitions of this code.

(5) Demonstrated a lack of fitness or trustworthiness to engage as a property insurance appraiser.

(6) Demonstrated a lack of reasonably adequate knowledge and technical competence to engage in the transactions

authorized by the license.

(7) Fraudulent or dishonest practices in the conduct of business under the license.

(8) Willful failure to comply with, or willful violation of, any proper order or rule of the department or willful violation of any provision of this act.

(9) Having been found guilty of or having plead guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States or of any state thereof or under the law of any other country which involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

(10) Violated a duty imposed upon her or him by law or by the terms of a contract, whether written, oral, expressed, or implied, in an appraisal; has aided, assisted, or conspired with any other person engaged in any such misconduct and in furtherance thereof; or has formed an intent, design, or scheme to engage in such misconduct and committed an overt act in furtherance of such intent, design, or scheme. It is immaterial to a finding that a licensee has committed a violation of this subsection that the victim or intended victim of the misconduct has sustained no damage or loss, that the damage or loss has been settled and paid after the discovery of misconduct, or that such victim or intended victim was a customer or a person in a confidential relationship with the licensee or was an identified

member of the general public.

(11) Had a registration, license, or certification as an appraiser revoked, suspended, or otherwise acted against; has had his or her registration, license, or certificate to practice or conduct any regulated profession, business, or vocation revoked or suspended by this or any other state, any nation, or any possession or district of the United States; or has had an application for such registration, licensure, or certification to practice or conduct any regulated profession, business, or vocation denied by this or any other state, any nation, or any possession or district of the United States.

(12)(a) Made or filed a report or record, written or oral, which the licensee knows to be false;

(b) Has willfully failed to file a report or record required by state or federal law;

(c) Has willfully impeded or obstructed such filing; or

(d) Has induced another person to impede or obstruct such filing.

(13) Accepted an appointment as an appraiser if the appointment is contingent upon the appraiser reporting a predetermined result, analysis, or opinion, or if the fee to be paid for the services of the appraiser is contingent upon the opinion, conclusion, or valuation reached by the appraiser.

468.86185 Grounds for discretionary denial, suspension, or revocation of an appraiser's license.-The department may deny an application for and suspend, revoke, or refuse to renew or

continue a license as a property insurance appraiser if the applicant or licensee has:

(1) Failed to timely communicate with the opposing party's appraiser without good cause.

(2) Failed or refused to exercise reasonable diligence in submitting recommendations to the opposing party's appraiser.

(3) Violated any ethical standard for property insurance appraisers set forth in s. 468.8619.

(4) Failed to inform the department in writing within 30 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, a felony.

(5) Failed to timely notify the department of any change in business location, or has failed to fully disclose all business locations from which he or she operates as a property insurance appraiser.

468.8619 Ethical standards for property insurance appraisers.—

(1) CONFIDENTIALITY.—An appraiser shall maintain confidentiality of all information revealed during an appraisal except to the party that hired the appraiser and except where disclosure is required by law.

(2) RECORDKEEPING.—An appraiser shall maintain confidentiality in the storage and disposal of records and may not disclose any identifying information when materials are used for research, training, or statistical compilations.

(3) FEES AND EXPENSES.—Fees charged for appraisal services

shall be reasonable and consistent with the nature of the case. An appraiser shall be guided by the following in determining fees:

(a) All charges for services as an appraiser based on time may not exceed actual time spent or allocated.

(b) Charges for costs shall be for those actually incurred.

(4) MAINTENANCE OF RECORDS.—An appraiser shall maintain records necessary to support charges for services and expenses, and upon request shall provide an accounting of all applicable charges to the parties. An appraiser licensed under this part shall retain for at least 5 years original or true copies of any contracts engaging the appraiser's services, appraisal reports, and supporting data assembled and formulated by the appraiser in preparing appraisal reports. The period for retaining the records applicable to each engagement starts on the date of the submission of the appraisal report to the client. The records must be made available by the appraiser for inspection and copying by the department upon reasonable notice to the appraiser. If an appraisal has been the subject of, or has been admitted as evidence in, a lawsuit, reports, and records the appraisal must be retained for at least 2 years after the date that the trial ends.

(5) ADVERTISING.—An appraiser may not engage in marketing practices that contain false or misleading information. An appraiser shall ensure that any advertisements of the

appraiser's qualifications, services to be rendered, or the appraisal process are accurate and honest. An appraiser may not make claims of achieving specific outcomes or promises implying favoritism for the purpose of obtaining business.

(6) INTEGRITY AND IMPARTIALITY.—An appraiser may not accept any engagement, provide any service, or perform any act that would compromise the appraiser's integrity or impartiality.

(a) An appraiser may not accept an appointment unless he or she can:

1. Serve impartially;

2. Serve independently from the party appointing him or her;

3. Serve competently; and

4. Be available to promptly commence the appraisal, and thereafter devote the time and attention to its completion in a manner expected by all involved parties.

(b) An appraiser shall conduct the appraisal process in a manner that advances the fair and efficient resolution of the matters submitted for decision. A licensed appraiser shall make all reasonable efforts to prevent delays in the appraisal process, the harassment of parties or other participants, or other abuse or disruption of the appraisal process.

(c) Once a licensed appraiser has accepted an appointment, the appraiser may not withdraw or abandon the appointment unless compelled to do so by unanticipated circumstances that would render it impossible or impracticable to continue.

(d) The licensed appraiser shall, after careful deliberation, decide all issues submitted for determination and no other issues. A licensed appraiser shall decide all matters justly, exercising independent judgment, and may not allow outside pressure to affect the decision. An appraiser may not delegate the duty to decide to any other person.

(7) SKILL AND EXPERIENCE.—An appraiser shall decline an appointment or selection, withdraw, or request appropriate assistance when the facts and circumstances of the appraisal are beyond the appraiser's skill or experience.

(8) GIFTS AND SOLICITATION.—An appraiser may not give or accept any gift, favor, loan, or other item of value in an appraisal process except for the appraiser's reasonable fee. During the appraisal process, an appraiser may not solicit or otherwise attempt to procure future professional services.

(9) COMMUNICATIONS WITH PARTIES.—

(a) If an agreement of the parties establishes the manner or content of the communications between the appraisers, the parties and the umpire, the appraisers shall abide by such agreement. In the absence of agreement, an appraiser may not discuss a proceeding with any party or with the umpire in the absence of any other party, except in the following circumstances:

1. If the appointment of the appraiser or umpire is being considered, the prospective appraiser or umpire may ask about the identities of the parties, counsel, and the general nature

of the case, and may respond to inquiries from a party, its counsel or an umpire designed to determine his or her suitability and availability for the appointment;

2. To consult with the party who appointed the appraiser concerning the selection of a neutral umpire.

3. To make arrangements for any compensation to be paid by the party who appointed the appraiser; or

4. To make arrangements for obtaining materials and inspection of the property with the party who appointed the appraiser. Such communication is limited to scheduling and the exchange of materials.

(b) There may be no communications whereby a party dictates to an appraiser what the result of the proceedings must be, what matters or elements may be included or considered by the appraiser, or what actions the appraiser may take.

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: Government Operations Appropriations Subcommittee
Representative Artiles offered the following:

Amendment (with title amendment)

Between lines 59 and 60, insert:

Section 1. Paragraph (a) of subsection (4) of section 20.165, Florida Statutes, is amended to read:

20.165 Department of Business and Professional Regulation.—There is created a Department of Business and Professional Regulation.

(4)(a) The following boards and programs are established within the Division of Professions:

1. Board of Architecture and Interior Design, created under part I of chapter 481.

2. Florida Board of Auctioneers, created under part VI of chapter 468.

3. Barbers' Board, created under chapter 476.

4. Florida Building Code Administrators and Inspectors Board, created under part XII of chapter 468.

5. Construction Industry Licensing Board, created under part I of chapter 489.

6. Board of Cosmetology, created under chapter 477.

7. Electrical Contractors' Licensing Board, created under part II of chapter 489.

8. Board of Employee Leasing Companies, created under part XI of chapter 468.

9. Board of Landscape Architecture, created under part II of chapter 481.

10. Board of Pilot Commissioners, created under chapter 310.

11. Board of Professional Engineers, created under chapter 471.

12. Board of Professional Geologists, created under chapter 492.

13. Board of Veterinary Medicine, created under chapter 474.

14. Home inspection services licensing program, created under part XV of chapter 468.

15. Mold-related services licensing program, created under part XVI of chapter 468.

16. Property insurance appraisal umpires licensing program, created under part XVII of chapter 468.

17. Property insurance appraisers licensing program, created under part XVII of chapter 468.

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

Remove line 3 and insert:
umpires and property insurance appraisers; amending s. 20.165, F.S.; establishing specified programs within the Division of Professions; creatingEnter Amending Text Here

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: Government Operations Appropriations Subcommittee

Representative Artiles offered the following:

Amendment (with title amendment)

Remove lines 118-210 and insert:

(1) All fees shall be deposited into the Professional Regulation Trust Fund of the Department of Business and Professional Regulation.

(2) The department, by rule, may establish fees to be paid for application, examination, reexamination, licensing and renewal, inactive status application, reactivation of inactive licenses, and application for providers of continuing education. The department may also establish by rule a delinquency fee. Fees shall be based on department estimates of the revenue required to implement the provisions of this part. Fees shall be remitted with the application, examination, reexamination,

licensing and renewal, inactive status application, and reactivation of inactive licenses, and application for providers of continuing education.

(3) The application fee shall not exceed $200 and is nonrefundable. The examination fee shall not exceed $200 plus the actual per applicant cost to the department to purchase the examination, if the department chooses to purchase the examination. The examination fee shall be in an amount that covers the cost of obtaining and administering the examination and shall be refunded if the applicant is found ineligible to sit for the examination.

(4) The fee for an initial license shall not exceed $250.

(5) The fee for an initial certificate of authorization shall not exceed $250.

(6) The fee for a biennial license renewal shall not exceed $500.

(7) The fee for application for inactive status shall not exceed $125.

(8) The fee for reactivation of an inactive license shall not exceed $250.

(9) The fee for applications from providers of continuing education may not exceed $600.

(10) The fee for fingerprinting shall be included in the department's costs for each background check.

468.85115 Application for license as a property insurance appraisal umpire.—

(1) The department shall not issue a license as a property insurance appraisal umpire to any person except upon written application previously filed with the department, with qualification and advance payment of all applicable fees. Any such application shall be made under oath or affirmation and signed by the applicant. The department shall accept the uniform application for a nonresident property insurance appraisal umpire. The department may adopt revised versions of the uniform application by rule.

(2) In the application, the applicant shall set forth:

(a) His or her full name, age, social security number, residence address, business address, mailing address, contact telephone numbers, including a business telephone number, and e-mail address.

(b) Proof that he or she has completed or is in the process of completing any required prelicensing course.

(c) Whether he or she has been refused or has voluntarily surrendered or has had suspended or revoked a professional license by the supervising officials of any state.

(d) Proof that the applicant meets the requirements for licensure as a property insurance appraisal umpire as required under ss. 468.8511 and 468.8512, and this section.

(e) The applicant's gender.

(f) The applicant's native language.

(g) The applicant's highest achieved level of education.

(h) All education requirements that the applicant has completed to qualify as a property insurance appraisal umpire, including the name of the course, the course provider, and the course completion dates.

(3) Each application shall be accompanied by payment of any applicable fee.

(4) An applicant must submit a full set of fingerprints to the department or to a vendor, entity, or agency authorized by s. 943.053(13). The department, vendor, entity, or agency shall forward the fingerprints to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing.

(5) Fees for state and federal fingerprint processing and retention shall be borne by the applicant. The state cost for fingerprint processing shall be as provided in s. 943.053(3)(b) for records provided to persons or entities other than those specified as exceptions therein.

(6) Fingerprints submitted to the Department of Law Enforcement pursuant to this paragraph shall be retained by the Department of Law Enforcement as provided in s. 943.05(2)(g) and (h) and, when the Department of Law Enforcement begins participation in the program, enrolled in the Federal Bureau of Investigation's national retained print arrest notification program. The fingerprints shall be submitted to the Department of Law Enforcement for a state criminal history record check and

to the Federal Bureau of Investigation for a national criminal history check. Any arrest record identified shall be reported to the department.

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

Remove line 11 and insert:

department to establish fees; providing for deposit of fees; providing licensing

Amendment No.3

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

Committee/Subcommittee hearing bill: Government Operations Appropriations Subcommittee
Representative Artiles offered the following:

Amendment (with title amendment)

Remove lines 607-699 and insert:

(1) All fees shall be deposited into the Professional Regulation Trust Fund of the Department of Business and Professional Regulation.

(2) The department, by rule, may establish fees to be paid for application, examination, reexamination, licensing and renewal, inactive status application, reactivation of inactive licenses, and application for providers of continuing education. The department may also establish by rule a delinquency fee. Fees shall be based on department estimates of the revenue required to implement the provisions of this part. Fees shall be remitted with the application, examination, reexamination,

licensing and renewal, inactive status application, and reactivation of inactive licenses, and application for providers of continuing education.

(3) The application fee shall not exceed $200 and is nonrefundable. The examination fee shall not exceed $200 plus the actual per applicant cost to the department to purchase the examination, if the department chooses to purchase the examination. The examination fee shall be in an amount that covers the cost of obtaining and administering the examination and shall be refunded if the applicant is found ineligible to sit for the examination.

(4) The fee for an initial license shall not exceed $250.

(5) The fee for an initial certificate of authorization shall not exceed $250.

(6) The fee for a biennial license renewal shall not exceed $500.

(7) The fee for application for inactive status shall not exceed $125.

(8) The fee for reactivation of an inactive license shall not exceed $250.

(9) The fee for applications from providers of continuing education may not exceed $600.

(10) The fee for fingerprinting shall be included in the department's costs for the background check.

468.86115 Application for license as a property insurance appraiser.—

(1) The department shall not issue a license as a property insurance appraiser to any person except upon written application previously filed with the department, with qualification and advance payment of all applicable fees. Any such application shall be made under oath or affirmation of and signed by the applicant. The department shall accept the uniform application for a nonresident property insurance appraiser. The department may adopt revised versions of the uniform application by rule.

(2) In the application, the applicant shall set forth:

(a) His or her full name, age, social security number, residence address, business address, mailing address, contact telephone numbers, including a business telephone number, and e-mail address.

(b) Proof that he or she has completed or is in the process of completing any required prelicensing course.

(c) Whether he or she has been refused or has voluntarily surrendered or has had suspended or revoked a professional license by the supervising officials of any state.

(d) Proof that the applicant meets the requirements of licensure as a property insurance appraiser as required under ss. 468.8611 and 468.8612, and this section.

(e) The applicant's gender.

(f) The applicant's native language.

(g) The applicant's highest achieved level of education.

(h) All education requirements that the applicant has completed to qualify as a property insurance appraiser, including the name of the course, the course provider, and the course completion dates.

(3) Each application shall be accompanied by payment of any applicable fee.

(4) An applicant must submit a full set of fingerprints to the department or to a vendor, entity, or agency authorized by s. 943.053(13). The department, vendor, entity, or agency shall forward the fingerprints to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing.

(5) Fees for state and federal fingerprint processing and retention shall be borne by the applicant. The state cost for fingerprint processing shall be as provided in s. 943.053(3)(b) for records provided to persons or entities other than those specified as exceptions therein.

(6) Fingerprints submitted to the Department of Law Enforcement pursuant to this paragraph shall be retained by the Department of Law Enforcement as provided in s. 943.05(2)(g) and (h) and, when the Department of Law Enforcement begins participation in the program, enrolled in the Federal Bureau of Investigation's national retained print arrest notification program. The fingerprints shall be submitted to the Department of Law Enforcement for a state criminal history record check and

to the Federal Bureau of Investigation for a national criminal history check. Any arrest record identified shall be reported to the department.

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

Remove line 37 and insert:

Department to establish fees; providing for deposit of fees; limiting fee amounts;

Amendment No.4

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Government Operations Appropriations Subcommittee

Representative Artiles offered the following:

Amendment (with title amendment)

Remove line 1082 and insert:

Section 3. Effective July 1, 2015, for the 2015-2016 fiscal year, the sums of $605,874 in recurring funds and $59,053 in nonrecurring funds from the Professional Regulation Trust Fund are appropriated to the Department of Business and Professional Regulation and 4.00 full-time equivalent positions and associated salary rate of 212,315 are authorized, for the purpose of implementing this act.

Section 4. Except as otherwise provided in this act, this act shall take effect January 1, 2016.

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

Remove line 55 and insert:

providing ethical standards; providing an appropriation; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 801 The Beirut Memorial
SPONSOR(S): Taylor
TIED BILLS: **IDEN./SIM. BILLS:** SB 876

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Veteran & Military Affairs Subcommittee	11 Y, 0 N	Renner	Kiner
2) Government Operations Appropriations Subcommittee		White CCW	Topp BDT
3) State Affairs Committee			

SUMMARY ANALYSIS

The bill requires the Department of Management Services (DMS), subject to legislative appropriation, to establish a Beirut Memorial on the premises of the Capitol Complex to honor the U.S. Armed Forces servicemembers who lost their lives in the October 23, 1983 attack in Beirut, Lebanon.

Furthermore, DMS is required to approve the design and placement of the Beirut Memorial, after considering recommendations from the Department of Veterans' Affairs and the Florida Historical Commission. DMS must also coordinate with the Division of Historical Resources of the Department of State regarding the Beirut Memorial's design and placement.

The bill has an indeterminate fiscal impact on state government as establishment of the memorial is contingent upon a not yet identified legislative appropriation.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Beirut Attack

In July of 1982, President Reagan authorized the deployment of U.S. Marines to join a multinational force (MNF) alongside French and Italian troops to contribute to peacekeeping efforts in Lebanon.[1] Lebanon was in the midst of a civil war that threatened the stability of the region and raised the specter of a wider war.[2] Syria and Israel were at ends supporting opposing Lebanese factions and perpetuating violence in an attempt to gain control of the country. In response, the MNF was tasked to protect Palestinian civilians from the ongoing conflict.[3]

On October 23, 1983, the headquarters and barracks of the 1st Battalion, 8th Marines Regiment in Beirut, Lebanon were attacked.[4] An explosion caused by a truck carrying 2,000 pounds of explosives drove into the facility and collapsed the structure, killing 220 Marines, 18 sailors, and three soldiers of the United States Armed Forces.[5] In February of 1984, President Reagan ordered that the Marines withdraw from Lebanon.[6]

Managing Agency for the Capitol Center

Chapter 272, F.S., provides that the Capitol Center[7] is under the general control and supervision of the Department of Management Services (DMS),[8] which includes the management and maintenance of both the grounds and buildings.[9] Additionally, the DMS has the authority to provide for the establishment of parks, walkways, and parkways on the grounds of the Capitol Center.[10] This responsibility has historically included assistance in establishing and maintaining public memorials throughout the Capitol Center, including project management oversight of the design and construction of memorials.[11] After an entity is assigned a designated space within the Capitol Center for an exhibit, the entity is the manager of the exhibit's content and display, in consultation with the DMS.[12]

The "Capitol Complex" is defined to include:

> "that portion of Tallahassee, Leon County, Florida, commonly referred to as the Capitol, the Historic Capitol, the Senate Office Building, the House Office Building, the Knott Building, the

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[1] U.S. Department of State, Office of the Historian, *The Reagan Administration and Lebanon, 1981-1984*, https://history.state.gov/milestones/1981-1988/lebanon (last visited March 6, 2015).
[2] *Id.*
[3] *Id.*
[4] Department of Management Services HB 801 analysis. On file with Veteran & Military Affairs Subcommittee staff.
[5] Marines Blog: The Official Blog of the United States Marine Corps, *30th Anniversary of Beirut Bombing: Survivor Shares his Story,* available at http://marines.dodlive.mil/2013/10/22/30th-anniversary-of-beirut-bombing-survivor-shares-his-story/ (last visited March 9, 2015)
[6] U.S. Department of State, Office of the Historian, *The Reagan Administration and Lebanon, 1981-1984*, https://history.state.gov/milestones/1981-1988/lebanon (last visited March 6, 2015).
[7] Section 272.12, F.S., describes the Tallahassee area bound by Martin Luther King, Jr. Boulevard, College Avenue, Franklin Boulevard, East Jefferson Street, and the Seaboard Coastline Railway right-of-way as the Capitol Center.
[8] Section 272.03, F.S.
[9] Section 272.09, F.S.
[10] Section 272.07, F.S.
[11] Department of Management Services, Senate Bill 608 Agency Analysis (February 19, 2014). The analysis is on file with House Veteran & Military Affairs Subcommittee staff.
[12] *Id.*

Pepper Building, the Holland Building, and the curtilage of each, including the state-owned lands and public streets adjacent thereto within an area bounded by and including Monroe Street, Jefferson Street, Duval Street, and Gaines Street. The term shall also include the State Capital Circle Office Complex located in Leon County, Florida."[13]

Capitol Complex Monuments

The construction and placement of a monument on the premises of the Capitol Complex is prohibited unless authorized by general law and unless the design and placement of the monument is approved by the DMS after considering the recommendations of the Florida Historical Commission.[14] Additionally, the DMS must coordinate with the Division of Historical Resources of the Department of State regarding a monument's design and placement.[15]

Among the statutorily authorized Capitol Complex memorials to honor military servicemembers are:

- The Florida Veterans' Walk of Honor;[16]
- The Florida Veterans' Memorial Garden;[17] and
- The POW-MIA Chair of Honor Memorial.[18]

Effect of Proposed Changes

The bill requires DMS, subject to legislative appropriation, to establish a Beirut Memorial on the premises of the Capitol Complex to honor the U.S. Armed Forces servicemembers who lost their lives in the October 23, 1983 attack in Beirut, Lebanon.

DMS is required to approve the design and placement of the Beirut Memorial, after considering recommendations from the Department of Veterans' Affairs and the Florida Historical Commission. DMS must also coordinate with the Division of Historical Resources of the Department of State regarding the Beirut Memorial's design and placement.

B. SECTION DIRECTORY:

Section 1. Creates s. 265.005, F.S., relating to the establishment of a Beirut Memorial.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

   The bill has an indeterminate fiscal impact on state government as establishment of the memorial is contingent upon a not yet identified legislative appropriation.

[13] Section 281.01, F.S.
[14] Section 265.111(2), F.S.
[15] *Id.*
[16] Section 265.0031, F.S.
[17] *Id.*
[18] Section 265.00301, F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

The bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for executive branch rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not Applicable.

A bill to be entitled

An act relating to the Beirut Memorial; creating s. 265.005, F.S.; providing legislative intent; requiring the Department of Management Services to establish a Beirut Memorial, subject to legislative appropriation; requiring the department to consider recommendations of the Department of Veterans' Affairs and the Florida Historical Commission regarding specific aspects of the memorial; requiring the Department of Management Services to coordinate with the Division of Historical Resources regarding design and placement of the memorial; providing an effective date.

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

Section 1. Section 265.005, Florida Statutes, is created to read:

265.005 Beirut Memorial.—

(1) It is the intent of the Legislature to recognize and honor the sacrifices endured by members of the United States Armed Forces who lost their lives as a result of the explosion of a truck laden with compressed gas-enhanced explosives which collapsed the headquarters building of the 1st Battalion, 8th Marines Regiment in Beirut, Lebanon, on October 23, 1983.

(2) The Department of Management Services shall, subject to legislative appropriation, establish a Beirut Memorial. The

Department of Management Services shall approve the design and placement of the Beirut Memorial in the Capitol Complex, as defined in s. 281.01, after considering recommendations from the Department of Veterans' Affairs and, pursuant to ss. 265.111 and 267.0612(9), the Florida Historical Commission with regard to the appropriate design and placement of the memorial. The Department of Management Services shall also coordinate with the Division of Historical Resources of the Department of State regarding the memorial's design and placement, subject to the division's powers and duties under s. 267.031.

Section 2. 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: Government Operations Appropriations Subcommittee

Representative Taylor offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 265.0031, Florida Statutes, is amended to read:

265.0031 Florida Veterans' Walk of Honor and Florida Veterans' Memorial Garden.—

(4) The Florida Veterans' Memorial Garden must include a memorial in remembrance of the 241 members of the United States Armed Forces who lost their lives on October 23, 1983, in Beirut, Lebanon.

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

Amendment No. 1

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

Remove everything before the enacting clause and insert:
An act relating to the Beirut Memorial; amending 265.0031; providing that the Veterans' Memorial Garden include the Beirut Memorial; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 915 Building Codes
SPONSOR(S): Business & Professions Subcommittee; Eagle
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 1232

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	13 Y, 0 N, As CS	Whittier	Luczynski
2) Government Operations Appropriations Subcommittee		White CCW	Topp BDT
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill makes the following changes to law:

- Makes several adjustments to the training and experience required to take the certification exam for building code inspector, plans examiner, and building code administrator;
- Amends the definition of "contractor" to allow licensed Category I liquefied petroleum gas dealers, LP gas installers, and specialty installers to disconnect and reconnect water lines in the servicing or replacement of an existing water heater;
- Adds Division II contractors (sheet metal, roofing, Class A air-conditioning, Class B air-conditioning, Class C air-conditioning, mechanical, commercial pool/spa, residential pool/spa, swimming pool/spa servicing, plumbing, underground utility and excavation, solar, pollutant storage systems, and specialty) to the Florida Homeowners' Construction Recovery Fund section, which would allow homeowners to make a claim and receive restitution from the fund when they have been harmed by a Division II contractor, subject to certain requirements and financial caps;
- Exempts low-voltage landscape lighting with a cord and a plug from having to be installed by a licensed electrical contractor;
- Requires the Department of Health (DOH) to inspect public pools to determine compliance with laws, rules, and the Florida Building Code (code) and specifies duties of local enforcement agencies in permitting and inspecting certain repairs;
- Authorizes DOH to close public pools or public bathing places, impose fines, or deny, suspend, or revoke operating permits for those pools if the code is violated;
- Provides funding for the recommendations made by the Building Code System Uniform Implementation Evaluation Workgroup and provides funding for Florida Fire Code informal interpretations;
- Requires permitted installation or replacement of a water heater in a conditioned space or attic to include a water leak detection device and specifies alarm requirements for the device;
- Authorizes local building officials to issue phased permits for the construction of the foundation or any other part of a building or structure before the construction documents for the entire building or structure have been submitted;
- Removes provisions regarding the development of advanced courses related to the Florida Building Code Compliance and Mitigation Program and accreditation of courses related to the code;
- Adds Underwriters Laboratories, LLC, to the list of entities that are authorized to produce information on which product approvals are based, related to the code; and
- Requires local enforcement agencies to accept duct and air infiltration tests conducted by specified individuals, which includes energy raters and HVAC contractors.

The bill has an insignificant negative fiscal impact on state government and does not appear to have a fiscal impact on local governments.

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

STORAGE NAME:
DATE:

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Building Code Administrators, Plans Examiners, and Inspectors Certifications (Section 1)

Present Situation

As the housing market and construction industry in the state slowed down in recent years, local building code departments began trimming their staffs. Now, as the economy is beginning to recover, local building code departments are struggling to find individuals to fill Florida Building Code (code) inspector positions because the municipalities rely on inspectors with multiple inspection certifications to complete several inspections on a single trip. The current rules and statutes related to obtaining certifications, however, makes acquiring multiple certifications difficult.

Building Code Inspector and Plans Examiner

In order to take the examination for building code inspector or plans examiner certification, s. 468.609(2), F.S., provides that a person must be at least 18, be of good moral character, and meet eligibility requirements of one of the following criteria:

No.	Requirements
Option 1.	Demonstrates five years' combined experience in the field of construction or a related field, building code inspection, or plans review corresponding to the certification category sought.
Option 2.	Demonstrates a combination of postsecondary education in the field of construction or a related field and experience which totals four years, with at least one year of such total being experience in construction, building code inspection, or plans review.
Option 3.	Demonstrates a combination of technical education in the field of construction or a related field and experience which totals four years, with at least one year of such total being experience in construction, building code inspection, or plans review.
Option 4.	Currently holds a standard certificate as issued by the Florida Building Code Administrators and Inspectors Board (Board) or a firesafety inspector license issued pursuant to chapter 633, has a minimum of five years' verifiable full-time experience in inspection or plan review, and satisfactorily completes a building code inspector or plans examiner training program of not less than 200 hours in the certification category sought. The Board shall establish by rule criteria for the development and implementation of the training programs.
Option 5.	Demonstrates a combination of the completion of an approved training program in the field of building code inspection or plan review and a minimum of two years' experience in the field of building code inspection; plan review; fire code inspections and fire plans review of new buildings as a firesafety inspector; or construction. The approved training portion of this requirement shall include proof of satisfactory completion of a training program[1] of not less than 300 hours which is approved by the Board in the chosen category of building code inspection or plan review in the certification category sought with not less than 20 hours of instruction in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificate holder.

[1] The Board shall coordinate with the Building Officials Association of Florida, Inc., to establish by rule the development and implementation of the training program.

Individuals are able to meet the above requirements for a single certification; however, it is difficult to earn additional certifications while employed as an inspector or plans examiner.

Building Code Administrator

In order to take the examination for building code administrator certification, s. 468.609(3), F.S., provides that a person must be at least 18, be of good moral character, and meet eligibility requirements of one of the following criteria:

No.	Requirements
Option 1.	Demonstrates 10 years' combined experience as an architect, engineer, plans examiner, building code inspector, registered or certified contractor, or construction superintendent, with at least five years of such experience in supervisory positions.
Option 2.	Demonstrates a combination of postsecondary education in the field of construction or related field, no more than five years of which may be applied, and experience as an architect, engineer, plans examiner, building code inspector, registered or certified contractor, or construction superintendent which totals 10 years, with at least five years of such total being experience in supervisory positions.

Effect of Proposed Changes

The bill makes several adjustments to the training and experience required to take the certification exam for building code inspector, plans examiner, and building code administrator. Specifically, the bill makes the following major changes to the certification requirements:

Building Code Inspector and Plans Examiner

For Option 4 above, under *Building Code Inspector and Plans Examiner*, the bill reduces the number of years' experience in inspection or plan review from five to three years and lowers the hour requirements for the training program from 200 to 100 hours.

For Option 5 above, under *Building Code Inspector and Plans Examiner*, the bill lowers the hour requirements for the training program from 300 to 200 hours and limits the required hours of instruction from not less than 20 hours to at least 20 hours but not more than 30 hours.

The bill adds a sixth option for eligibility requirements to take the building code inspector or plans examiner certification exam. The bill provides:

No.	Requirements
Option 6.	Currently holds a standard certificate issued by the Board or a firesafety inspector license issued pursuant to chapter 633 and: • Has at least five years of verifiable full-time experience as an inspector or plans examiner in a standard certification category currently held or has a minimum of five years' verifiable full-time experience as a firesafety inspector licensed pursuant to chapter 633; and • Satisfactorily completes a building code inspector or plans examiner classroom training course or program that provides at least 40 but not more than 300 hours in the certification category sought, except for one-family and two-family dwelling training programs which are required to provide at least 500 but not more than 800 hours of training as prescribed by the Board. The Board shall establish by rule criteria for the development and implementation of classroom training courses and programs in each certification category.

Building Code Administrator

For Option 1 above, under *Building Code Administrator*, the bill reduces the number of combined years' experience from 10 to seven years and the required number of years of experience in supervisory positions from five to three. It also adds firesafety inspector certified under s. 633.216, F.S., to the list of occupations that may satisfy the experience requirement.

For Option 2 above, under *Building Code Administrator*, the bill reduces the number of combined years' experience from 10 to seven years and the required number of years of experience in supervisory positions from five to three. It adds a requirement of at least 20 hours but not more than 30 hours of training in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificateholder. It also adds firesafety inspector certified under s. 633.216, F.S., to the list of occupations that may satisfy the experience requirement.

Propane Gas Water Heater Installations (Section 2)

Present Situation

Currently, natural gas utility employees have the authority under s. 489.105, F.S., to disconnect and reconnect water lines when servicing and replacing "existing" water heaters. Although natural gas and propane are piped in the same manner and have the same properties and pressures inside homes, the propane industry does not have the authority to disconnect and reconnect water lines and must contract with plumbers to start and complete this task. This creates additional costs for propane water heater customers. According to the Florida Natural Gas Association, the installers of each of these gases have the same capabilities for their job duties. For example, currently there are three companies within the state that have natural gas and propane sides to their operations. Their employees can disconnect and reconnect water lines when servicing natural gas water heaters, but the same employees cannot do this when servicing propane water heaters.[2]

Effects of Proposed Changes

The bill extends the authority to disconnect and reconnect water lines in the servicing or replacement of an existing water heater to licensed Category I liquefied petroleum gas dealers, LP gas installers, and specialty installers.

Florida Homeowners' Construction Recovery Fund (Sections 3-7)

The Florida Homeowners' Construction Recovery Fund (fund) is created in s. 489.140, F.S., as a separate account in the Professional Regulation Trust Fund.

According to the Department of Business and Professional Regulation (DBPR), the fund was created in 1993, after Hurricane Andrew, as a fund of last resort to compensate consumers who contracted for construction, repair, or improvement of their Florida residence and who suffered monetary damages due to the financial misconduct, abandonment, or fraudulent statement of the licensed contractor,[3] financially responsible officer, or business organization licensed under ch. 489, F.S.[4]

The fund is financed by a 1.5 percent surcharge on all building permit fees associated with the enforcement of the Florida Building Code.[5] The proceeds from the surcharge are allocated equally to the fund and support the operations of the Building Code Administrators and Inspectors Board.[6, 7]

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[2] Email from a representative of the Florida Natural Gas Association, RE: propane tank installations (Mar. 13, 2015).
[3] Florida Department of Business and Professional Regulation, Agency Analysis of 2014 Senate Bill 1098 (Mar. 11, 2014).
[4] s. 489.1402(1)(g), F.S.
[5] s. 468.631(1), F.S.
[6] *Id.*

A claimant must be a homeowner and the damage must have been caused by a Division I contractor.[8] The fund is not permitted to compensate consumers who contracted with Division II contractors or to compensate consumers who suffered damages as a result of payments made in violation of the Florida Construction Lien Law under part I of ch. 713, F.S.

Division I contractors are listed in s. 489.105(3)(a)-(c), F.S., as the following:

- General contractors
- Building contractors
- Residential contractors

Division II contractors are listed in s. 489.105(3)(d)-(q), F.S., as the following:

• Sheet metal contractors	• Residential pool/spa contractors
• Roofing contractors	• Swimming pool/spa servicing contractors
• Class A air-conditioning contractors	• Plumbing contractors
• Class B air-conditioning contractors	• Underground utility and excavation contractors
• Class C air-conditioning contractors	• Solar contractors
• Mechanical contractors	• Pollutant storage systems contractors
• Commercial pool/spa contractors	• Specialty contractors

Decisions regarding the fund are made by the Construction Industry Licensing Board which is housed within DBPR.

Construction Industry Licensing Board

The Construction Industry Licensing Board (CILB) consists of 18 members who are responsible for licensing and regulating the construction industry in this state.[9] The CILB is divided into Division I and Division II members following the definitions of Division I and Division II contractors respectively, jurisdiction falling to each division relative to their scope.[10] Five members constitute a quorum for each division.

The CILB meets regularly to consider applications for licensure, to review disciplinary cases, and to conduct informal hearings related to licensure and discipline.[11] It engages in rulemaking to implement the provisions set forth in its statutes and conducts other general business, as necessary.[12]

The CILB, with respect to actions for recovery from the fund, may "intervene, enter an appearance, file an answer, defend the action, or take any action it deems appropriate and may take recourse through any appropriate method of review" on behalf of the state.[13] In accordance with DBPR rules, "The Board shall either authorize payment of the claim in full or in part, or deny the claim in full, by entry of a Final

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[7] In 2013, the Legislature gave DBPR the authority to transfer excess cash to the fund if it determines it is not needed to support the operation of the Building Code Administrators and Inspectors Board; however, DBPR may not transfer excess cash that would exceed the amount appropriated in the General Appropriations Act and any amount approved by the Legislative Budget Commission pursuant to s. 216.181, F.S. *See* sect. 2, ch. 2013-187, Laws of Fla.
[8] s. 489.1402(1)(c), (d), and (f), F.S.
[9] s. 489.107, F.S.
[10] s. 489.107(4)(c), F.S.
[11] Florida Department of Business and Professional Regulation, Construction Industry Licensing Board, *available at* http://www.myfloridalicense.com/DBPR/pro/cilb/index.html (Last visited Mar. 18, 2015).
[12] s. 489.108, F.S.
[13] s. 489.142(1), F.S.

Order in accordance with Section 489.143, F.S. Action by the Board shall be considered final agency action."[14]

Section 489.129, F.S., grants the CILB the authority to take actions against any certificateholder or registrant if the contractor, financially responsible officer, or business organization for which the contractor is a primary qualifying agent, a financially responsible officer, or a secondary qualifying agent responsible under s. 489.1195, F.S., is found guilty of certain acts, including the acts that may qualify a claim to the fund. Specifically, the acts that may qualify a claim to the fund are financial misconduct, abandonment, or fraudulent statement of the contractor[15] and are described in s. 489.129(1)(g), (j), or (k), F.S. If the violation is not expressly based on s. 489.129(1)(g), (j), or (k), F.S., the claimant must demonstrate that the contractor engaged in activity that is described in those subsections.[16]

Financial Misconduct

Section 489.129(1)(g), F.S., allows disciplinary proceedings for committing mismanagement or misconduct in the practice of contracting that causes financial harm to a customer. Financial mismanagement or misconduct occurs when:

- Valid liens have been recorded against the customer's property by the contractor for supplies or services ordered by the contractor for which the customer has paid the contractor, but the contractor has not removed the liens within 75 days of such liens;
- The contractor has abandoned a job and the percentage of completion is less than the percentage of the contract price received by the contractor, unless the contractor is entitled to retain such funds under the terms of the contract or refunds the excess funds within 30 days after abandonment; or
- The contractor's job has been completed, and the customer has been made to pay more than the original contract price, as adjusted for subsequent change orders, unless such increase in cost was the result of circumstances beyond the contractor's control, was caused by the customer, or was otherwise permitted by the terms of the contract between the contractor and the customer.

Abandonment of the Project

Section 489.129(1)(j), F.S., allows disciplinary proceedings for abandoning a construction project, which is presumed after 90 days if the contractor terminates the project without just cause or without proper notification to the owner, including the reason for termination, or fails to perform work without just cause for 90 consecutive days.

Fraudulent Statement by the Contractor

Section 489.129(1)(k), F.S, allows disciplinary proceedings for signing a statement with respect to a project or contract:

- Falsely indicating that the work is bonded;
- Falsely indicating that payment has been made for all subcontracted work, labor, and materials which results in a financial loss to the owner, purchaser, or contractor; or
- Falsely indicating that workers' compensation and public liability insurance are provided.

[14] Rule 61G4-21.004(7), F.A.C.
[15] Florida Department of Business and Professional Regulation, Agency Analysis of 2014 Senate Bill 1098 (Mar. 11, 2014).
[16] Rule 61G4-21.003(3), F.A.C.

Discipline

Section 489.129, F.S., allows the Board to take the following actions given the circumstances above:

- Place on probation or reprimand the licensee;
- Revoke, suspend, or deny the issuance or renewal of the certificate or registration;
- Require financial restitution to a consumer for financial harm directly related to a violation of a provision of part 1 of ch. 489, F.S.;
- Impose an administrative fine not to exceed $10,000 per violation;
- Require continuing education; or
- Assess costs associated with investigation and prosecution.

Claims Process

The claimant must have obtained a final judgment, arbitration award, or Board-issued restitution order against the contractor for damages that are a direct result of a compensable violation. A claim for recovery must be made within one year after the conclusion of any civil, criminal, administrative action, or award in arbitration based on the act.[17]

Completed claim forms must be submitted with:

- A copy of the complaint that initiated action against the contractor, a certified copy of the underlying judgment, order of restitution, or award in arbitration, together with the judgment;
- A copy of any contract between the claimant and the contractor, including change orders;
- Proof of payment to the contractor and/or subcontractors;
- Copies of any liens and releases filed against the property, together with the Notice of Claim and Notice to Owner; copies of applicable bonds, sureties, guarantees, warranties, letters of credit and/or policies of insurance; and
- Certified copies of levy and execution documents and proof of all efforts and inability to collect the judgment or restitution order, and other documentation as may be required by the Board to determine causation of injury or specific actual damages.[18]

Pursuant to s. 489.143, F.S., each recovery claim is limited to both a per-claim maximum amount and a total lifetime per-contractor maximum. For contracts entered prior to July 1, 2004, the fund claims are limited to $25,000 per claim with a total life time aggregate limit of $250,000 per licensee.[19] For contracts entered after July 1, 2004, the per-claim payment limits are increased to $50,000 with a total lifetime aggregate of $500,000 per licensee.[20] Claims are paid in the order that they are filed.[21]

The Board will not compensate claimants from the recovery fund for any of the following reasons.

- The claimant is a licensee who acted as the contractor;
- The claimant is the spouse of the judgment debtor or licensee or a personal representative of such spouse;
- The claim is based upon a construction contract in which the licensee was acting with respect to the property owned or controlled by the licensee;
- The claim is based upon a construction contract in which the contractor did not hold a valid and current license at the time of the construction contract;

[17] Rule 61G4-21.003(5), F.A.C.
[18] Rule 61G4-21.003(2), F.A.C.
[19] s. 489.143(2) and (5), F.S.
[20] *Id.*
[21] s. 489.143(6), F.S.

- The claimant was associated in a business relationship with the licensee other than the contract at issue;
- When, after notice, the claimant has failed to provide documentation in support of the claims required by rule;
- Where the licensee has reached the aggregate limit; or
- The claimant has contracted for scope of work described in s. 489.105(3)(d)-(q), F.S. [Division II contractors].[22]

The fund is also not permitted to compensate consumers who suffered damages as a result of payments made in violation of Florida Construction Lien Law under part I of ch. 713, F.S.

Duty of Contractor to Give Notice of Fund

Any agreement or contract for the repair, restoration, improvement, or construction to residential real property must contain a statutorily mandated notification statement informing the consumer of their rights under the recovery fund, unless the total contract price is less than $2,500.[23]

Effects of Proposed Changes

The bill revises the law to include Division II contractors within the parameters of the fund. Specifically, it revises the statutory limits on recovery payments to include Division II contracts beginning January 1, 2016, for any contract entered into after July 1, 2015. The bill limits Division II claims to $15,000 per claim with a $150,000 lifetime maximum per licensee.

The bill removes the prohibition against paying consumer claims where the damages resulted from payments made in violation of the Florida Construction Lien Law for contracts entered into after July 1, 2015.

The bill revises language for the notice that contractors must give to homeowners informing them of their rights under the recovery fund to advise that payments from the fund are up to a limited amount.

Low-Voltage Landscape Lighting (Section 8)

Present Situation

Chapter 489, Part II, regulates electrical and alarm system contractors. This regulation seeks to enable qualified persons to obtain licensure, while ensuring that applicants have sufficient technical experience in the applicable trade prior to licensure, are tested on technical and business matters, and upon licensure are made subject to disciplinary procedures and effective policing of the profession.[24]

Section 489.503, F.S., provides exemptions to Part II for persons performing various tasks such as someone licensed as a fire protection system contractor while engaged in work as a fire protection system contractor, an employee monitoring an alarm system of a business, a lightning rod or related systems installer, etc.

Effects of Proposed Changes

The bill creates an exemption from the requirement to be a licensed electrical contractor for a person who installs low-voltage landscape lighting that contains a factory-installed electrical cord with a plug and does not require installation, wiring, or other modification to the electrical wiring of a structure.

[22] Rule 61G4-21.004(3), F.A.C.
[23] s. 489.1425, F.S.
[24] s. 489.501, F.S.

Public Swimming Pools and Public Bathing Places (Sections 9 and 10 and part of Section 13)

Present Situation

The Florida Building Commission (Commission) has included standards for the construction of public swimming pools in the code which are enforced by local building departments throughout the state. In 2012, the Legislature determined that local building entities would have jurisdiction over permitting, plan reviews, and inspections of public swimming pools and public bathing places and that the Department of Health (DOH) would continue to have jurisdiction over the operating permits for public swimming pools and public bathing places.[25]

A "public swimming pool" or "public pool" is defined as:

> A watertight structure of concrete, masonry, or other approved materials which is located either indoors or outdoors, used for bathing or swimming by humans, and filled with a filtered and disinfected water supply, together with buildings, appurtenances, and equipment used in connection therewith. This term includes a conventional pool, spa-type pool, wading pool, special purpose pool, or water recreation attraction, to which admission may be gained with or without payment of a fee and includes, but is not limited to, pools operated by or serving camps, churches, cities, counties, day care centers, group home facilities for eight or more clients, health spas, institutions, parks, state agencies, schools, subdivisions, or the cooperative living-type projects of five or more living units, such as apartments, boardinghouses, hotels, mobile home parks, motels, recreational vehicle parks, and townhouses.[26]

A "public bathing place" is defined as:

> A body of water, natural or modified by humans, for swimming, diving, and recreational bathing, together with adjacent shoreline or land area, buildings, equipment, and appurtenances pertaining thereto, used by consent of the owner or owners and held out to the public by any person or public body, irrespective of whether a fee is charged for the use thereof. The bathing water areas of public bathing places include, but are not limited to, lakes, ponds, rivers, streams, artificial impoundments, and waters along the coastal and intracoastal beaches and shores of the state.[27]

Due to the 2012 changes in ch. 514, F.S., DOH does not have authority to cite violations of the code during its routine inspections of public swimming pools and public bathing places. These routine inspections are done to ensure the pools and bathing places continue to be operated and maintained in compliance with their original approval to protect public health and safety. The DOH notes that from September 2013 through September 2014, they conducted 75,478 inspections of the 37,600 public pools in the state and found 127,413 code violations.[28] Local building officials do not perform routine inspections of public swimming pools but can respond to complaints received.

Effect of Proposed Changes

The bill requires DOH to inspect public swimming pools and public bathing places to determine if they are being operated and maintained in compliance with departmental rules, the original approved plans and specifications or variances, and the code. These inspections are to include the pool, the pool deck,

[25] Ch. 2012-184, Laws of Fla.
[26] s. 514.011(2), F.S.
[27] s. 514.011(4), F.S.
[28] Florida Department of Health, Agency Analysis of 2015 House Bill 915, p. 2 (Feb. 25, 2015).

the barrier,[29] and the bathroom facilities. The bill authorizes DOH to adopt and enforce rules regarding inspections and closure of pools and bathing places that are not in compliance with the law.

Local enforcement agencies are to permit and inspect repairs or modifications required as a result of DOH's inspections and may take enforcement action to ensure compliance and DOH is required to ensure that the rules enforced by the local enforcement agency are "not inconsistent" with the code.

The bill provides that DOH may impose fines, close public pools or public bathing places, deny, suspend, or revoke operating permits for those pools or bathing places if they are not in compliance with the original approved plans and specifications or variances and the code, in addition to not being in compliance with the Florida Building Codes Act, or the rules adopted under the Act.

Building Code Compliance and Mitigation Program (Sections 11 and 14)

Present Situation

Education and Training Requirements

The DBPR administers the Florida Building Code Compliance and Mitigation Program (program), which was created to develop, coordinate, and maintain education and outreach to persons who are required to comply with the code and ensure consistent education, training, and communication of the code's requirements, including, but not limited to, methods for mitigation of storm-related damage.[30] The program is geared toward persons licensed and employed in the design and construction industries. The services and materials under the program must be provided by a private, nonprofit corporation under contract with DBPR.[31]

The education and training requirements of the program include maintaining a thorough knowledge of the code, a thorough knowledge of code compliance and enforcement, duties related to consumers, project completion, and compliance of design and construction to protect against consumer harm, storm damage, and other damage. The Commission establishes, via rules, the qualifications of accreditors and criteria for the accreditation of courses. Currently, the program requires advanced code courses for each profession referenced in the code.

Proponents of the bill state the following:

> The advanced code course(s) was initiated when we first adopted a statewide uniform building code. It was mandated that all contractors and design professionals take the "advanced" code course. The various boards adopted the mandate as part of their rules and it became synonymous with any course that was "approved" by the Florida Building Commission. It is now just a duplicative process in that you have to get a course approved by the FBC as an "advanced" course to access any of the training dollars through the Building A Safer Florida program. The same courses are approved individually by the various professional boards. It is a duplicative, costly process—you have to pay an accreditor to accredit the course, take it to the FBC Education POC and then take it to the full Commission for approval. The courses are the same whether they get a stamp of "advanced" or not.[32]

[29] Section 515.25(2), F.S., defines "barrier" as "a fence, dwelling wall, or nondwelling wall, or any combination thereof, which completely surrounds the swimming pool and obstructs access to the swimming pool...."
[30] s. 553.841(2), F.S.
[31] s. 553.841(3), F.S.
[32] Email from a representative of the Building Industry, RE: advanced courses in Florida Building Code Compliance and Mitigation Program (March 8, 2015).

Surcharge

Section 553.721, F.S., provides for the DBPR to collect a surcharge that is 1.5 percent of the permit fees associated with enforcement of the code as defined by the uniform account criteria and specifically the uniform account code for building permits adopted for local government financial reporting. The minimum amount to be collected on any permit issued is $2. The proceeds that are collected from the surcharge are remitted to DBPR and deposited in the Professional Regulation Trust Fund quarterly. These monies fund the Florida Building Code Compliance and Mitigation Program and the Commission.[33] Section 553.721, F.S., provides that the Florida Building Code Compliance and Mitigation Program is allocated $925,000 from this fund each fiscal year.[34]

Building Code System Uniform Implementation Evaluation Workgroup

The Building Code System Uniform Implementation Evaluation Workgroup was created on January 31, 2012, by the Commission and is composed of building industry stakeholders. Its objective was to evaluate the success of the Commission to implement a unified building code throughout the state.[35]

Fire Code Interpretation Committee

Section 633.212, F.S., provides legislative intent that the "Florida Fire Prevention Code be interpreted by fire officials and local enforcement agencies in a manner that reasonably and cost-effectively protects the public safety, health, and welfare; ensures uniform interpretations throughout this state; and provides just and expeditious processes for resolving disputes regarding such interpretations." Further, it is the intent of the Legislature that the Division of State Fire Marshal establish a Fire Code Interpretation Committee composed of seven members and seven alternates, equally representing each area of the state, to which a person can pose questions regarding the interpretation of the Florida Fire Prevention Code provisions.[36]

Each nonbinding interpretation of Florida Fire Prevention Code provisions must be provided within 15 business days after receipt of a request for interpretation. The response period may be waived with the written consent of the party requesting the nonbinding interpretation and the State Fire Marshal. The interpretations are advisory only and nonbinding on the parties or the State Fire Marshal.[37, 38]

Effect of Proposed Changes

Education and Training Requirements

The bill removes the requirement that DBPR develop advanced modules for each profession when administering the Florida Building Code Compliance and Mitigation Program. The bill also removes the requirement that the Commission provide for the accreditation of courses related to the code. When this requirement is removed, the Florida Building Code Compliance and Mitigation Program course providers will still be required to have their course reviewed and approved under the appropriate board that would be reviewing and approving the course for continuing education purposes.

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[33] The Florida Building Code Compliance and Mitigation Program is established in s. 553.841, F.S.
[34] Funds used by DBPR as well as funds to be transferred to DOH shall be as prescribed in the annual General Appropriations Act.
[35] Jeff A. Blair, *Building Code System Uniform Implementation Evaluation Workgroup Report to the Florida Building Commission*, p. 19 (Apr. 8, 2013).
[36] s. 633.212(1), F.S.
[37] s. 633.212(3), F.S.
[38] The Division of State Fire Marshal may charge a fee, not to exceed $150, for each request for a review or nonbinding interpretation.

Surcharge; Building Code System Uniform Implementation Evaluation Workgroup; and Fire Code Interpretation Committee

The bill provides funding from the existing funds of the Florida Building Code Compliance and Mitigation Program, not to exceed $30,000 in Fiscal Year 2015-2016, for the recommendations made by the Building Code System Uniform Implementation Evaluation Workgroup. It also provides funding for Florida Fire Code Committee for nonbinding interpretations, not to exceed $15,000 each fiscal year.

Water Heaters (Section 12)

Present Situation

The code contains provisions regulating the installation of water heaters that have been incorporated from the International Model Codes.[39] Installation and replacement of a water heater requires a permit. The code requires a secondary steel pan when a water heater is installed where a leak will cause damage. The code does not require any water level detection or leak devices for water heaters. The International Code Council considered a similar measure for adoption in its model codes but the requirement was rejected.[40]

Effect of Proposed Changes

The bill directs local enforcement agencies that require a permit to install or replace a water heater to require that a hard-wired or battery-operated water-leak detection device be secured to the drain pan area at a level lower than the drain connection upon installation or replacement of a water heater in conditioned spaces and attics. The device must include an audible alarm and, if battery-operated, must have a 10-year low-battery notification capability.

Phased Permitting (Part of Section 13)

Present Situation

Section 553.79, F.S., prohibits any person, firm, corporation, or governmental entity to construct, erect, alter, modify, repair, or demolish any building within the state without first obtaining a permit therefor from the appropriate enforcing agency.[41] Further, a permit may not be issued for any building construction, erection, alteration, modification, repair, or addition unless the applicant for such permit complies with the requirements for plan review established by the Commission within the code. However, the code shall set standards and criteria to authorize preliminary construction before completion of all building plans review, including, but not limited to, special permits for the foundation only.[42]

Section 105.13 (phased permit approval), of the code provides the following:

> After submittal of the appropriate construction documents, the building official is authorized to issue a permit for the construction of foundations or any other part of a building or structure before the construction documents for the whole building or structure have been submitted. The holder of such permit for the foundation or other parts of a building or structure shall proceed at the holder's own risk with the building operation and without assurance that a permit for the entire structure will be granted. Corrections may be required to meet the requirements of the technical codes.

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[39] Florida Department of Business and Professional Regulation, Agency Analysis of 2015 House Bill 915, p. 2 (Mar. 9, 2015).
[40] *Id.*
[41] s. 553.79(1), F.S.
[42] s. 553.79(6), F.S.

Effects of Proposed Changes

The bill provides that after an applicant submits the appropriate construction documents, the local building official may issue a phased permit. If the building official issues a phased permit, an outside agency may not require additional reviews or approvals because the project will need additional outside agency reviews and approvals before the issuance of a master building permit. The holder of a phased permit for the foundation or other parts of a building or structure may proceed with permitted activities at the holder's own risk and without assurance that a master building permit for the entire structure will be granted. The building official may require corrections to the phased permit to meet the requirements of the technical codes.

Product Evaluation and Approval (Section 15)

Present Situation

The State Product Approval System provides manufacturers an opportunity to have building products approved for use in Florida by the Commission rather than seeking approval in each local jurisdiction where the product is used.[43] Section 553.842, F.S., directs the Commission to adopt rules to develop and implement a product evaluation and approval system that applies statewide to operate in coordination with the code. The Commission may enter into contracts to provide for administration of the product evaluation and approval system. The product evaluation and approval system is to rely on national and international consensus standards, whenever adopted by the code, for demonstrating compliance with code standards. Other standards which meet or exceed established state requirements are also to be considered.

Section 553.842(8), F.S., authorizes the Commission to adopt rules to approve the following types of entities that produce information on which product approvals are based. The entities must comply with a nationally recognized standard demonstrating independence or no conflict of interest. The Commission is directed to specifically approve the following evaluation entities:[44]

- The National Evaluation Service;
- The International Association of Plumbing and Mechanical Officials Evaluation Service;
- International Code Council Evaluation Services; and
- The Miami-Dade County Building Code Compliance Office Product Control Division.

Effect of Proposed Changes

The bill adds Underwriters Laboratories, LLC (UL), an independent safety consulting and certification company,[45] to the list of entities that are authorized to produce information on which product approvals are based.

Duct and Air Infiltration Tests (Section 16)

Present Situation

As of June 30, 2015, the new 5th Edition (2014) Florida Building Code, Energy Conservation, will go into effect. Part of this new code is section R402.4.1.2 (see below). According to this section, a home

[43] Florida Department of Business and Professional Regulation, Agency Analysis of 2015 House Bill 915, p. 2 (Mar. 9, 2015).
[44] Architects and engineers licensed in this state are also approved to conduct product evaluations, as provided in s. 553.842(5), F.S.
[45] According to Underwriters Laboratories, LLC,"UL is a global independent safety science company with more than a century of expertise innovating safety solutions from the public adoption of electricity to new breakthroughs in sustainability, renewable energy and nanotechnology." http://UL.com, (last visited March 5, 2015).

constructed to this code will be required to be tested via a blower door test/air infiltration test to demonstrate specific air infiltration levels.

Section R402.4.1.2 (testing), of the code provides the following:

> The building or dwelling unit shall be tested and verified as having an air leakage rate of not exceeding 5 air changes per hour in Climate Zones 1 and 2, and 3 air changes per hour in Climate Zones 3 through 8. Testing shall be conducted with a blower door at a pressure of 0.2 inches w.g. (50 Pascals). Where required by the *code official,* testing shall be conducted by an *approved* third party. A written report of the results of the test shall be signed by the party conducting the test and provided to the *code official.* Testing shall be performed at any time after creation of all penetrations of the *building thermal envelope.*

Effects of Proposed Changes

The bill requires local enforcement agencies to accept duct and air infiltration tests conducted by specified individuals, which would include energy raters and HVAC contractors.

B. SECTION DIRECTORY:

Section 1. Amends s. 468.609, F.S., relating to certification examination requirements for building code inspectors, plans examiners, and building code administrators.

Section 2. Amends s. 489.105, F.S., relating to plumbing contractors.

Section 3. Amends s. 489.1401, F.S., relating to the Florida Homeowners' Construction Recovery Fund.

Section 4. Amends s. 489.1402, F.S., relating to definitions.

Section 5. Amends s. 489.141, F.S. relating to claims against the recovery fund.

Section 6. Amends s. 489.1425, F.S., relating to notification provided by contractors regarding the recovery fund.

Section 7. Amends s. 489.143, F.S., relating to payments from the Florida Homeowners' Construction Recovery Fund.

Section 8. Amends s. 489.503, F.S., relating to an exemption for certain types of low-voltage landscape lighting.

Section 9. Amends s. 514.031, F.S., relating to operating permits for swimming pools.

Section 10. Amends s. 514.05, F.S., relating to denial, suspension, or revocation of a permit for certain public pools and bathing places.

Section 11. Amends s. 553.721, F.S., relating to the Florida Building Code Compliance and Mitigation Program.

Section 12. Amends s. 553.73, F.S., relating to a requirement for water heater water-leak detection devices.

Section 13. Amends s. 553.79, F.S., relating to phased permitting for construction.

Section 14. Amends s. 553.841, F.S., relating to the Florida Building Code Compliance and Mitigation Program.

Section 15. Amends s. 553.842, F.S., relating to Florida Building Code related product evaluation and approval.

Section 16. Amends s. 553.908, F.S., relating to duct and air infiltration tests.

Section 17. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The DBPR reports that under the bill, the Florida Building Commission will no longer charge continuing education providers $100 per application for accreditation of building code related education courses. This will result in an approximate $5,000 annual revenue reduction related to application fees ($100 X 50 = $5,000).

2. Expenditures:

   See *Fiscal Comments.*

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None anticipated.

2. Expenditures:

   None anticipated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Requiring hot water heaters to have an attached device with an audible alarm, and if battery-operated, have a 10-year low-battery notification capability, may result in higher costs when installing or replacing hot water heaters.

Homeowners who have been harmed by Division II contractors and receive restitution from the Florida Homeowners' Construction Recovery Fund will benefit from the bill.

D. FISCAL COMMENTS:

The DBPR reports that there will be an anticipated reduction in service charge transfers to general revenue of approximately $400 per year, due to the revenue reduction. Additionally, the Florida Building Commission will no longer need a continuing education course accreditation program administrator resulting in an approximately $22,000 in reduced expenditures.[46]

The DOH reports that, "As the violations will be cited during inspections already being done at public swimming pools, the bill does not have a significant fiscal impact on the Department."[47]

[46] Florida Department of Business and Professional Regulation, Agency Analysis of 2015 CS/HB 915 (Mar. 24, 2015).
[47] Florida Department of Health, Agency Analysis of 2015 House Bill 915, p. 2 (Feb. 25, 2015).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill authorizes DOH to adopt and enforce rules regarding inspections of public swimming pools and public bathing places and closure of pools and bathing places that are not in compliance with the law.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The elimination of s. 553.841(4) and (7), F.S., relating to the approval of advanced modules for building code education may create some confusion as to the availability of building code education courses that satisfy the statutory continuing education requirements for certain licenses. However, ss. 553.781(3) and 553.841(3), F.S., appear to provide for the development of building code-related continuing education courses. Section 553.781(3), F.S., provides that any fines collected by a local jurisdiction ... shall be used initially to help set up the parts of the reporting system for which such local jurisdiction is responsible. Any remaining moneys shall be used solely for enforcing the Florida Building Code, licensing activities relating to the Florida Building Code, or education and training on the Florida Building Code. Section 553.841(3)(a), F.S., provides that a program that is provided by a private, nonprofit corporation that is under contract with DBPR must "develop and deliver building code-related education, training, and outreach."

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On Tuesday, March 10, 2015, the Business & Professions Subcommittee adopted amendments and reported the bill favorably as a Committee Substitute. The committee substitute differs from the filed bill by:

- Making several adjustments to the training and experience required to take the certification exam for building code inspector, plans examiner, and building code administrator;
- Amending the definition of "contractor" to allow licensed Category I liquefied petroleum gas dealers, LP gas installers, and specialty installers to disconnect and reconnect water lines in the servicing or replacement of an existing water heater;
- Adding Division II contractors to the Florida Homeowners' Construction Recovery Fund section, which would allow homeowners to make a claim and receive restitution from the fund when they have been harmed by a Division II contractor, subject to certain requirements and financial caps;
- Exempting low-voltage landscape lighting with a cord and a plug from having to be installed by a licensed electrical contractor;
- Amending list of documents that local enforcement agencies must abide by in order to obtain or retain a swimming pool operating permit to be consistent with a similar section that is being amended in the bill;
- Providing funding for the recommendations made by the Building Code System Uniform Implementation Evaluation Workgroup and provides funding for Florida Fire Code informal interpretations;

- Clarifying that water heater installation requires a water leak detection device if it is being installed or replaced in a conditioned space or attic;
- Authorizing local building officials to issue phased permits for the construction of the foundation or any other part of a building or structure before the construction documents for the whole building or structure have been submitted; and
- Requiring local enforcement agencies to accept duct and air infiltration tests conducted by specified individuals, which includes energy raters and HVAC contractors.

A bill to be entitled

An act relating to building codes; amending s. 468.609, F.S.; revising the certification examination requirements for building code inspectors, plans examiners, and building code administrators; requiring the Florida Building Code Administrators and Inspectors Board to provide for issuance of certain provisional certificates; amending s. 489.105, F.S.; revising the definition of the term "plumbing contractor"; amending s. 489.1401, F.S.; revising legislative intent with respect to the purpose of the Florida Homeowners' Construction Recovery Fund; providing legislative intent that Division II contractors set apart funds to participate in the fund; amending s. 489.1402, F.S.; revising definitions; amending s. 489.141, F.S.; prohibiting certain claimants from making a claim against the recovery fund for certain contracts entered into before a specified date; amending s. 489.1425, F.S.; revising a notification provided by contractors to certain residential property owners to state that payment from the recovery fund is limited; amending s. 489.143, F.S.; revising provisions concerning payments from the recovery fund; specifying claim amounts for certain contracts entered into before or after specified dates; providing aggregate caps for

payments; amending s. 489.503, F.S.; exempting certain low-voltage landscape lighting from licensed electrical contractor installation requirements; amending s. 514.031, F.S.; requiring the Department of Health to conduct inspections of certain public pools with operating permits to ensure continued compliance with specified criteria; authorizing the department to adopt rules; specifying the department's jurisdiction for purposes of inspecting certain public pools; specifying duties of local enforcement agencies regarding modifications and repairs made to certain public pools as a result of the department's inspections; requiring the department to ensure certain rules enforced by local enforcement agencies comply with the Florida Building Code; amending s. 514.05, F.S.; specifying that the department may deny, suspend, or revoke operating permits for certain pools and bathing places if certain plans, variances, or requirements of the Florida Building Code are violated; specifying that the department may assess an administrative fine for violations by certain public pools and bathing places if certain plans, variances, or requirements of the Florida Building Code are violated; amending s. 553.721, F.S.; directing the Florida Building Code Compliance and Mitigation Program to fund from existing resources the

recommendations made by the Building Code System Uniform Implementation Evaluation Workgroup; providing a limitation; requiring that a specified amount of funds from the surcharge be used to fund certain Florida Fire Code informal interpretations; amending s. 553.73, F.S.; requiring the permitted installation or replacement of a water heater in a conditioned or attic space to include a water leak detection device; amending s. 553.79, F.S.; authorizing a building official to issue a permit for the construction of the foundation or any other part of a building or structure before the construction documents for the whole building or structure have been submitted; providing that the holder of such permit shall begin building at the holder's own risk with the building operation and without assurance that a permit for the entire structure will be granted; requiring local enforcing agencies to permit and inspect modifications and repairs made to certain public pools and public bathing places as a result of the department's inspections; amending s. 553.841, F.S.; removing provisions related to the development of advanced courses with respect to the Florida Building Code Compliance and Mitigation Program and the accreditation of courses related to the Florida Building Code; amending s. 553.842, F.S.; providing

that Underwriters Laboratories, LLC, is an approved evaluation entity; amending s. 553.908, F.S.; requiring local enforcement agencies to accept duct and air infiltration tests conducted in accordance with certain guidelines by specified individuals; providing an effective date.

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

Section 1. Subsections (2), (3), and (7) of section 468.609, Florida Statutes, are amended to read:

468.609 Administration of this part; standards for certification; additional categories of certification.—

(2) A person may take the examination for certification as a building code inspector or plans examiner pursuant to this part if the person:

(a) Is at least 18 years of age.

(b) Is of good moral character.

(c) Meets eligibility requirements according to one of the following criteria:

1. Demonstrates 5 years' combined experience in the field of construction or a related field, building code inspection, or plans review corresponding to the certification category sought;

2. Demonstrates a combination of postsecondary education in the field of construction or a related field and experience which totals 4 years, with at least 1 year of such total being

experience in construction, building code inspection, or plans review;

3. Demonstrates a combination of technical education in the field of construction or a related field and experience which totals 4 years, with at least 1 year of such total being experience in construction, building code inspection, or plans review;

4. Currently holds a standard certificate ~~as~~ issued by the board~~,~~ or a firesafety ~~fire safety~~ inspector license issued pursuant to chapter 633, has a minimum of 3 ~~5~~ years' verifiable full-time experience in inspection or plan review, and satisfactorily completes a building code inspector or plans examiner training program that provides at least 100 hours but not more ~~of not less~~ than 200 hours of cross-training in the certification category sought. The board shall establish by rule criteria for the development and implementation of the training programs. The board shall accept all classroom training offered by an approved provider if the content substantially meets the intent of the classroom component of the training program; ~~or~~

5. Demonstrates a combination of the completion of an approved training program in the field of building code inspection or plan review and a minimum of 2 years' experience in the field of building code inspection, plan review, fire code inspections, and fire plans review of new buildings as a firesafety inspector certified under s. 633.216, or construction. The approved training portion of this requirement

shall include proof of satisfactory completion of a training program that provides at least 200 hours but not more ~~of not less~~ than 300 hours of cross-training which is approved by the board in the chosen category of building code inspection or plan review in the certification category sought with at least ~~not less than~~ 20 hours but not more than 30 hours of instruction in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificateholder. The board shall coordinate with the Building Officials Association of Florida, Inc., to establish by rule the development and implementation of the training program. However, the board shall accept all classroom training offered by an approved provider if the content substantially meets the intent of the classroom component of the training program; or

6. Currently holds a standard certificate issued by the board or a firesafety inspector license issued pursuant to chapter 633 and:

a. Has at least 5 years of verifiable full-time experience as an inspector or plans examiner in a standard certification category currently held or has a minimum of 5 years' verifiable full-time experience as a firesafety inspector licensed pursuant to chapter 633; and

b. Satisfactorily completes a building code inspector or plans examiner classroom training course or program that provides at least 40 but not more than 300 hours in the certification category sought, except for one-family and two-

family dwelling training programs which are required to provide at least 500 but not more than 800 hours of training as prescribed by the board. The board shall establish by rule criteria for the development and implementation of classroom training courses and programs in each certification category.

(3) A person may take the examination for certification as a building code administrator pursuant to this part if the person:

(a) Is at least 18 years of age.

(b) Is of good moral character.

(c) Meets eligibility requirements according to one of the following criteria:

1. Demonstrates 7 ~~10~~ years' combined experience as an architect, engineer, plans examiner, building code inspector, firesafety inspector certified under s. 633.216, registered or certified contractor, or construction superintendent, with at least 3 ~~5~~ years of such experience in supervisory positions; or

2. Demonstrates a combination of postsecondary education in the field of construction or related field, no more than 5 years of which may be applied, and experience as an architect, engineer, plans examiner, building code inspector, firesafety inspector certified under s. 633.216, registered or certified contractor, or construction superintendent which totals 7 ~~10~~ years, with at least 3 ~~5~~ years of such total being experience in supervisory positions. In addition, the applicant must have completed training consisting of at least 20 hours but not more

than 30 hours of instruction in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificateholder.

(7)(a) The board shall ~~may~~ provide for the issuance of provisional certificates valid for 1 year, as specified by board rule, to any newly employed or promoted building code inspector or plans examiner who meets the eligibility requirements described in subsection (2) and any newly employed or promoted building code administrator who meets the eligibility requirements described in subsection (3). The provisional license may be renewed by the board for just cause; however, a provisional license is not valid for a period longer than 3 years.

(b) No building code administrator, plans examiner, or building code inspector may have a provisional certificate extended beyond the specified period by renewal or otherwise.

(c) The board shall ~~may~~ provide for appropriate levels of provisional certificates and may issue these certificates with such special conditions or requirements relating to the place of employment of the person holding the certificate, the supervision of such person on a consulting or advisory basis, or other matters as the board may deem necessary to protect the public safety and health.

(d) A newly employed or hired person may perform the duties of a plans examiner or building code inspector for 120 days if a provisional certificate application has been submitted

if such person is under the direct supervision of a certified building code administrator who holds a standard certification and who has found such person qualified for a provisional certificate. Direct supervision and the determination of qualifications may also be provided by a building code administrator who holds a limited or provisional certificate in a county having a population of fewer than 75,000 and in a municipality located within such county.

Section 2. Paragraph (m) of subsection (3) of section 489.105, Florida Statutes, is amended to read:

489.105 Definitions.—As used in this part:

(3) "Contractor" means the person who is qualified for, and is only responsible for, the project contracted for and means, except as exempted in this part, the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others; and whose job scope is substantially similar to the job scope described in one of the paragraphs of this subsection. For the purposes of regulation under this part, the term "demolish" applies only to demolition of steel tanks more than 50 feet in height; towers more than 50 feet in height; other structures more than 50 feet in height; and all buildings or residences. Contractors are subdivided into two divisions, Division I, consisting of those contractors

defined in paragraphs (a)-(c), and Division II, consisting of those contractors defined in paragraphs (d)-(q):

(m) "Plumbing contractor" means a contractor whose services are unlimited in the plumbing trade and includes contracting business consisting of the execution of contracts requiring the experience, financial means, knowledge, and skill to install, maintain, repair, alter, extend, or, if not prohibited by law, design plumbing. A plumbing contractor may install, maintain, repair, alter, extend, or, if not prohibited by law, design the following without obtaining an additional local regulatory license, certificate, or registration: sanitary drainage or storm drainage facilities, water and sewer plants and substations, venting systems, public or private water supply systems, septic tanks, drainage and supply wells, swimming pool piping, irrigation systems, and solar heating water systems and all appurtenances, apparatus, or equipment used in connection therewith, including boilers and pressure process piping and including the installation of water, natural gas, liquefied petroleum gas and related venting, and storm and sanitary sewer lines. The scope of work of the plumbing contractor also includes the design, if not prohibited by law, and installation, maintenance, repair, alteration, or extension of air-piping, vacuum line piping, oxygen line piping, nitrous oxide piping, and all related medical gas systems; fire line standpipes and fire sprinklers if authorized by law; ink and chemical lines; fuel oil and gasoline piping and tank and pump installation,

except bulk storage plants; and pneumatic control piping systems, all in a manner that complies with all plans, specifications, codes, laws, and regulations applicable. The scope of work of the plumbing contractor applies to private property and public property, including any excavation work incidental thereto, and includes the work of the specialty plumbing contractor. Such contractor shall subcontract, with a qualified contractor in the field concerned, all other work incidental to the work but which is specified as being the work of a trade other than that of a plumbing contractor. This definition does not limit the scope of work of any specialty contractor certified pursuant to s. 489.113(6)~~,~~ and does not require certification or registration under this part for a category I liquefied petroleum gas dealer, LP gas installer, or specialty installer who is licensed under chapter 527 or an ~~of any~~ authorized employee of a public natural gas utility or of a private natural gas utility regulated by the Public Service Commission when disconnecting and reconnecting water lines in the servicing or replacement of an existing water heater. A plumbing contractor may perform drain cleaning and clearing and install or repair rainwater catchment systems; however, a mandatory licensing requirement is not established for the performance of these specific services.

Section 3. Subsections (2) and (3) of section 489.1401, Florida Statutes, are amended to read:

489.1401 Legislative intent.—

(2) It is the intent of the Legislature that the sole purpose of the Florida Homeowners' Construction Recovery Fund is to compensate an ~~any~~ aggrieved claimant who contracted for the construction or improvement of the homeowner's residence located within this state and who has obtained a final judgment in a ~~any~~ court of competent jurisdiction, was awarded restitution by the Construction Industry Licensing Board, or received an award in arbitration against a licensee on grounds of financial mismanagement or misconduct, abandoning a construction project, or making a false statement with respect to a project. Such grievance must arise ~~and arising~~ directly out of a ~~any~~ transaction conducted when the judgment debtor was licensed and must involve an act ~~performed any of the activities~~ enumerated under s. 489.129(1)(g), (j) or (k) ~~on the homeowner's residence~~.

(3) It is the intent of the Legislature that Division I and Division II contractors set apart funds for the specific objective of participating in the fund.

Section 4. Paragraphs (d), (i), (k), and (l) of subsection (1) of section 489.1402, Florida Statutes, are amended to read:

489.1402 Homeowners' Construction Recovery Fund; definitions.—

(1) The following definitions apply to ss. 489.140-489.144:

(d) "Contractor" means a Division I or Division II contractor performing his or her respective services described in s. 489.105(3)(a)-(q) ~~489.105(3)(a)-(c)~~.

(i) "Residence" means a single-family residence, an individual residential condominium or cooperative unit, or a residential building containing not more than two residential units in which the owner contracting for the improvement is residing or will reside 6 months or more each calendar year upon completion of the improvement.

(k) "Same transaction" means a contract, or a ~~any~~ series of contracts, between a claimant and a contractor or qualified business, when such contract or contracts involve the same property or contiguous properties and are entered into either at one time or serially.

(l) "Valid and current license," for the purpose of s. 489.141(2)(d), means a ~~any~~ license issued pursuant to this part to a licensee, including a license in an active, inactive, delinquent, or suspended status.

Section 5. Subsections (1) and (2) of section 489.141, Florida Statutes, are amended to read:

489.141 Conditions for recovery; eligibility.—

(1) A ~~Any~~ claimant is eligible to seek recovery from the recovery fund after making ~~having made~~ a claim and exhausting the limits of any available bond, cash bond, surety, guarantee, warranty, letter of credit, or policy of insurance if~~, provided that~~ each of the following conditions is satisfied:

(a) The claimant has received a final judgment in a court of competent jurisdiction in this state or has received an award in arbitration or the Construction Industry Licensing Board has

issued a final order directing the licensee to pay restitution to the claimant. The board may waive this requirement if:

1. The claimant is unable to secure a final judgment against the licensee due to the death of the licensee; or

2. The claimant has sought to have assets involving the transaction that gave rise to the claim removed from the bankruptcy proceedings so that the matter might be heard in a court of competent jurisdiction in this state and, after due diligence, the claimant is precluded by action of the bankruptcy court from securing a final judgment against the licensee.

(b) The judgment, award, or restitution is based upon a violation of s. 489.129(1)(g), (j), or (k) or s. 713.35.

(c) The violation was committed by a licensee.

(d) The judgment, award, or restitution order specifies the actual damages suffered as a consequence of such violation.

(e) The contract was executed and the violation occurred on or after July 1, 1993, and provided that:

1. The claimant has caused to be issued a writ of execution upon such judgment, and the officer executing the writ has made a return showing that no personal or real property of the judgment debtor or licensee liable to be levied upon in satisfaction of the judgment can be found or that the amount realized on the sale of the judgment debtor's or licensee's property pursuant to such execution was insufficient to satisfy the judgment;

2. If the claimant is unable to comply with subparagraph

1. for a valid reason to be determined by the board, the claimant has made all reasonable searches and inquiries to ascertain whether the judgment debtor or licensee is possessed of real or personal property or other assets subject to being sold or applied in satisfaction of the judgment and by his or her search has discovered no property or assets or has discovered property and assets and has taken all necessary action and proceedings for the application thereof to the judgment but the amount thereby realized was insufficient to satisfy the judgment; and

3. The claimant has made a diligent attempt, as defined by board rule, to collect the restitution awarded by the board.

(f) A claim for recovery is made within 1 year after the conclusion of any civil, criminal, or administrative action or award in arbitration based on the act. This paragraph applies to any claim filed with the board after October 1, 1998.

(g) Any amounts recovered by the claimant from the judgment debtor or licensee, or from any other source, have been applied to the damages awarded by the court or the amount of restitution ordered by the board.

(h) The claimant is not a person who is precluded by this act from making a claim for recovery.

(2) A claimant is not qualified to make a claim for recovery from the recovery fund~~,~~ if:

(a) The claimant is the spouse of the judgment debtor or licensee or a personal representative of such spouse;

(b) The claimant is a licensee who acted as the contractor in the transaction that ~~which~~ is the subject of the claim;

(c) The claim is based upon a construction contract in which the licensee was acting with respect to the property owned or controlled by the licensee;

(d) The claim is based upon a construction contract in which the contractor did not hold a valid and current license at the time of the construction contract;

(e) The claimant was associated in a business relationship with the licensee other than the contract at issue; or

~~(f) The claimant has suffered damages as the result of making improper payments to a contractor as defined in part I of chapter 713; or~~

(f)~~(g)~~ The claimant has entered into a contract ~~contracted~~ with a licensee to perform a scope of work described in s. 489.105(3)(d)-(q) before July 1, 2015 ~~489.105(3)(d)-(p)~~.

Section 6. Subsection (1) of section 489.1425, Florida Statutes, is amended to read:

489.1425 Duty of contractor to notify residential property owner of recovery fund.—

(1) Each ~~Any~~ agreement or contract for repair, restoration, improvement, or construction to residential real property must contain a written statement explaining the consumer's rights under the recovery fund, except where the value of all labor and materials does not exceed $2,500. The written statement must be substantially in the following form:

FLORIDA HOMEOWNERS' CONSTRUCTION
RECOVERY FUND

PAYMENT, UP TO A LIMITED AMOUNT, MAY BE AVAILABLE FROM THE FLORIDA HOMEOWNERS' CONSTRUCTION RECOVERY FUND IF YOU LOSE MONEY ON A PROJECT PERFORMED UNDER CONTRACT, WHERE THE LOSS RESULTS FROM SPECIFIED VIOLATIONS OF FLORIDA LAW BY A LICENSED CONTRACTOR. FOR INFORMATION ABOUT THE RECOVERY FUND AND FILING A CLAIM, CONTACT THE FLORIDA CONSTRUCTION INDUSTRY LICENSING BOARD AT THE FOLLOWING TELEPHONE NUMBER AND ADDRESS:

The statement must ~~shall~~ be immediately followed by the board's address and telephone number as established by board rule.

Section 7. Section 489.143, Florida Statutes, is amended to read:

489.143 Payment from the fund.—

(1) The fund shall be disbursed as provided in s. 489.141 on a final order of the board.

(2) A ~~Any~~ claimant who meets all of the conditions prescribed in s. 489.141 may apply to the board to cause payment to be made to a claimant from the recovery fund in an amount equal to the judgment, award, or restitution order or $25,000, whichever is less, or an amount equal to the unsatisfied portion of such person's judgment, award, or restitution order, but only to the extent and amount of actual damages suffered by the

claimant, and only up to the maximum payment allowed for each respective Division I and Division II claim. Payment from the fund for other costs related to or pursuant to civil proceedings such as postjudgment interest, attorney ~~attorney's~~ fees, court costs, medical damages, and punitive damages is prohibited. The recovery fund is not obligated to pay a ~~any~~ judgment, an award, or a restitution order, or any portion thereof, which is not expressly based on one of the grounds for recovery set forth in s. 489.141.

(3) Beginning January 1, 2005, for each Division I contract entered into after July 1, 2004, payment from the recovery fund shall be subject to a $50,000 maximum payment for each Division I claim. Beginning January 1, 2016, for each Division II contract entered into on or after July 1, 2015, payment from the recovery fund shall be subject to a $15,000 maximum payment for each Division II claim.

(4) ~~(3)~~ Upon receipt by a claimant under subsection (2) of payment from the recovery fund, the claimant shall assign his or her additional right, title, and interest in the judgment, award, or restitution order, to the extent of such payment, to the board, and thereupon the board shall be subrogated to the right, title, and interest of the claimant; and any amount subsequently recovered on the judgment, award, or restitution order, to the extent of the right, title, and interest of the board therein, shall be for the purpose of reimbursing the recovery fund.

(5)~~(4)~~ Payments for claims arising out of the same transaction shall be limited, in the aggregate, to the lesser of the judgment, award, or restitution order or the maximum payment allowed for a Division I or Division II claim, regardless of the number of claimants involved in the transaction.

(6)~~(5)~~ For contracts entered into before July 1, 2004, payments for claims against any one licensee may ~~shall~~ not exceed, in the aggregate, $100,000 annually, up to a total aggregate of $250,000. For any claim approved by the board which is in excess of the annual cap, the amount in excess of $100,000 up to the total aggregate cap of $250,000 is eligible for payment in the next and succeeding fiscal years, but only after all claims for the then-current calendar year have been paid. Payments may not exceed the aggregate annual or per claimant limits under law. Beginning January 1, 2005, for each Division I contract entered into after July 1, 2004, payment from the recovery fund is subject only to a total aggregate cap of $500,000 for each Division I licensee. Beginning January 1, 2016, for each Division II contract entered into on or after July 1, 2015, payment from the recovery fund is subject only to a total aggregate cap of $150,000 for each Division II licensee.

(7)~~(6)~~ Claims shall be paid in the order filed, up to the aggregate limits for each transaction and licensee and to the limits of the amount appropriated to pay claims against the fund ~~for the fiscal year in which the claims were filed~~. Payments may not exceed the total aggregate cap per license or per claimant

limits under this section.

(8)~~(7)~~ If the annual appropriation is exhausted with claims pending, such claims shall be carried forward to the next fiscal year. Any moneys in excess of pending claims remaining in the recovery fund at the end of the fiscal year shall be paid as provided in s. 468.631.

(9)~~(8)~~ Upon the payment of any amount from the recovery fund in settlement of a claim in satisfaction of a judgment, award, or restitution order against a licensee as described in s. 489.141, the license of such licensee shall be automatically suspended, without further administrative action, upon the date of payment from the fund. The license of such licensee may ~~shall~~ not be reinstated until he or she has repaid in full, plus interest, the amount paid from the fund. A discharge of bankruptcy does not relieve a person from the penalties and disabilities provided in this section.

(10)~~(9)~~ A ~~Any~~ firm, a corporation, a partnership, or an association, or a ~~any~~ person acting in his or her individual capacity, who aids, abets, solicits, or conspires with another ~~any~~ person to knowingly present or cause to be presented a ~~any~~ false or fraudulent claim for the payment of a loss under this act commits ~~is guilty of~~ a third-degree felony, punishable as provided in s. 775.082 or s. 775.084 and by a fine of up to ~~not exceeding~~ $30,000~~,~~ unless the value of the fraud exceeds that amount, ~~$30,000~~ in which event the fine may not exceed double the value of the fraud.

(11)~~(10)~~ Each payment ~~All payments~~ and disbursement ~~disbursements~~ from the recovery fund shall be made by the Chief Financial Officer upon a voucher signed by the secretary of the department or the secretary's designee.

Section 8. Subsection (24) is added to section 489.503, Florida Statutes, to read:

489.503 Exemptions.—This part does not apply to:

(24) A person who installs low-voltage landscape lighting that contains a factory-installed electrical cord with plug and does not require installation, wiring, or other modification to the electrical wiring of a structure.

Section 9. Subsections (2) through (5) of section 514.031, Florida Statutes, are renumbered as subsections (3) through (6), respectively, and a new subsection (2) is added to that section to read:

514.031 Permit necessary to operate public swimming pool.—

(2) The department shall ensure through inspections that a public swimming pool with an operating permit continues to be operated and maintained in compliance with rules adopted under this section, the original approved plans and specifications or variances, and the Florida Building Code adopted under chapter 553 applicable to public pools or public bathing places. The department may adopt and enforce rules to implement this subsection, including provisions for closing those pools and bathing places not in compliance. For purposes of this subsection, the department's jurisdiction includes the pool, the

pool deck, the barrier as defined in s. 515.25, and the bathroom facilities for pool patrons. The local enforcement agency shall permit and inspect repairs or modifications required as a result of the department's inspections and may take enforcement action to ensure compliance. The department shall ensure that the rules enforced by the local enforcement agency under this subsection are not inconsistent with the Florida Building Code adopted under chapter 553.

Section 10. Subsections (1), (2), and (5) of section 514.05, Florida Statutes, are amended to read:

514.05 Denial, suspension, or revocation of permit; administrative fines.—

(1) The department may deny an application for an ~~a~~ operating permit, suspend or revoke a permit issued to any person or public body, or impose an administrative fine upon the failure of such person or public body to comply with the provisions of this chapter, the original approved plans and specifications or variances, the Florida Building Code adopted under chapter 553 applicable to public pools or public bathing places, or the rules adopted hereunder.

(2) The department may impose an administrative fine, which shall not exceed $500 for each violation, for the violation of this chapter, the original approved plans and specifications or variances, the Florida Building Code adopted under chapter 553 applicable to public pools or public bathing places, or the rules adopted hereunder and for the violation of

~~any of the provisions of~~ chapter 386. Notice of intent to impose such fine shall be given by the department to the alleged violator. Each day that a violation continues may constitute a separate violation.

(5) Under conditions specified by rule, the department may close a public pool that is not in compliance with this chapter, the original approved plans and specifications or variances, the Florida Building Code adopted under chapter 553 applicable to public pools or public bathing places, or the rules adopted under this chapter.

Section 11. Section 553.721, Florida Statutes, is amended to read:

553.721 Surcharge.—In order for the Department of Business and Professional Regulation to administer and carry out the purposes of this part and related activities, there is created a surcharge, to be assessed at the rate of 1.5 percent of the permit fees associated with enforcement of the Florida Building Code as defined by the uniform account criteria and specifically the uniform account code for building permits adopted for local government financial reporting pursuant to s. 218.32. The minimum amount collected on any permit issued shall be $2. The unit of government responsible for collecting a permit fee pursuant to s. 125.56(4) or s. 166.201 shall collect the surcharge and electronically remit the funds collected to the department on a quarterly calendar basis for the preceding quarter and continuing each third month thereafter. The unit of

government shall retain 10 percent of the surcharge collected to fund the participation of building departments in the national and state building code adoption processes and to provide education related to enforcement of the Florida Building Code. All funds remitted to the department pursuant to this section shall be deposited in the Professional Regulation Trust Fund. Funds collected from the surcharge shall be allocated to fund the Florida Building Commission and the Florida Building Code Compliance and Mitigation Program under s. 553.841. Funds allocated to the Florida Building Code Compliance and Mitigation Program shall be $925,000 each fiscal year. The Florida Building Code Compliance and Mitigation Program shall fund the recommendations made by the Building Code System Uniform Implementation Evaluation Workgroup, dated April 8, 2013, from existing resources, not to exceed $30,000 in the 2015-2016 fiscal year. Funds collected from the surcharge shall also be used to fund Florida Fire Code informal interpretations managed by the State Fire Marshal and shall be limited to $15,000 each fiscal year. The funds collected from the surcharge may not be used to fund research on techniques for mitigation of radon in existing buildings. Funds used by the department as well as funds to be transferred to the Department of Health and the State Fire Marshal shall be as prescribed in the annual General Appropriations Act. The department shall adopt rules governing the collection and remittance of surcharges pursuant to chapter 120.

Section 12. Subsection (19) is added to section 553.73, Florida Statutes, to read:

553.73 Florida Building Code.—

(19) A local enforcing agency that requires a permit to install or replace a water heater in a conditioned or attic space shall require that a hard-wired or battery-operated water leak detection device be secured to the drain pan area at a level lower than the drain connection upon installation or replacement of the water heater. The device must include an audible alarm and, if battery-operated, must have a 10-year low-battery notification capability.

Section 13. Subsections (6) and (11) of section 553.79, Florida Statutes, are amended to read:

553.79 Permits; applications; issuance; inspections.—

(6) A permit may not be issued for any building construction, erection, alteration, modification, repair, or addition unless the applicant for such permit complies with the requirements for plan review established by the Florida Building Commission within the Florida Building Code. However, the code shall set standards and criteria to authorize preliminary construction before completion of all building plans review, including, but not limited to, special permits for the foundation only, and such standards shall take effect concurrent with the first effective date of the Florida Building Code. After submittal of the appropriate construction documents, the building official is authorized to issue a permit for the

construction of foundations or any other part of a building or structure before the construction documents for the whole building or structure have been submitted. No other agency review or approval may be required before the issuance of a phased permit due to the fact that the project will need all the necessary outside agencies' reviews and approvals before the issuance of a master building permit. The holder of such permit for the foundation or other parts of a building or structure shall proceed at the holder's own risk with the building operation and without assurance that a permit for the entire structure will be granted. Corrections may be required to meet the requirements of the technical codes.

(11)(a) The local enforcing agency may not issue a building permit to construct, develop, or modify a public swimming pool without proof of application, whether complete or incomplete, for an operating permit pursuant to s. 514.031. A certificate of completion or occupancy may not be issued until such operating permit is issued. The local enforcing agency shall conduct its review of the building permit application upon filing and in accordance with this chapter. The local enforcing agency may confer with the Department of Health, if necessary, but may not delay the building permit application review while awaiting comment from the Department of Health.

(b) If the department determines under s. 514.031(2) that a public pool or a public bathing place is not being operated or maintained in compliance with department's rules, the original

approved plans and specifications or variances, and the Florida Building Code, the local enforcing agency shall permit and inspect the repairs or modifications required as a result of the department's inspections and may take enforcement action to ensure compliance.

Section 14. Subsections (4) and (7) of section 553.841, Florida Statutes, are amended, to read:

553.841 Building code compliance and mitigation program.—

~~(4) In administering the Florida Building Code Compliance and Mitigation Program, the department shall maintain, update, develop, or cause to be developed advanced modules designed for use by each profession.~~

~~(7) The Florida Building Commission shall provide by rule for the accreditation of courses related to the Florida Building Code by accreditors approved by the commission. The commission shall establish qualifications of accreditors and criteria for the accreditation of courses by rule. The commission may revoke the accreditation of a course by an accreditor if the accreditation is demonstrated to violate this part or the rules of the commission.~~

Section 15. Paragraph (a) of subsection (8) of section 553.842, Florida Statutes, is amended to read:

553.842 Product evaluation and approval.—

(8) The commission may adopt rules to approve the following types of entities that produce information on which product approvals are based. All of the following entities,

including engineers and architects, must comply with a nationally recognized standard demonstrating independence or no conflict of interest:

(a) Evaluation entities approved pursuant to this paragraph. The commission shall specifically approve the National Evaluation Service, the International Association of Plumbing and Mechanical Officials Evaluation Service, the International Code Council Evaluation Services, Underwriters Laboratories, LLC, and the Miami-Dade County Building Code Compliance Office Product Control Division. Architects and engineers licensed in this state are also approved to conduct product evaluations as provided in subsection (5).

Section 16. Section 553.908, Florida Statutes, is amended to read:

553.908 Inspection.—Before construction or renovation is completed, the local enforcement agency shall inspect buildings for compliance with the standards of this part. The local enforcement agency shall accept duct and air infiltration tests conducted in accordance with the Florida Building Code-Energy Conservation by individuals certified as set forth in s. 553.993(5) or (7) or individuals licensed under s. 489.105(3)(f), (g), or (i) who perform duct testing. The local enforcement agency may accept inspections in whole or in part by individuals certified in accordance with s. 553.993(5) or (7) or by individuals certified as energy inspectors by the International Code Council, provided that the inspection

729 complies with the Florida Building Code-Energy Conservation.

730 Section 17. 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: Government Operations Appropriations Subcommittee
Representative Nuñez offered the following:

Amendment (with title amendment)

Remove lines 532-582 and insert:

Section 9. Subsection (3) of section 514.011, Florida Statutes, is amended to read:

514.011 Definitions.—As used in this chapter:

(3) "Private pool" means a facility used only by an individual, family, or living unit members and their guests which does not serve any type of cooperative housing or joint tenancy of five or more living units. Anything to the contrary notwithstanding, a portable pool used exclusively for the purpose of providing swimming lessons or related instruction in support of an established "Learn to Swim" educational program sponsored or provided by a county school district shall be

considered as a "private pool" for purposes of the exemptions provided under s. 514.0113.

Section 10. Subsection (3) of section 514.0115, Florida Statutes, is amended to read:

514.0115 Exemptions from supervision or regulation; variances.—

(3) A private pool used for instructional purposes in swimming shall not be regulated as a public pool, nor shall a portable pool used for instructional purposes or in furtherance of an approved "Learn to Swim" program be regulated as a public pool.

Section 11. Subsection (5) of section 514.031, Florida Statutes, is amended to read:

514.031 Permit necessary to operate public swimming pool.—

(5) An owner or operator of a public swimming pool, including, but not limited to, a spa, wading, or special purpose pool, to which admittance is obtained by membership for a fee shall post in a prominent location within the facility the most recent pool inspection report issued by the department pertaining to the health and safety conditions of such facility. The report shall be legible and readily accessible to members or potential members. The department shall adopt rules to enforce this subsection. A portable pool may not be used as a public pool, unless it is exempt under s. 514.0115.

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

Remove lines 30-50 and insert:

amending s. 514.011, F.S.; adding "Learn to Swim" programs with portable pools to the definition of private pool; amending s. 514.0115, F.S.; exempting a portable pool used for instructional purposes from being regulated as a public pool; amending s. 514.031, F.S.; allowing portable pools for the purpose of a "Learn to Swim" program to be used as a public pool; amending s. 553.721, F.S.; directing the

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: Government Operations Appropriations Subcommittee

Representative Eagle offered the following:

Amendment (with title amendment)

Remove lines 625-635

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

Remove lines 57-60 and insert:

Florida Fire Code informal interpretations;

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Government Operations Appropriations Subcommittee

Representative Eagle offered the following:

Amendment (with title amendment)

Remove lines 663-681

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

Remove lines 69-73 and insert:

entire structure will be granted; amending s. 553.841, F.S.; removing

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1147 Honor and Remember Flag
SPONSOR(S): Government Operations Subcommittee; Burgess, Jr. and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1410

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	12 Y, 0 N, As CS	Moore	Williamson
2) Government Operations Appropriations Subcommittee		White CCW	Topp BDT
3) State Affairs Committee			

SUMMARY ANALYSIS

Current law regulates the display of certain flags at specified locations in the state. The United States flag, the Florida state flag, and the POW-MIA flag must be displayed at certain venues on specified days. In addition, the Firefighter Memorial Flag may be displayed at certain locations and events.

The bill designates the Honor and Remember Flag as an emblem of the state to honor the service and sacrifice of the brave men and women of the United States Armed Forces who have given their lives in the line of duty. The bill authorizes the flag to be displayed at specified state-owned locations on certain days.

The bill also authorizes local governments to display the flag and authorizes each department, agency, or local government displaying the flag to establish regulations related to display of the flag. The bill allows the Department of Management Services to procure and distribute the flags.

The fiscal impact to state and local governments is unknown because the provisions of the bill are permissive.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Display of United States and Florida State Flags

Current law requires the United States and Florida state flags to be displayed in certain venues. The United States flag must be displayed daily, when the weather permits, at the state capitol, at every county courthouse,[1] at every publicly supported and controlled auditorium,[2] and on the grounds and in the classrooms of public K-20 educational institutions.[3] The U.S. flag also must be displayed at each polling station on election days.[4]

The state flag must be displayed daily, when the weather permits, on the grounds of every public K-20 educational institution in the state, except when the institution or school is closed for vacation.[5] The Governor is required to adopt a protocol on state flag display.[6] The protocol must provide guidelines for the proper display of the flag and for the lowering of the flag to half-staff on appropriate occasions, such as on holidays and upon the death of high-ranking state officials, uniformed law enforcement and fire service personnel, and prominent citizens.[7]

POW-MIA Flag

A POW-MIA flag must be displayed at each state-owned building at which the U.S. flag is displayed if the POW-MIA flag is available free of charge to the agency that occupies the building and if such display is in accordance with federal laws and regulations.[8] The Department of Transportation also must display the flag year round at each rest area along an interstate highway in the state.[9] In addition, the Department of Environmental Protection must display the POW-MIA flag year round at each state park where the U.S. flag is displayed.[10]

Firefighter Memorial Flag

The Division of State Fire Marshal of the Department of Financial Services is directed by law to design, produce, and implement the creation and distribution of an official state Firefighter Memorial Flag to honor firefighters who have died in the line of duty.[11] The flag may be displayed at memorial or funeral services of firefighters who have died in the line of duty, at firefighter memorials, at fire stations, at the Fallen Firefighter Memorial located at the Florida State Fire College in Ocala, by the families of fallen firefighters, and at any other location designated by the State Fire Marshal.[12]

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[1] Section 256.01, F.S.
[2] Section 256.11, F.S.
[3] Section 1000.06(1), F.S.
[4] Section 256.011(1), F.S.
[5] Sections 256.032 and 1000.06(1), F.S.
[6] Section 256.015(1), F.S.
[7] *Id.*
[8] Section 256.12, F.S.
[9] Section 256.13, F.S.
[10] Section 256.14, F.S.
[11] Section 256.15, F.S.
[12] Section 256.15(1), F.S.

Honor and Remember Flag

The Honor and Remember Flag was created by the 501(c)3 charitable organization Honor and Remember, Inc., to serve as a visible reminder to all Americans of the U.S. military lives that have been lost in the defense and service of our national freedoms.[13] The mission of the organization is to establish the Honor and Remember Flag as a nationally recognized flag.[14]

The Honor and Remember Flag has been endorsed by various organizations, including American Gold Star Mothers, Gold Star Wives of America, Blue Star Mothers of America, Vietnam Veterans of America, the Fleet Reserve Association, the Military Officers Association of America, the Air Force Security Forces Association, the Naval Reserve Association, and the Associations of the U.S. Army, Navy, and Air Force.[15]

The Honor and Remember Flag has been adopted as an official state symbol by 20 states: Delaware, Louisiana, North Carolina, Maryland, Oklahoma, Oregon, Pennsylvania, Utah, Virginia, Kansas, Arizona, Missouri, South Carolina, New Jersey, Indiana, Texas, Wisconsin, South Dakota, Tennessee, and West Virginia.[16] Sixteen additional states, including Florida, have introduced legislation to adopt the flag as an official state symbol.[17] The Honor and Remember flags range in price from $50 for a screen-printed flag to $300 for a personalized hand-stitched flag and may be purchased from Honor and Remember, Inc.[18]

Effect of Proposed Changes

The bill designates the Honor and Remember Flag (flag) as the state's emblem of the service and sacrifice of the brave men and women of the U.S. Armed Forces who have given their lives in the line of duty.

The bill authorizes the flag to be displayed at the following locations:

- Each state-owned building at which the U.S. flag is displayed;
- All state-owned military memorials; and
- Any other state-owned location deemed appropriate.

The bill authorizes the flag to be displayed on the following days:

- Armed Forces Day, the third Saturday in May;
- Memorial Day, the last Monday in May;
- Flag Day, June 14;
- Independence Day, July 4;
- National POW-MIA Recognition Day, the third Friday in September;
- Veterans' Day, November 11;
- Gold Star Mother's Day, the last Sunday in September; and
- A day on which a member of the U.S. Armed Forces who is a resident of the state loses his or her life in the line of duty.

In addition, a local government may display the flag at any local government building at which the U.S. flag is displayed and at any other local government location it deems appropriate.

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[13] Honor and Remember, *Our Mission*, http://www.honorandremember.org/our-mission (last visited March 20, 2015).
[14] *Id.*
[15] Honor and Remember, *Official Endorsements*, http://www.honorandremember.org/category/supporters/official-endorsements (last visited March 20, 2015).
[16] Honor and Remember, *Progress Map*, http://www.honorandremember.org/progress-map (last visited March 20, 2015).
[17] Honor and Remember, http://www.honorandremember.org (last visited March 20, 2015).
[18] Honor and Remember, *Featured Products*, https://honorandremember.3dcartstores.com (last visited March 20, 2015).

The bill specifies that no more than two additional flags may be displayed on a flagpole with the Honor and Remember Flag. In addition, flags displayed pursuant to the bill must be manufactured in the U.S.

The bill authorizes each department, agency, local government, or other establishment responsible for one of the authorized locations to prescribe regulations as necessary to carry out these provisions by July 1, 2016. The regulations may not require an employee to report to work solely to display the flag.

The bill also authorizes the Department of Management Services to begin procurement and distribution of the flag as necessary by July 31, 2016.

B. SECTION DIRECTORY:

Section 1. creates s. 256.16, F.S., relating to the Honor and Remember Flag.

Section 2. provides an effective date of January 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See FISCAL COMMENTS section.

D. FISCAL COMMENTS:

The fiscal impacts to the state and local governments are unknown because the bill language is permissive, and it will depend on how many flags are purchased and at what price.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes each department, agency, local government, or other establishment responsible for one of the authorized locations to prescribe regulations as necessary to carry out the provisions of the bill by July 1, 2016.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 24, 2015, the Government Operations Subcommittee adopted four amendments and reported the bill favorably as a committee substitute. The amendments:

- Remove the provision specifying that the Honor and Remember Flag was created by Honor and Remember, Inc.
- Allow the Honor and Remember Flag to be displayed on a day on which a member of the U.S. Armed Forces who is a resident of Florida loses his or her life in the line of duty.
- Limit the number of additional flags that may be displayed on the same flagpole as the Honor and Remember Flag to two.
- Require flags displayed pursuant to the bill to be manufactured in the U.S.

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

A bill to be entitled

An act relating to the Honor and Remember flag; creating s. 256.16, F.S.; designating the Honor and Remember flag as an emblem of the state; authorizing that the flag be displayed at specified locations, on specified days, and in a specified manner; requiring displayed flags to be manufactured in the United States; authorizing local governments to display the flag; authorizing each department, agency, or local government displaying the flag to establish certain regulations; authorizing the Department of Management Services to procure and distribute such flags; providing an effective date.

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

Section 1. Section 256.16, Florida Statutes, is created to read:

256.16 Honor and Remember flag.—

(1) The Honor and Remember flag is designated as the state's emblem of the service and sacrifice of the brave men and women of the United States Armed Forces who have given their lives in the line of duty.

(2) The flag may be displayed:

(a) At the following locations:

1. Each state-owned building at which the United States

flag is displayed.

2. All state-owned military memorials.

3. Any other state-owned location deemed appropriate.

(b) On the following days:

1. Armed Forces Day, the third Saturday in May.

2. Memorial Day, the last Monday in May.

3. Flag Day, June 14.

4. Independence Day, July 4.

5. National POW-MIA Recognition Day, the third Friday in September.

6. Veterans' Day, November 11.

7. Gold Star Mother's Day, the last Sunday in September.

8. A day on which a member of the United States Armed Forces who is a resident of the state loses his or her life in the line of duty.

(c) In a manner designed to ensure visibility to the public.

(d) With no more than two additional flags when displayed together on a flagpole.

(3) A flag displayed pursuant to this section must be manufactured in the United States.

(4) A local government may choose to display the flag in accordance with paragraphs (2)(b), (c), and (d) at any local government building at which the United States flag is displayed and at any other local government location it deems appropriate.

(5) By July 1, 2016, each department, agency, or other

establishment responsible for a location specified in paragraph (2)(a), or a local government pursuant to subsection (3), may prescribe such regulations as necessary to carry out this section. Such regulations may not require an employee to report to work solely to provide for display of the flag.

(6) By July 31, 2016, the Department of Management Services may begin procurement and distribution of the flag as necessary to comply with this section.

Section 2. This act shall take effect January 1, 2016.

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: Government Operations Appropriations Subcommittee

Representative Burgess offered the following:

Amendment (with title amendment)

Remove lines 52-60

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

Remove lines 9-13 and insert:

flag; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1219 Public Food Service Establishments
SPONSOR(S): Business & Professions Subcommittee; Raulerson and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1390

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	12 Y, 0 N, As CS	Butler	Luczynski
2) Government Operations Appropriations Subcommittee		Topp	Topp
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The Division of Hotels and Restaurants (Division) of the Department of Business and Professional Regulation (Department) licenses and inspects public food service establishments, which are defined as a place where food is prepared, served, or sold for consumption by the general public.

An eating place that is excluded from the definition of "public food service establishment" is removed from the regulatory oversight of the Division. The Division will not be able to charge a license fee, conduct inspections, require compliance with health, safety, welfare and sanitary requirements, or pursue administrative remedies or fines against an excluded eating place.

Current law excludes from the definition of "public food service establishment" any place maintained and operated by a public or private school, college, university, church or a religious, nonprofit fraternal or nonprofit civic organization temporarily for the use of members and associates, or temporarily to serve such events as fairs, carnivals, or athletic contests.

The bill adds "food contests" to the list of temporary events that are excluded from the definition of "public food service establishment." The bill amends s. 509.013, F.S., to provide that the Division may request documentation from individuals claiming an exemption from the definition of public food service establishment. A new exemption is created for:

- A temporary eating place maintained and operated by an individual or entity at a temporary event such as a fair, carnival, food contest, or athletic contest hosted by a church or a religious, nonprofit fraternal, or nonprofit civic organization that lasts three or fewer days, if the individual or entity:
- Guarantees that a percentage of the profit generated at the event will be provided to the nonprofit host; and
- Does not generate more than $4,000 in total annual revenue during the previous calendar year from all eating places and temporary events that it maintains and operates.

The bill amends s. 509.032, F.S., to provide the Division with the authority to require sponsors for temporary food services events to submit additional information to the Division related to individuals or entities claiming an exemption.

The bill is expected to have a negative fiscal impact on state funds by reducing revenues to the Hotels and Restaurants Trust Fund up to $228,410 annually. However, the Department estimates that the fiscal year-end balance of the Trust Fund (including the impact of CS/HB 1219) will maintain a positive surplus cash balance of: $14.1 million in FY 2015-16, $17.4 in FY 2016-17, and $20.8 in FY 2017-18.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Food Service Establishments

The Division of Hotels and Restaurants (Division) within the Department of Business and Professional Regulation (Department) is the state agency charged with enforcing the provisions of part I of ch. 509, F.S., and all other applicable laws relating to the inspection and regulation of public food service establishments for the purpose of protecting the public health, safety, and welfare.

The Division licenses and inspects public food service establishments, defined by s. 509.013(5)(a), F.S., to mean:

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

A "temporary food service event" means any event of 30 days or less in duration where food is prepared, served, or sold to the general public.[1]

At the end of fiscal year 2013-2014, there were 87,083 licensed public food service establishments, including seating, permanent non-seating, hotdog carts, and mobile food dispensing vehicles.[2] The number of temporary event license applications processed during the last three fiscal years:

Fiscal Year	Temporary Event license Applications[3]
2013-14	7,718
2012-13	7,292
2011-12	7,125

During the last three fiscal years, one confirmed foodborne illness outbreak occurred in 2013 which sickened eight individuals.[4]

Exclusions from the Definition of Public Food Service Establishments

The definition of "public food service establishment" in s. 509.013(5)(b), F.S., excludes certain places, including:

- Any place maintained and operated by a public or private school, college, or university:
  - For the use of students and faculty; or
  - Temporarily to serve such events as fairs, carnivals, and athletic contests.

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[1] s. 509.13(8), F.S.

[2] Department of Business and Professional Regulation, Division of Hotels and Restaurants, *Annual Report, Fiscal Year 2013-2014*, *available at* http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/hr_annual_reports.html.

[3] Department of Business and Professional Regulation, email to staff of the Government Operations Appropriations Subcommittee, March 31, 2015.

[4] Department of Business and Professional Regulation, email to staff of the Government Operations Appropriations Subcommittee, March 31, 2015.

- Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization:
  - For the use of members and associates; or
  - Temporarily to serve such events as fairs, carnivals, or athletic contests.

The Division broadly applies "members and associates" when determining licensure requirements.

The Division does not license or inspect temporary food service events when the food is prepared and served by an excluded entity. In Fiscal Year 2013-14, the Division licensed and inspected 7,718 public food service establishments and food vendors at temporary food service events. The Division collected an estimated $626,546 in temporary event license fees in Fiscal Year 2013-14.

Sponsors of Temporary Food Service Events

Pursuant to s. 509.032(3)(c), F.S., sponsors of temporary food service events are required to notify the Division at least three days before the scheduled event of several details of the event, including the type of food service proposed, the time and location of the event, a complete list of food service vendors participating in the event, the number of individual food service facilities each vendor will operate at the event, and the identification number of each food service vendor's current license as a public food service establishment or temporary food service event licensee.

The Division needs this information to prepare and send enough inspectors to efficiently inspect each temporary food service establishment before the event begins or soon after the event begins. Generally the Division sends enough inspectors to inspect every temporary food service establishment within an hour.

Notification to the Division may be completed orally, by telephone, in person, or in writing and this notification process may not be used to circumvent the license requirements of this ch. 509, F.S.

Effect of the Bill

The bill excludes temporary food contests from the definition of "public food service establishment" if conducted at any place maintained and operated by a public or private school, college, university, church, or a religious, nonprofit fraternal, or nonprofit civic organization.

The bill amends s. 509.013(5)(b)3., F.S., to provide that the Division may request documentation from individuals claiming an exemption from the definition of public food service establishment. A new exemption is created for:

- A temporary eating place maintained and operated by an individual or entity at a temporary event such as a fair, carnival, food contest, or athletic contest hosted by a church or a religious, nonprofit fraternal, or nonprofit civic organization that lasts three or fewer days, if the individual or entity:
  - Guarantees that a percentage of the profit generated at the event will be provided to the nonprofit host; and
  - Does not generate more than $4,000 in total annual revenue during the previous calendar year from all eating places and temporary events that it maintains and operates.

The bill does not provide a minimum percentage of profit that an individual or entity must guarantee to the nonprofit host to be excluded from the definition of "public food service establishment." Therefore, this exclusion could be applied to any food vendor at an event hosted by a nonprofit organization that guarantees any percentage of profit to the host. The Division estimates a loss of up to 100 percent of temporary event permit fee revenue for events that last less than three days.[5]

[5] Florida Department of Business and Professional Regulation, Agency Analysis of 2015 Senate Bill 1390, p. 2 (Mar. 16, 2015).

The bill provides the Division with the authority to request documentation of the annual revenue generated from eating places during the previous calendar year from an individual or entity that claims an exemption.

An eating place that is excluded from the definition of "public food service establishment," is removed from the regulatory oversight of the Division. The Division will not be able to charge a permit fee, conduct inspections, require compliance with health, safety, welfare and sanitary requirements, or pursue administrative remedies or fines against an excluded eating place.

A sponsor of a temporary food service event is required to submit additional information to the Division related to individuals or entities claiming an exemption at one of their events, specifically, a complete list of names, addresses, phone numbers, and the type of exemption that is being claimed by each individual or entity.

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

B. SECTION DIRECTORY:

Section 1 amends s. 509.013, F.S., revising the definition of the term "public food service establishment" to exclude certain events and locations provide the Division with the authority to request documentation of individuals claiming an exemption.

Section 2 amends s. 509.032, F.S., to require a sponsor of a temporary food service event to submit additional information to the Division related to individuals or entities claiming an exemption.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The loss of license fees could decrease revenues to the Hotels and Restaurants Trust Fund by up to $228,410 annually.[6] This reduction estimate considers the worst case scenario of a 100% reduction in licensing revenue from temporary food service establishment permits for events that last three days or fewer. However, the Department estimates that the fiscal year-end balance of the Trust Fund (including the impact of CS/HB 1219) will maintain a positive cash balance of: $14.1 million in FY 2015-16, $17.4 in FY 2016-17, and $20.8 in FY 2017-18.[7]

While the Division forecasts this reduction as the worst case scenario, the annual revenue cap of $4,000 on the exempted eating places should prevent a large amount of eating places from using the exemption, and subsequently, the actual fiscal impact is indeterminate and likely less than the worst case scenario presented here.

2. Expenditures:

None.

[6] Department of Business and Professional Regulation, Agency Analysis of 2015 Senate Bill 1390, p. 4 (Mar. 16, 2015).
[7] Department of Business and Professional Regulation, Operating Account forecast of Hotels and Restaurants Trust Fund, emailed to staff of the Government Operations Appropriations Subcommittee, March 2, 2015.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill decreases permit fees and regulatory oversight for temporary food contests and for persons who operate eating places at events hosted by a church, religious organization, or nonprofit fraternal or civic organization.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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

- Removes the exclusion from permitting or inspection for an eating place operating "for the benefit of" a nonprofit organization;
- Provides a new exclusion from licensing or inspection for a temporary eating place maintained and operated by an individual or entity at a temporary event such as a fair, carnival, food contest, or athletic contest hosted by a church or a religious, nonprofit fraternal, or nonprofit civic organization that lasts three or fewer days, if the individual or entity:
  - Guarantees that a percentage of the profit generated at the event will be provided to the nonprofit host; and,
  - Does not generate more than $4,000 in total annual revenue during the previous calendar year from all eating places and temporary events that it maintains and operates.
- Authorizes the Division to request documentation of eating places claiming an exemptions; and,
- Requires the sponsor of a temporary food service event to submit to the Division a list of all eating places being operated at their event and information for any individual or entity claiming an exemption.

The staff analysis is drafted to reflect the committee substitute.

A bill to be entitled

An act relating to public food service establishments; amending s. 509.013, F.S.; revising the definition of the term "public food service establishment" to exclude certain events; amending s. 509.032, F.S.; providing additional requirements for temporary food service event sponsors; providing an effective date.

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

Section 1. Subsection (5) of section 509.013, Florida Statutes, is amended to read:

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

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

(b) The following are excluded from the definition in paragraph (a):

1. Any place maintained and operated by a public or private school, college, or university:

a. For the use of students and faculty; or

b. Temporarily to serve such events as fairs, carnivals,

food contests, and athletic contests.

2. Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization:

a. For the use of members and associates; or

b. Temporarily to serve such events as fairs, carnivals, food contests, or athletic contests.

3. Any temporary eating place maintained and operated by an individual or entity at a temporary event such as a fair, carnival, food contest, or athletic contest hosted by a church or a religious, nonprofit fraternal, or nonprofit civic organization that lasts 3 or fewer days, if the individual or entity:

a. Guarantees that a percentage of the profit generated at the event will be provided to the nonprofit host; and

b. Does not generate more than $4,000 in total annual revenue during the previous calendar year from all eating places and temporary events that it maintains and operates.

Upon request of the division, an individual or entity that claims an exclusion under this subparagraph must provide the division with documentation of such revenue generated during the previous calendar year, if any, from all eating places and temporary food service events that it maintains and operates.

4.~~3.~~ Any eating place located on an airplane, train, bus, or watercraft which is a common carrier.

5.~~4.~~ Any eating place maintained by a facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place that is regulated under s. 381.0072.

6.~~5.~~ Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services under s. 500.12.

7.~~6.~~ Any place of business where the food available for consumption is limited to ice, beverages with or without garnishment, popcorn, or prepackaged items sold without additions or preparation.

8.~~7.~~ Any theater, if the primary use is as a theater and if patron service is limited to food items customarily served to the admittees of theaters.

9.~~8.~~ Any vending machine that dispenses any food or beverages other than potentially hazardous foods, as defined by division rule.

10.~~9.~~ Any vending machine that dispenses potentially hazardous food and which is located in a facility regulated under s. 381.0072.

11.~~10.~~ Any research and development test kitchen limited to the use of employees and which is not open to the general public.

Section 2. Paragraph (c) of subsection (3) of section 509.032, Florida Statutes, is amended to read:

509.032 Duties.—

(3) SANITARY STANDARDS; EMERGENCIES; TEMPORARY FOOD SERVICE EVENTS.—The division shall:

(c) Administer a public notification process for temporary food service events and distribute educational materials that address safe food storage, preparation, and service procedures.

1. Sponsors of temporary food service events shall notify the division, on a form adopted by rule of the division, at least ~~not less than~~ 3 days before the scheduled event of the type of food service proposed;~~,~~ the time and location of the event;~~,~~ a complete list of food service vendors participating in the event; a complete list of the names, addresses, telephone numbers, and types of exclusions claimed for any individuals or entities maintaining or operating eating places and claiming an exclusion under s. 509.013(5)(b);~~,~~ the number of individual food service facilities each vendor will operate at the event;~~,~~ and the identification number of each food service vendor's current license as a public food service establishment or temporary food service event licensee. Notification may be completed orally, by telephone, in person, or in writing. A public food service establishment or food service vendor may not use this notification process to circumvent the license requirements of this chapter.

2. The division shall keep a record of all notifications received for proposed temporary food service events and shall provide appropriate educational materials to the event sponsors, including the food-recovery brochure developed under s. 595.420.

3.a. Unless excluded under s. 509.013(5)(b), a public food service establishment or other food service vendor must obtain one of the following classes of license from the division: an individual license, for a fee of no more than $105, for each temporary food service event in which it participates; or an annual license, for a fee of no more than $1,000, that entitles the licensee to participate in an unlimited number of food service events during the license period. The division shall establish license fees, by rule, and may limit the number of food service facilities a licensee may operate at a particular temporary food service event under a single license.

b. Public food service establishments holding current licenses from the division may operate under the regulations of such a license at temporary food service events of 3 days or less in duration.

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