Business & Professions Subcommittee

Tuesday, March 3, 2015
2:00 PM
12 HOB

MEETING PACKET

Steve Crisafulli
Speaker

Halsey Beshears
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Business & Professions Subcommittee

Start Date and Time: Tuesday, March 03, 2015 02:00 pm

End Date and Time: Tuesday, March 03, 2015 04:00 pm

Location: 12 HOB

Duration: 2.00 hrs

Consideration of the following proposed committee substitute(s):

PCS for HB 239 -- Medication and Testing of Racing Animals

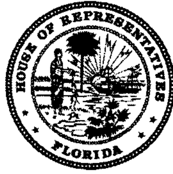
Consideration of the following bill(s):

HB 271 Consumer Protection by Nuñez
HB 401 Public Lodging & Public Food Service Establishments by Magar
HB 4021 Financial Reporting by Steube

Pursuant to rule 7.12, the filing deadline for amendments to bills on the agenda by a member who is not a member of the committee or subcommittee considering the bill is 6:00 p.m., Monday, March 2, 2015.

By request of the Chair, all Business & Professions Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Monday, March 2, 2015.

NOTICE FINALIZED on 02/27/2015 16:08 by Ellinor.Martha



The Florida House of Representatives

Regulatory Affairs Committee

Business & Professions Subcommittee

Steve Crisafulli
Speaker

Halsey Beshears
Chair

AGENDA

March 3, 2015
12 House Office Building
2:00 PM – 4:00 PM

I. **Call to Order & Roll Call**

II. PCS for HB 239 by *Business & Professions Subcommittee*
Medication and Testing of Racing Animals

III. HB 271 by *Rep. Nuñez*
Consumer Protection

IV. HB 401 by *Rep. Magar*
Public Lodging & Public Food Service Establishments

V. HB 4021 by *Rep. Steube*
Financial Reporting

VI. **Adjournment**

303 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4871 Fax: (850) 413-0419

PCS for HB 239

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 239 Medication and Testing of Racing Animals
SPONSOR(S): Business & Professions Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Business & Professions Subcommittee		Anstead	Luczynski

SUMMARY ANALYSIS

The Division of Pari-mutuel Wagering (division) within the Department of Business and Professional Regulation (Department) regulates the business of pari-mutuel wagering.

The bill modifies the current regulation of prohibited medications, drugs and naturally occurring substances in racing animals - both horses and greyhounds.

The bill makes it a violation for a racing animal to merely test positive for a prohibited substance and allows the prosecution of licensees without requiring evidence that such licensee administered or caused to be administered the prohibited substance.

The bill allows an owner or trainer to request analysis by an independent laboratory after a positive test result from the division. No further administrative action may be taken if the test results are not confirmed by the independent laboratory. If there is an insufficient quantity of the sample from a racing greyhound to confirm the results by an independent laboratory, the owner or trainer may still be prosecuted. If a racehorse's results cannot be confirmed by an independent laboratory because there is insufficient quantity to confirm, the owner or trainer may not be prosecuted, and any suspended licensee must be reinstated.

The bill changes the maximum fine for violations from $5,000 to $10,000 or the amount of the purse, whichever is greater. Administrative prosecutions must be started within 90 days of the violation, which was reduced from the current 2 year standard.

The bill requires the division to adopt the Association of Racing Commissioners International (ARCI) rules regarding the medications, drugs, and naturally occurring substances given to racing animals, including a classification system for drugs that incorporates ARCI's Penalty Guidelines for drug violations, and updates current methodologies used in testing procedures.

The bill requires that conditions and limitations be set for the use of furosemide, a diuretic used to treat exercise-induced pulmonary hemorrhage.

The bill requires an outside quality assurance program for the annual assessment of the ability of all laboratories approved by the division to analyze samples for the presence of medications, drugs, and prohibited substances. The findings must be reported to the division and the Department of Agriculture and Consumer Services.

The bill does not have a fiscal impact on state or local government.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

I. Present Situation:

The majority of the current law related to the medication and testing of racing animals was adopted in the 1990's and has not been specifically revised to address current technology or current medical standards. Florida is the only equine state in the nation that has not adopted current national uniform racing rules developed by the Association of Racing Commissioners International (ARCI). Kentucky, New York, Maryland, California, and Pennsylvania have adopted all or some of such policies.[1] With more than 3,300 thoroughbred and quarter horse races a year, and as host to four Kentucky Derby qualifying races, Florida has a robust and prestigious equine industry. Florida's adoption of nationally recognized standards is supported by the Jockey Club, the Racing Testing and Medication Consortium (RMTC),[2] the Florida Thoroughbred Breeder's and Owners' Association, Florida Quarter Horse Racing Association, and Florida Horsemen's Benevolent & Protective Association.

Current law, s. 550.2415, F.S., prohibits the racing of an animal that has been impermissibly medicated and identifies certain medications or substances that are either prohibited or permitted under certain conditions. The division is authorized to adopt rules specifying acceptable levels of naturally occurring substances. Other drugs and substances are permitted under limited conditions, such as furosemide to treat exercise-induced bleeding, and vitamins and minerals that do not exceed acceptable levels are also permitted.

Currently, to determine whether certain substances are prohibited depends upon whether the substance was administered during a specific time frame prior to a race, whether the racing animal is approved or qualified to receive the substance, what level of the substance is detected as set by administrative rule and what method of administration was used.

The trainer of record for each animal is responsible for the condition of the animals he or she enters into a race, and for securing all prescribed medications, over-the-counter medicines, and natural or synthetic medicinal compounds.

Samples of bodily fluids may be collected from a racing animal immediately before and immediately after it has raced. If racing officials find that impermissible substances have been administered, or that permissible substances have been administered during prohibited periods before a race, such substances may be confiscated and the racing animal may be prohibited from racing.

The winner of every race is examined by an authorized representative of the division and samples are taken. Any other animals that participated in the race may be designated for examination and testing by the stewards, judges, racetrack veterinarian, or a division representative.

All samples are collected by staff of the Office of Operations of the division and sent to the University of Florida College of Medicine Racing Laboratory for analysis.[3] Blood specimens must be collected from racing animals by veterinarians employed by the division or any licensed veterinarian hired or retained by the division, and the collection must be witnessed by the animal's trainer, owner, or designee.

---

[1] *See Blood-Horse, Foreman: Pace of Drug Reform 'Unprecedented',* http://www.bloodhorse.com/horse-racing/articles/84070/foreman-pace-of-drug-reform-unprecedented *(last visited Feb.26, 2015).*

[2] *Id.*

[3] See The Department of Business and Professional Regulation, Division of Pari-mutuel Wagering, *83rd Annual Report, Fiscal Year 2013-2014,* p. 3, http://www.myfloridalicense.com/dbpr/pmw/documents/AnnualReports/AnnualReport-2013-2014--83rd--20150114.pdf (last visited Feb. 26, 2015).

The 83rd Annual Report of the division reflects that during Fiscal Year 2013-2014, the laboratory received and processed 79,600 samples and performed 344,289 analyses, as follows:[4]

Sample Type	Horse Urine/Blood	Greyhound Urine	Investigative
Samples Received	15,816	63,757	27
Samples Analyzed	16,066	43,631	27
Number of Analyses	76,316	267,885	88
Positive Results	208	42	n/a

Some greyhound urine samples (20,044 or 31.4% of the total) were insufficient to allow for valid testing of those samples. Of the 79,573 non-investigative samples that were collected at racetracks, 59,697 samples were analyzed, but there were only 250 positive results for impermissible substances.

If a prohibited substance is found in a specimen, it is evidence that the substance was administered to and in the racing animal while racing. Test results are confidential and exempt from public records requirements for at least 10 days after the testing is completed. If the results are positive, they must be reported to the director of the division. If the test is positive, the results remain confidential and exempt until an action against the person licensed by the division has been commenced by the service of an administrative complaint, which is currently required to be commenced within two years after the violation.

Once the division notifies the owners or trainer of the results, the owner may request that each sample be split into a primary sample and a secondary (split) sample and that the secondary sample be sent to an independent laboratory. The splitting procedure must occur in the division's laboratory using procedures approved by the division by rule.

If a positive result found by the laboratory is not confirmed by the analysis made by the independent laboratory, no further administrative or disciplinary action may be pursued by the division.[5] If the positive result is confirmed, or if the volume of the secondary sample is insufficient to do so, then administrative action may proceed.

According to the division, there were 19 license suspensions, and $80,950 in fines assessed for violations of all pari-mutuel statutes and rules in Fiscal Year 2013-2014.[6]

II. Effect of Proposed Changes:

The bill modifies s. 550.2415, F.S., related to the prohibition of racing animals under certain conditions. The bill makes it a violation for a racing animal to test positive for a prohibited substance based on the testing of a sample of the racing animals bodily fluids collected before or after a race. Licensees responsible for a racing animal are held in violation if illegal substances are found, whether or not the actual perpetrator is known.

If a racing animal tests positive for a prohibited substance, the licensee's license can be suspended or revoked or the licensee may be fined. The bill increases the maximum fine for violations to $10,000 or the amount of the purse, whichever is greater.

The bill shortens the existing deadline to initiate administrative prosecutions of violations from 2 years to 90 days from the date of the violation.

[4] *See* 83rd Annual Report, *supra* note 3, at page 37.
[5] Section 550.2415(5)(b), F.S.
[6] *See* 83rd Annual Report, *supra* note 3, at page 3.

The bill provides that the division may solicit input from the Department of Agriculture and Consumer Services when adopting rules that specify normal concentrations of naturally occurring substances and acceptable levels of other environmental contaminants and substances.

The bill does not change existing law as to the testing of samples from racing greyhounds. Samples from racing animals collected at racetracks are analyzed by the division's laboratory. The University of Florida College of Veterinary Medicine Equine Racing Laboratory is currently under annual contract for these services.[7]

The bill provides that the division must notify not only the owner or trainer of the outcome of all drug tests, but all the stewards (the racetrack officials responsible for enforcement of racing regulations) and the appropriate horsemen's association (which represents the majority of the racehorse owners and trainers at a track). The bill does not address the timing of such notification to the stewards and horsemen's association.

If the division's laboratory finds that the sample contains impermissible medications, prohibited substances, or a level of a naturally occurring substance exceeding normal concentrations, the owner or trainer has the right to request another analysis be made on the retained portion by an independent laboratory. If the independent laboratory's analysis confirms the finding made by the division laboratory, administrative proceedings may be pursued.

If the quantity of the split sample provided to the independent laboratory from a racing greyhound is insufficient to confirm the positive drug test result made by the division's laboratory, prosecution may still be pursued against the owner or trainer on the basis of the initial test result. In 2013-2014, the volume of urine collected from greyhounds was insufficient for testing by the independent laboratory 31.4% of the time.[8]

As to the testing of samples from racehorses, the bill provides that if the quantity of the split sample provided to the independent laboratory is insufficient to confirm the positive drug test result, no prosecution may be pursued against the owner or trainer, and any suspended license must be immediately reinstated.

The division's laboratory and all laboratories approved by the division to analyze samples collected from racing animals must annually participate in an outside quality assurance program to assess their ability to detect and quantify medications, drugs, and naturally occurring substances that may be administered to racing animals. The quality assurance program administrator must report its findings to the division and the Department of Agriculture and Consumer Services.

The bill mandates the adoption by the division of rules that establish the use and allowed levels of medications, drugs, and naturally occurring substances that are in the Controlled Therapeutic Medication Schedule (schedule), Version 2.1, revised April 17, 2014,[9] by the Association of Racing Commissioners International, Inc. (ARCI),[10] which is a not-for-profit trade association with no regulatory authority. However, its members individually possess regulatory authority within their jurisdictions, and many have the authority to determine whether to adopt ARCI recommendations on policies and rules.[11]

---

[7] *See* Veterinary Diagnostic Laboratories, UF Large Animal Hospital, College of Veterinary Medicine, http://largeanimal.vethospitals.ufl.edu/services/veterinary-diagnostic-laboratories/ (last visited Feb. 26, 2015).
[8] *See* 83rd Annual Report, *supra* note 5, at p. 37.
[9] *See* ARCI Controlled Therapeutic Medication Schedule - Version 2.1, Revised April 17, 2014, http://arcicom.businesscatalyst.com/assets/arci-controlled-therapeutic-medication-schedule---version-2.1.pdf (last visited Feb. 26, 2015).
[10] *See* Racing Commissioners International, http://arcicom.businesscatalyst.com/about-rci.html (last visited Feb. 26, 2015).
[11] *Id.*

The Association of Racing Commissioners International, Inc. has adopted Model Rules for Racing[12] for the use of the pari-mutuel industry.

The schedule includes maximum allowed concentrations and doses for 23 medications and three non-steroidal anti-inflammatory drugs, with guidelines for the termination of use of the medication or substance prior to racing, to avoid a positive drug test. The adoption of uniform medication rules using the schedule is an attempt to provide owners and trainers with uniformity of regulations across jurisdictions.[13]

The bill also requires the division to adopt rules designating the appropriate biological specimens to monitor the administration of certain substances, setting the testing methods for screening specimens to confirm the presence of certain substances, and establishing a classification system for drugs and substances, with a penalty schedule for violations.

The bill requires that the penalty schedule for violations must incorporate the Uniform Classification Guidelines for Foreign Substances, Version 8.0, revised December 2014, by ARCI.[14] These guidelines are "intended to assist stewards, hearing officers and racing commissioners in evaluating the seriousness of alleged violations of medication and prohibited substance rules . . . ."[15]

The bill requires the division to adopt rules specifying the conditions for the use of furosemide, a diuretic used to treat exercise-induced pulmonary hemorrhage and nose bleeds. The bill specifies that furosemide is the only medication that may be administered within the 24 hours before the "officially scheduled post time of a race," but not within the four hour period prior to that post time.

The bill deletes the specific requirement that the division adopt rules of the use and administration of prednisolone sodium succinate, phenylbutazone, and synthetic corticosteroids. Instead the bill provides for the reliance on ARCI's schedule and guidelines. The bill also deletes the division's authority to adopt rules for the use of furosemide, phenylbutazone, or prednisolone sodium succinate; those substances are addressed in ARCI's schedule and rules.

The bill deletes the requirement that the division use only thin layer chromatography (TLC) for the testing of urine and blood samples from race horses.

The bill deletes the use of 1995 standards, specifically to ARCI's uniform classification system for class IV and V medications adopted on February 14, 1995, and deletes the specific requirement that the testing for phenylbutazone be six full 15 milliliter blood tubes for each horse tested.

The bill retains existing law respecting the division's authority to adopt medication levels for racing greyhounds as may be recommended by the University of Florida College of Veterinary Medicine.

The division notes that since the Controlled Therapeutic Medication Schedule adopted by the Association of Racing Commissioners International, Inc. appears to be limited to horses, the deletion of existing s. 550.2415(15), F.S., as to the medication of racehorses, removes its authority to adopt rules on medication levels that have not yet been addressed by ARCI.

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

---

[12] *See* University of Arizona, Race Track Industry Program, https://ua-rtip.org/industry_service/download_model_rules (last visited Feb. 26, 2015).

[13] See Gary West, *Churchill Could Spark Change, ESPN.com, (Dec. 17, 2014),* http://espn.go.com/espn/print?id=12043495&type=story; *See also* Racing Medication and Testing Consortium, *RMTC Executive Committee Responds to Proposal, Stresses Importance of Independence (Dec.18, 2014),* http://www.rmtcnet.com/content_pressreleases.asp?id=&s=&article=1942 .

[14] *See* Association of Racing Commissioners International, Inc., *Drug Testing Standards and Practices Program, Model Rules Guidelines (Dec. 2014),* http://arcicom.businesscatalyst.com/assets/uniformclassificationguidelines.pdf .

[15] *Id.* at p. ii.

B. SECTION DIRECTORY:

Section 1 amends s. 550.2415, F.S.:

- setting standards for medication and testing of racing animals;
- making it a violation for a racing animal to test positive for a prohibited substance and for a person to impermissibly medicate a racing animal;
- allowing the division to solicit input from the Department of Agriculture and Consumer Services;
- increasing the fine amounts for violations;
- decreasing the time for commencing an administrative action;
- requiring notification of certain persons; and
- requiring the adoption of rules related to the use of certain national testing standards.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Collection of higher fine amounts could lead to increased revenue to the state.

2. Expenditures:

   None. Note: The negative fiscal impacts estimated by the division have been addressed and are no longer present in the proposed committee substitute.[16]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The changes in sampling of specimens from racing animals and the annual assessment of independent testing laboratories will have an indeterminate impact on horse and greyhound tracks, and the owners and trainers of racing animals.

D. FISCAL COMMENTS:

[16] *See* Department of Business and Professional Regulation, *Legislative Bill Analysis of 2015 Senate Bill 226,* p. 6 (Feb. 4, 2015).

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 division is given the authority to make rules in accordance with national standards for medications and testing procedures used in the animal racing industry and as set out by the Controlled Therapeutic Medication Schedule adopted by the Association of Racing Commissioners International, Inc.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to medication and testing of racing
3 animals; amending s. 550.2415, F.S.; revising the
4 prohibition on the use of certain medications or
5 substances on racing animals; authorizing the Division
6 of Pari-mutuel Wagering within the Department of
7 Business and Professional Regulation to solicit input
8 from the Department of Agriculture and Consumer
9 Services; revising the penalties for violating laws
10 relating to the racing of animals; decreasing the
11 timeframe in which prosecutions for violations
12 regarding racing animals must commence; requiring the
13 division to notify the owners or trainers, stewards,
14 and the appropriate horsemen's association of all drug
15 test results; prohibiting the division from taking
16 action against owners or trainers under certain
17 circumstances; requiring the division to require its
18 laboratory and specified independent laboratories to
19 annually participate in a quality assurance program;
20 requiring the administrator of the program to submit a
21 report; revising the conditions of use for certain
22 medications; expanding violations to include
23 prohibited substances that break down during a race
24 found in specimens collected after a race; revising
25 the rulemaking authority of the division; providing an
26 effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:
29
30 Section 1. Paragraphs (a) and (b) of subsection (1),
31 paragraphs (a) and (b) of subsection (3), subsections (4) and
32 (5), and subsections (7) through (16) of section 550.2415,
33 Florida Statutes, are amended to read:
34 550.2415 Racing of animals under certain conditions
35 prohibited; penalties; exceptions.—
36 (1)(a) The racing of an animal that has been impermissibly
37 medicated or determined to have a prohibited substance present
38 ~~with any drug, medication, stimulant, depressant, hypnotic,~~
39 ~~narcotic, local anesthetic, or drug-masking agent~~ is prohibited.
40 It is a violation of this section for a person to impermissibly
41 medicate an animal or for an animal to have a prohibited
42 substance present resulting ~~administer or cause to be~~
43 ~~administered any drug, medication, stimulant, depressant,~~
44 ~~hypnotic, narcotic, local anesthetic, or drug-masking agent to~~
45 ~~an animal which will result~~ in a positive test for such
46 medications or substances ~~such substance~~ based on samples taken
47 from the animal ~~immediately~~ prior to or immediately after the
48 racing of that animal. Test results and the identities of the
49 animals being tested and of their trainers and owners of record
50 are confidential and exempt from s. 119.07(1) and from s. 24(a),
51 Art. I of the State Constitution for 10 days after testing of
52 all samples collected on a particular day has been completed and

53 any positive test results derived from such samples have been
54 reported to the director of the division or administrative
55 action has been commenced.
56 (b) It is a violation of this section for a race-day
57 specimen to contain a level of a naturally occurring substance
58 which exceeds normal physiological concentrations. The division
59 may solicit input from the Department of Agriculture and
60 Consumer Services and adopt rules that specify normal
61 physiological concentrations of naturally occurring substances
62 in the natural untreated animal and rules that specify
63 acceptable levels of environmental contaminants and trace levels
64 of substances in test samples.
65 (3)(a) Upon the finding of a violation of this section,
66 the division may revoke or suspend the license or permit of the
67 violator or deny a license or permit to the violator; impose a
68 fine against the violator in an amount not exceeding the purse
69 or sweepstakes earned by the animal in the race at issue or
70 $10,000, whichever is greater ~~$5,000~~; require the full or
71 partial return of the purse, sweepstakes, and trophy of the race
72 at issue; or impose against the violator any combination of such
73 penalties. The finding of a violation of this section does not
74 prohibit ~~in no way prohibits~~ a prosecution for criminal acts
75 committed.
76 (b) The division, notwithstanding the provisions of
77 chapter 120, may summarily suspend the license of an
78 occupational licensee responsible under this section or division

79 rule for the condition of a race animal if the division
80 laboratory reports the presence of a prohibited ~~an impermissible~~
81 substance in the animal or its blood, urine, saliva, or any
82 other bodily fluid, either before a race in which the animal is
83 entered or after a race the animal has run.
84 (4) A prosecution pursuant to this section for a violation
85 of this section must be commenced within 90 days ~~2 years~~ after
86 the violation was committed. Service of an administrative
87 complaint marks the commencement of administrative action.
88 (5) The division shall implement a split-sample procedure
89 for testing animals under this section.
90 (a) ~~Upon finding a positive drug test result,~~ The division
91 ~~department~~ shall notify the owner or trainer, the stewards, and
92 the appropriate horsemen's association of all drug test ~~the~~
93 results. ~~The owner may request that each urine and blood sample~~
94 ~~be split into a primary sample and a secondary (split) sample.~~
95 ~~Such splitting must be accomplished in the laboratory under~~
96 ~~rules approved by the division. Custody of both samples must~~
97 ~~remain with the division.~~ If a drug test result is positive
98 ~~However~~, and upon request by the affected trainer or owner of
99 the animal from which the sample was obtained, the division
100 shall send the split sample to an approved independent
101 laboratory for analysis. The division shall establish standards
102 and rules for uniform enforcement and shall maintain a list of
103 at least five approved independent laboratories for an owner or
104 trainer to select from if a drug test result is ~~in the event of~~

105 ~~a~~ positive ~~test sample~~.
106 (b) If the division ~~state~~ laboratory's findings are not
107 confirmed by the independent laboratory, no further
108 administrative or disciplinary action under this section may be
109 pursued. ~~The division may adopt rules identifying substances~~
110 ~~that diminish in a blood or urine sample due to passage of time~~
111 ~~and that must be taken into account in applying this section.~~
112 (c) If the independent laboratory confirms the division
113 ~~state~~ laboratory's positive result, ~~or if there is an~~
114 ~~insufficient quantity of the secondary (split) sample for~~
115 ~~confirmation of the state laboratory's positive result,~~ the
116 division may commence administrative proceedings as prescribed
117 in this chapter and consistent with chapter 120. For purposes of
118 this subsection, the department shall in good faith attempt to
119 obtain a sufficient quantity of the test fluid to allow both a
120 primary test and a secondary test to be made.
121 (d) For the testing of racing greyhounds, if there is an
122 insufficient quantity of the secondary (split) sample for
123 confirmation of the division laboratory's positive result, the
124 division may commence administrative proceedings as prescribed
125 in this chapter and consistent with chapter 120.
126 (e) For the testing of racehorses, if there is an
127 insufficient quantity of the secondary (split) sample for
128 confirmation of the division laboratory's positive result, the
129 division may not take further action on the matter against the
130 owner or trainer, and any resulting license suspension must be

131 immediately lifted.
132 (f) The division shall require its laboratory and the
133 independent laboratories to annually participate in an
134 externally administered quality assurance program designed to
135 assess testing proficiency in the detection and appropriate
136 quantification of medications, drugs, and naturally occurring
137 substances that may be administered to racing animals. The
138 administrator of the quality assurance program shall report its
139 results and findings to the division and the Department of
140 Agriculture and Consumer Services.
141 (7)(a) In order to protect the safety and welfare of
142 racing animals and the integrity of the races in which the
143 animals participate, the division shall adopt rules establishing
144 the conditions of use and maximum concentrations of medications,
145 drugs, and naturally occurring substances identified in the
146 Controlled Therapeutic Medication Schedule, Version 2.1, revised
147 April 17, 2014, adopted by the Association of Racing
148 Commissioners International, Inc. (ARCI). Controlled therapeutic
149 medications include only the specific medications and
150 concentrations allowed in biological samples which have been
151 approved by ARCI as controlled therapeutic medications.
152 (b) The division rules must designate the appropriate
153 biological specimens by which the administration of medications,
154 drugs, and naturally occurring substances is monitored and must
155 determine the testing methodologies, including measurement
156 uncertainties, for screening such specimens to confirm the

157 presence of medications, drugs, and naturally occurring
158 substances.
159 (c) The division rules must include a classification
160 system for drugs and substances and a corresponding penalty
161 schedule for violations which incorporates the Uniform
162 Classification Guidelines for Foreign Substances, Version 8.0,
163 revised December 2014, by ARCI. The division shall adopt
164 laboratory screening limits approved by ARCI for drugs and
165 medications that are not included as controlled therapeutic
166 medications, the presence of which in a sample may result in a
167 violation of this section.
168 (d) The division rules must include conditions for the use
169 of furosemide to treat exercise-induced pulmonary hemorrhage.
170 (e) The division may solicit input from the Department of
171 Agriculture and Consumer Services in adopting the rules required
172 under this subsection. Such rules must be adopted before January
173 1, 2016 ~~Under no circumstances may any medication be~~
174 ~~administered closer than 24 hours prior to the officially~~
175 ~~scheduled post time of a race except as provided for in this~~
176 ~~section~~.
177 ~~(a) The division shall adopt rules setting conditions for~~
178 ~~the use of furosemide to treat exercise-induced pulmonary~~
179 ~~hemorrhage.~~
180 ~~(b) The division shall adopt rules setting conditions for~~
181 ~~the use of prednisolone sodium succinate, but under no~~
182 ~~circumstances may furosemide or prednisolone sodium succinate be~~

183 ~~administered closer than 4 hours prior to the officially~~
184 ~~scheduled post time for the race.~~
185 ~~(c) The division shall adopt rules setting conditions for~~
186 ~~the use of phenylbutazone and synthetic corticosteroids; in no~~
187 ~~case, except as provided in paragraph (b), shall these~~
188 ~~substances be given closer than 24 hours prior to the officially~~
189 ~~scheduled post time of a race. Oral corticosteroids are~~
190 ~~prohibited except when prescribed by a licensed veterinarian and~~
191 ~~reported to the division on forms prescribed by the division.~~
192 (f)~~(d)~~ This section does not ~~Nothing in this section shall~~
193 ~~be interpreted to~~ prohibit the use of vitamins, minerals, or
194 naturally occurring substances so long as none exceeds the
195 normal physiological concentration in a race-day specimen.
196 ~~(e) The division may, by rule, establish acceptable levels~~
197 ~~of permitted medications and shall select the appropriate~~
198 ~~biological specimens by which the administration of permitted~~
199 ~~medication is monitored.~~
200 (8)~~(a)~~ Furosemide is the only medication that may be
201 administered within 24 hours before the officially scheduled
202 post time of a race, but it may not be administered within 4
203 hours before the officially scheduled post time of a race ~~Under~~
204 ~~no circumstances may any medication be administered within 24~~
205 ~~hours before the officially scheduled post time of the race~~
206 ~~except as provided in this section~~.
207 ~~(b) As an exception to this section, if the division first~~
208 ~~determines that the use of furosemide, phenylbutazone, or~~

209 ~~prednisolone sodium succinate in horses is in the best interest~~
210 ~~of racing, the division may adopt rules allowing such use. Any~~
211 ~~rules allowing the use of furosemide, phenylbutazone, or~~
212 ~~prednisolone sodium succinate in racing must set the conditions~~
213 ~~for such use. Under no circumstances may a rule be adopted which~~
214 ~~allows the administration of furosemide or prednisolone sodium~~
215 ~~succinate within 4 hours before the officially scheduled post~~
216 ~~time for the race. Under no circumstances may a rule be adopted~~
217 ~~which allows the administration of phenylbutazone or any other~~
218 ~~synthetic corticosteroid within 24 hours before the officially~~
219 ~~scheduled post time for the race. Any administration of~~
220 ~~synthetic corticosteroids is limited to parenteral routes. Oral~~
221 ~~administration of synthetic corticosteroids is expressly~~
222 ~~prohibited. If this paragraph is unconstitutional, it is~~
223 ~~severable from the remainder of this section.~~
224 ~~(c) The division shall, by rule, establish acceptable~~
225 ~~levels of permitted medications and shall select the appropriate~~
226 ~~biological specimen by which the administration of permitted~~
227 ~~medications is monitored.~~
228 (9)(a) The division may conduct a postmortem examination
229 of any animal that is injured at a permitted racetrack while in
230 training or in competition and that subsequently expires or is
231 destroyed. The division may conduct a postmortem examination of
232 any animal that expires while housed at a permitted racetrack,
233 association compound, or licensed kennel or farm. Trainers and
234 owners shall be requested to comply with this paragraph as a

235 condition of licensure.
236 (b) The division may take possession of the animal upon
237 death for postmortem examination. The division may submit blood,
238 urine, other bodily fluid specimens, or other tissue specimens
239 collected during a postmortem examination for testing by the
240 division laboratory or its designee. Upon completion of the
241 postmortem examination, the carcass must be returned to the
242 owner or disposed of at the owner's option.
243 (10) The presence of a prohibited substance in an animal,
244 found by the division laboratory in a bodily fluid specimen
245 collected <u>after the race or</u> during the postmortem examination of
246 the animal, which breaks down during a race constitutes a
247 violation of this section.
248 (11) The cost of postmortem examinations, testing, and
249 disposal must be borne by the division.
250 (12) The division shall adopt rules to implement this
251 section. ~~The rules may include a classification system for~~
252 ~~prohibited substances and a corresponding penalty schedule for~~
253 ~~violations.~~
254 ~~(13) Except as specifically modified by statute or by~~
255 ~~rules of the division, the Uniform Classification Guidelines for~~
256 ~~Foreign Substances, revised February 14, 1995, as promulgated by~~
257 ~~the Association of Racing Commissioners International, Inc., is~~
258 ~~hereby adopted by reference as the uniform classification system~~
259 ~~for class IV and V medications.~~
260 ~~(14) The division shall utilize only the thin layer~~

CODING: Words ~~stricken~~ are deletions; words <u>underlined</u> are additions.

261 ~~chromatography (TLC) screening process to test for the presence~~
262 ~~of class IV and V medications in samples taken from racehorses~~
263 ~~except when thresholds of a class IV or class V medication have~~
264 ~~been established and are enforced by rule. Once a sample has~~
265 ~~been identified as suspicious for a class IV or class V~~
266 ~~medication by the TLC screening process, the sample will be sent~~
267 ~~for confirmation by and through additional testing methods. All~~
268 ~~other medications not classified by rule as a class IV or class~~
269 ~~V agent shall be subject to all forms of testing available to~~
270 ~~the division.~~
271 (13)~~(15)~~ The division may implement by rule medication
272 levels for racing greyhounds recommended by the University of
273 Florida College of Veterinary Medicine developed pursuant to an
274 agreement between the Division of Pari-mutuel Wagering and the
275 University of Florida College of Veterinary Medicine. The
276 University of Florida College of Veterinary Medicine may provide
277 written notification to the division that it has completed
278 research or review on a particular drug pursuant to the
279 agreement and when the College of Veterinary Medicine has
280 completed a final report of its findings, conclusions, and
281 recommendations to the division.
282 ~~(16) The testing medium for phenylbutazone in horses shall~~
283 ~~be serum, and the division may collect up to six full 15-~~
284 ~~milliliter blood tubes for each horse being sampled.~~
285 Section 2. This act shall take effect July 1, 2015.

HB 271

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 271 Consumer Protection
SPONSOR(S): Nuñez
TIED BILLS: **IDEN./SIM. BILLS:** SB 604

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Butler BSB	Luczynski MJ
2) Civil Justice Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The bill, titled the "True Origin of Digital Goods Act," requires owners and operators of websites or online services (websites) that deal in substantial part with the electronic dissemination of commercial recordings and audiovisual works to provide personal identification information plainly on the website. The bill provides that the owner or operator of such website must post their true and correct name, address, and either a telephone number or e-mail address.

The bill provides definitions for "commercial recording or audiovisual work" and "electronic dissemination."

An owner, assignee, authorized agent, or licensee of a commercial recording or audiovisual work may bring a private cause of action to obtain a declaratory judgment that an owner or operator of a website has failed to disclose his or her personal information. The court may then compel compliance with the disclosure requirements of this bill.

Proponents argue that bad actors are unlikely to disclosure the personal information required by this bill, and thus, this bill will allow owners of copyrighted works to indirectly protect their intellectual property.

In a cause of action under this bill, the prevailing party is entitled to recover necessary expenses and reasonable attorney fees.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Internet and Intellectual Property

The rise of the Internet has provided many opportunities and challenges for the free communication of thoughts and ideas. Among these challenges is the effective protection of intellectual property and copyrights when individuals can quickly and efficiently distribute creative works with low barriers to reproduction. A system that protects the rights of creative content producers to choose how their works are displayed and distributed must be balanced against creating barriers that may fundamentally alter the nature of the Internet and the free flow of knowledge and information.

Because of the distributed and semi-anonymous nature of the Internet, it is difficult to strike a balance between the rights of all the stakeholders involved, and difficult to enforce regulations and responsibilities on individuals, content, and conduct. The Internet seamlessly crosses all political borders and traditional regulatory jurisdictions.

Additionally, bad actors have used the relatively open nature of the Internet, and the lack of barriers for the distribution of information and content to ignore intellectual property and copyright protections and injure creative content producers who are unable to derive the exclusive benefits of the works they create. With so many competing interests to balance, legislation that addresses the practices of the Internet faces extensive scrutiny from many interested parties.

Federal Copyright Law

The United States Constitution explicitly grants Congress the power to create copyright law with the copyright clause, which states, "[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."[1]

Copyright law encourages the creation of art and culture by rewarding authors and artists with exclusive rights to make and sell copies of their works, the right to create derivative works, and the right to perform or display their works in public. These rights are governed by the federal Copyright Act of 1976,[2] and generally these rights do not expire until 70 years after the author or artist's death.

The Digital Millennium Copyright Act[3] (DMCA) was passed in 1998 to update and modernize the United States' copyright protections for the Internet age. The DMCA criminalizes production and dissemination of technology used to circumvent digital rights management software (DRM) and other types of access controls, and heightens the penalties for copyright infringement on the Internet. The DMCA also provides several "safe harbor" provisions for providers of online services (such as YouTube) that provide hosting for user generated content. Under the DMCA's safe harbor provisions, online services that follow the DMCA's takedown procedures are able to limit their liability for the copyright infringement of users of their service.[4]

Although when used appropriately the DMCA's safe harbor provisions protect copyright owners, there are many reports of bad actors abusing DMCA takedown requests to remove completely legal content.

---

[1] U.S. CONST. art. 1, § 8, cl. 8.
[2] Copyright Revision Act of 1976, 90 Stat. 2541, 17 U.S.C. § 101 et seq. (1982).
[3] Digital Millennium Copyright Act, PL 105–304, Oct. 28, 1998, 112 Stat 2860.
[4] *See generally, Viacom Int'l, Inc. v. YouTube, Inc.*, 676 F.3d 19, 25 (2d Cir. 2012).

In order to benefit from the protections of the DMCA's safe harbor provisions, an online service must immediately remove any content that is identified as offending at the request of a self-identified content owner or face financial liability for possible infringements. Many online services do not have the ability to review every takedown request and simply remove any flagged content. Further, it is difficult to hold persons accountable who abuse the DMCA takedown provisions as a tool for censorship.[5]

Some examples of improper takedown requests include misidentification of copyrighted works,[6] meritless takedown requests of political ads,[7] or takedown requests performed with malice and the intent to harm the content producer's reputation or revenue.[8] DMCA takedown notices used improperly can be used to censor speech and may have a chilling effect on free speech.[9]

It is possible that the Federal Copyright Act may "completely preempt" any state laws related to copyright. Under the "complete preemption doctrine," state law claims that are "arising under" the subject matter of a Federal act may be completely preempted to federal courts if Congress intended an exclusive federal remedy, and federal courts are granted exclusive jurisdiction to decide claims and causes of action related to the Federal act.[10]

Several Federal Circuit Courts have held that the "complete preemption doctrine" can be applied to Federal Copyright Law; however, the Eleventh Circuit Court of Appeals, which directly controls questions of Federal law within Florida, has not held whether the complete preemption doctrine applies to Copyright Law.[11]

Rogue Copyright Infringing Websites

The Copyright Office of the United States has identified bad actors who build online businesses based upon infringing copyright and engaging in related illegal activity. The operators of these sites are able to act with impunity because there is little expectation of enforcement of copyright or other laws.

These rogue websites flagrantly engage in illegal activities, and offer for sale or download many copyrighted movies, music, books, and software. Many rogue websites make money through both direct transactions (selling copyrighted content) and indirect transactions (ad revenue or subscription services).

Rogue websites may also attempt to steal a consumer's financial information and take advantage of unsuspecting consumers private information. Some rogue websites may falsely state that they have relationships with well-known payment processing services (such as credit cards); however, when a consumer attempts to pay, the website redirects payment to alternative and possibly unsecure services.

---

[5] *See generally* Lydia Pallas Loren, Deterring Abuse of the Copyright Takedown Regime by Taking Misrepresentation Claims Seriously, 46 Wake Forest L. Rev. 745, 746 (2011) (discussing copyright takedown abuse, and noting that "misrepresentation claims have been brought [against abusers of takedown notices], and the early interpretations of the [misrepresentation] provisions have limited their effectiveness in curbing abuse").

[6] *See* John Schwartz, *She Says She's No Music Pirate. No Snoop Fan, Either*, N.Y. TIMES (September 25, 2003), http://www.nytimes.com/2003/09/25/business/media/25TUNE.html.

[7] Center for Democracy & Technology, *CDT Releases Report on Meritless DMCA Takedowns of Political Ads,* (Oct. 12, 2010), https://cdt.org/insight/cdt-releases-report-on-meritless-dmca-takedowns-of-political-ads/.

[8] *See generally,* Google, *Transparency Report,* http://www.google.com/transparencyreport/removals/copyright/faq/ (Listing several "inaccurate or intentionally abusive copyright removal requests" submitted to Google).

[9] Wendy Seltzer, Free Speech Unmoored in Copyright's Safe Harbor: Chilling Effects of the DMCA on the First Amendment, 24 Harv. J.L. & Tech. 171 (2010).

[10] 17 U.S.C § 301 (2012); *Briarpatch Ltd., L.P v. Phoenix Pictures, Inc.*, 373 F.3d 296, 303 (2d Cir. 2004).

[11] *Stuart Weitzman, LLC v. Microcomputer Res., Inc.*, 542 F.3d 859, 864 (11th Cir. 2008) .

There appears to be widespread consensus on the existence and methods of these rogue websites; however, there is often disagreement over solutions that are presented to address these bad actors.[12] Protecting a copyright owner's right to benefit from their creative content is balanced against unduly restricting the freedom of speech and privacy rights of good actors who are not infringing against copyright laws, but may be impeded by regulations imposed to protect a copyright.

Attempted Federal Solutions

The Stop Online Privacy Act (SOPA) was introduced to Congress on October 26, 2011, with the intent to expand the ability of United States law enforcement to combat online copyright infringement and the online trafficking of counterfeit goods. The bill faced intense scrutiny after its introduction.

Provisions included requesting court orders to bar advertising networks and payment facilities from conducting business with infringing websites, preventing search engines from linking to identified rogue websites, and expediting court orders to require Internet service providers block access to rogue websites. The proposed law would have expanded criminal laws to include unauthorized streaming of copyrighted content and imposed a maximum penalty of five years in prison.

Proponents stated the legislation would protect the intellectual-property market and corresponding industry, jobs, and revenue, and was necessary to bolster enforcement of copyright laws, claiming current laws do not cover foreign-owned or operated websites, and citing examples of rogue websites that were flagrantly offending U.S. copyright law.[13]

Opponents claimed the proposed legislation was expansive and would impose liability on many more entities than just rogue websites. Opponents argued that the bill threatened freedom of speech and innovation on the Internet, would bypass the safe harbor provisions of the DMCA, and would even expose libraries to prosecution for previously completely legal and free speech conduct. [14]

In protest of SOPA and its House counterpart the PROTECT IP Act (PIPA), many online services, websites, and consumers organized an online blackout in an attempt to illustrate the possible repercussions should they be passed. On January 18, 2012, the English Wikipedia, Google, Reddit, and an estimated 7,000 websites coordinated a service blackout in protest against the bills.[15] A petition at Google recorded over 4.5 million signatures;[16] and lawmakers reportedly collected "more than 14 million names—more than 10 million of them voters—who contacted them to protest" of the bills.[17] The bills were ultimately postponed until an agreement on a solution was found.

Protecting Personal Information on the Internet

There is an inherent risk involved when disclosing private information on the Internet. Bad actors can use information found on the Internet to assist in identity theft, use personal information to harass, extort, coerce, or publicly shame a person by violating their online privacy, and even trick an

[12] Maria A. Pallante, Acting Register of Copyrights, *Promoting Investment and Protecting Commerce Online: Legitimate Sites v. Parasites, Part I*, (Mar. 14, 2011), *available at* http://www.copyright.gov/docs/regstat031411.html.
[13] David Carr, *The Danger of an Attack on Piracy Online*, N.Y. TIMES (Jan. 2, 2012), at B1, *available at* http://www.nytimes.com/2012/01/02/business/media/the-danger-of-an-attack-on-piracy-online.html.
[14] *Id.*
[15] Rob Waugh, *U.S. Senators withdraw support for anti-piracy bills as 4.5 million people sign Google's anti-censorship petition*, DAILYMAIL.COM (Jan. 20, 2012), http://www.dailymail.co.uk/sciencetech/article-2088860/SOPA-protest-4-5m-people-sign-Googles-anti-censorship-petition.html.
[16] Deborah Netburn, *Wikipedia: SOPA protest led 8 million to look up reps in Congress*, L.A. TIMES BLOGS (Jan. 19, 2012), *available at* http://latimesblogs.latimes.com/technology/2012/01/wikipedia-sopa-blackout-congressional-representatives.html.
[17] Jonathan Weisman, *After an Online Firestorm, Congress Shelves Antipiracy Bills*, N.Y. TIMES, (Jan. 21, 2012) at B6, *available at* http://www.nytimes.com/2012/01/21/technology/senate-postpones-piracy-vote.html.

emergency service into dispatching a police response team to a target's address based on false reports of imminent danger or injury.[18]

Balanced Solutions for Protecting Copyrighted Works Outside of Federal Copyright Law

The difficulty in identifying bad actors because of a lack of identifying personal information available on a semi-anonymous website, as well as the general expense and delay of Federal causes of action have led to the development of state law causes of action in an attempt to find better solutions.

Effect of the Bill

Definitions

The bill defines a "commercial recording or audiovisual work," as a:

> [A] recording or audiovisual work whose owner, assignee, authorized agent, or licensee has disseminated or intends to disseminate such recording or audiovisual work for sale, rental, or for performance or exhibition to the public, including under license, but does not include an excerpt consisting of less than substantially all of a recording or audiovisual work. A recording or audiovisual work may be commercial regardless of whether a person who electronically disseminates it seeks commercial advantage or private financial gain from the dissemination. The term does not include video games, depictions of video game play, or the streaming of video game activity.

A "recording or audiovisual work" that is disseminated or intended to be disseminated for sale, rental, performance or exhibition, appears to include all video or audio content available on the Internet. Any recording or audiovisual work that is on the Internet is likely exhibited to the public. The definition "commercial recording or audiovisual work" appears to include commercial and noncommercial recordings and audiovisual works as it does not require a person to seek commercial advantage or private financial gain to be considered "commercial" in this bill.

The definition excludes "an excerpt consisting of less than substantially all of a recording or audiovisual work". This language seems to limit the definition of "commercial recording or audiovisual work" to only those works that are complete, and not include simply portions or excerpts of said works. In some cases, an excerpt may be considered a "commercial recording or audiovisual work" completely independent of the original work.

The definition explicitly excludes video games, video game streaming, or depictions of video game play from the definition of "commercial recording or audiovisual work." This exception would remove a significant amount of content from the definition of "commercial recording or audiovisual work."

Video or audio content on a website will thus be excluded, so long as the video or audio content only contains "video games, depictions of video game play, or the streaming of video game activity." Additional content within such videos such as commentary, music, soundtracks, or other non-video game related content may cause such videos to be considered "commercial recordings or audiovisual works" under this bill and subject to the disclosure requirements.

---

[18] Sasha Goldstein, *Suburban Denver 'swatting' incident caught on gamer's camera*, N.Y. DAILY NEWS (Aug. 27, 2014), http://www.nydailynews.com/news/national/suburban-denver-swatting-incident-caught-gamer-camera-article-1.1919640 (reporting on YouTube user Jordan Mathewson being swatted and broadcasted the incident live while streaming playing games over the Internet); Brian Crecente, *Destiny developer startled awake by police sheriff's helicopter after faked 911 call*, POLYGON (Nov. 7, 2014), http://www.polygon.com/2014/11/7/7172827/destiny-swatting (Unnamed Destiny video game developer is a victim of a swatting in Washington State home).

The bill defines "electronic dissemination" to mean the transmission of, making available, or otherwise offering a "commercial recording or audiovisual work" for distribution through the Internet. The definition of electronic dissemination includes many forms of hosting content on the Internet, including directly hosting, linking to content hosted elsewhere, or otherwise distributing information where "commercial recordings or audiovisual works" may be located.

Disclosure of Information

The bill requires that a person who "owns or operates a website or online service dealing "in substantial part" in the electronic dissemination of commercial recordings or audiovisual works," to clearly and conspicuously disclose their personal information, including his or her true and correct name, physical address, and either a telephone number or e-mail address. A corporation is considered a "person" in this case.

The phrase "in substantial part" is not defined. It is unclear how many "commercial recordings or audiovisual works" must be disseminated by a website before the website or online service is considered to be dealing "in substantial part" in the dissemination of such under this bill.

The disclosure requirements of this bill are required even if all recordings or audiovisual works disseminated by the website are owned by the website owner.

Injunctive Relief

The bill allows an "owner, assignee, authorized agent, or licensee" of a "commercial recording or audiovisual work" aggrieved by a violation of this section to bring a private cause of action to enforce the disclosure requirements of this bill.

An "aggrieved party" would be aggrieved if they personally own or otherwise have proper authority to electronically disseminate a specific "commercial recording or audiovisual work" that is being disseminated by the non-disclosing website.

It is unclear if Florida could assert jurisdiction over foreign websites should an aggrieved party attempt to enforce the disclosure requirements of this bill against a website owner or operator located outside of Florida. Proponents do not expect websites owners or operators located outside of Florida to respond to law suits or submit willingly to jurisdiction in Florida courts. As such, proponents expect for any proceedings against owners or operators of websites located outside of Florida to end in default judgments.

Following a default or other declaratory judgment, proponents intend to proceed with third party injunctions to discourage Internet service providers, hosting services, payment services or other Internet website services from working with websites that fail to disclose their personal information required by this bill.

Proponents argue that bad actors are unlikely to disclosure the personal information required by this bill, and thus, this bill will allow owners of copyrighted works to indirectly protect their intellectual property.

The bill allows prevailing party in a cause under this section is entitled to recover necessary expenses and reasonable attorney fees.

B. SECTION DIRECTORY:

Section 1 creates s. 501.155, F.S., to define "commercial recording or audiovisual work," "electronic dissemination," require the disclosure of personal information on websites dealing in substantial part in disseminating commercial recordings and audiovisual works, and providing injunctive relief for aggrieved parties.

Section 2 provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Freedom of Speech: Right Not to Speak

The First Amendment promotes the free exchange of ideas and information by prohibiting the government from restricting speech because of the message expressed.[19]

Not only does the First Amendment protect the right to speak, but it protects the right to refrain from speaking and the right to refrain from endorsing any particular view. In *Hurley v. Irish-American Gay,*

[19] See, e.g., Texas v. Johnson, 491 U.S. 397 (1989); *State v. T.B.D.*, 656 So.2d 479 (Fla. 1995).

Lesbian & Bisexual Group of Boston,[20] the United States Supreme Court held that a state could not require a private parade sponsor to allow participation by a group which imparted a message that the sponsoring organization did not wish to convey.[21] Despite the general prohibition against forced speech, however, federal courts have allowed certain organizations to collect dues and fees that may be used to engage in advocacy hostile to the beliefs of some dues payers.

The bill requires a person who owns or operates a website to disclose certain personal information. This disclosure requirement may have First Amendment implications regarding a person's right not to speak and not to disclose such personal information to the public.

Freedom of Speech: Overbroad Regulations

Additionally, under the First Amendment, laws that burden substantially more speech than is necessary to further a compelling interest are invalid.[22] Overbroad regulations are disfavored because they produce a chilling effect on free speech by dissuading the exercise of legitimate First Amendment Rights.[23] Overbroad regulations also lend themselves to selective enforcement.[24] The overbreadth doctrine contains an important exception to normal standing requirements. It allows a litigant challenging an overbroad regulation to assert the First Amendment rights of persons not before the court.

The disclosure requirements of this bill will apply to a large amount of content and websites currently on the Internet, which may have First Amendment overbreadth implications.

Federal Preemption of Copyright Law

The United States Constitution explicitly grants Congress the power to create copyright law with the copyright clause, which states, "[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."[25]

The Federal Copyright Act provides exclusive jurisdiction to federal district courts of claims and causes of action that "arise under" any Congressional act related to copyright.[26] Even in situations where a copyright is not directly at issue and only state law claims are argued, such state law claims could still potentially be preempted by the Copyright Act.[27]

Under the "complete preemption doctrine," Federal law completely preempts a state law "arising under" a Congressional act.[28] Citing the Supreme Court's recent decision in *Beneficial Nat. Bank v. Anderson*,[29] expanding the doctrine of complete preemption, the Second Circuit Court of Appeals found that copyright claims and all legal and equitable rights related to copyright fall within the exclusive jurisdiction of the federal courts.[30] The Second Circuit detailed a two-pronged analysis to determine if a state law would be preempted by the Copyright Act, specifically:

---

[20] 515 U.S. 557 (1995).
[21] *See also West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943)(a school may not require students to salute the flag or recite the pledge of allegiance).
[22] *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973)(requiring "substantial" overbreadth); *Thornhill v. Alabama*, 310 U.S. 88, 99-101 (1940).
[23] Reno v. ACLU, 521 U.S. 844, 871-72 (1997).
[24] In re Primus, 436 U.S. 412, 432-33 (1978).
[25] U.S. CONST. art. 1, § 8, cl. 8
[26] 17 U.S.C § 301; *Briarpatch*, 373 F.3d at 303.
[27] *Briarpatch*, 373 F.3d at 303.
[28] *Id.*
[29] 539 U.S. 1, 11 (2003).
[30] *Briarpatch*, 373 F.3d at 303.

> The Copyright Act exclusively governs a claim when: (1) the particular work to which the claim is being applied falls within the type of works protected by the Copyright Act under 17 U.S.C. §§ 102 and 103, and (2) the claim seeks to vindicate legal or equitable rights that are equivalent to one of the bundle of exclusive rights already protected by copyright law under 17 U.S.C. § 106.[31]

The prongs of this test are referred to as the "subject matter requirement" and the "general scope requirement.[32] The subject matter requirement is satisfied if the claim is related to an act or work that would normally be covered by the Copyright Act.[33] The general scope requirement is only satisfied when a state law affects a right provided by federal copyright law, or specifically, a state regulates acts of reproduction, adaptation, performance, distribution or display of copyrighted works.[34]

The Eleventh Circuit Court of Appeals decides questions of Federal law within Florida, secondary only to the Supreme Court of the United States, and has not held whether the Copyright Act has complete preemptive effect, although it did note that "four other circuits have held that at least some state law claims are preempted by the Copyright Act such that federal subject matter jurisdiction exists over the claim under the complete preemption doctrine."[35]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Website Definition Clarity

It is unclear if a person is considered the operator of a website under this bill if the person is operating as a broadcaster, host, streamer, or otherwise controls the content of a subpage or subchannel to a major user-content site, such as YouTube or Twitch.tv. A person who operates such a subpage or subchannel may be required to disclose their personal information under this bill.

The sponsor has indicated that an amendment is forthcoming to clarify this issue.

Aggrieved Party Clarity

The ambiguity of who may be considered an "aggrieved" becomes more complex when dealing with transformative or derivative works, which may have several different owners, assignees, authorized agents, or licensees independent of the original owners, assignees, authorized agents, or licensees. It is possible for each of these different parties to be "aggrieved" under the language of this bill if any of the other owners, assignees, authorized agents, licensees or any other person disseminate the work in question without disclosure.

The sponsor has indicated that an amendment is forthcoming to clarify this issue.

Less than Substantially All of a Work Clarity

The phrase "less than substantially all" is not defined. It is unclear when a "commercial recordings or audiovisual work" is no longer "substantially all" of the work, or at what point an excerpt would no longer be considered a "commercial recording or audiovisual work" under this bill.

---

[31] *Id.* at 305.
[32] *Id.* at 303.
[33] *Id.*
[34] *Id.*
[35] *See Stuart Weitzman, LLC*, 542 F.3d at 864 (noting that the First, Second, Fourth and Sixth Circuits have all held that the Copyright Act could have complete preemptive effect).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to consumer protection; creating s.
3 501.155, F.S.; providing a short title; providing
4 applicability; providing definitions; requiring owners
5 and operators of specified websites and online
6 services to disclose certain information; providing
7 for injunctive relief; providing an effective date.
8
9 Be It Enacted by the Legislature of the State of Florida:
10
11 Section 1. Section 501.155, Florida Statutes, is created
12 to read:
13 501.155 Electronic dissemination of commercial recordings
14 or audiovisual works; required disclosures; injunctive relief.—
15 (1) SHORT TITLE.—This section may be cited as the "True
16 Origin of Digital Goods Act."
17 (2) APPLICABILITY.—This section is supplemental to those
18 provisions of state and federal criminal and civil law which
19 impose prohibitions or provide penalties, sanctions, or remedies
20 against the same conduct prohibited by this section. This
21 section does not:
22 (a) Bar any cause of action or preclude the imposition of
23 sanctions or penalties that would otherwise be available under
24 state or federal law.
25 (b) Impose liability on providers of an interactive
26 computer service, communications service as defined in s.

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

27 202.11(1), commercial mobile service, or information service,
28 including, but not limited to, an Internet access service
29 provider and a hosting service provider, if they provide the
30 transmission, storage, or caching of electronic communications
31 or messages of others or provide another related
32 telecommunications, commercial mobile radio service, or
33 information service, for use of such services by another person
34 in violation of this section. This exemption from liability is
35 consistent with and in addition to any liability exemption
36 provided under 47 U.S.C. s. 230.
37 (3) DEFINITIONS.—As used in this section, the term:
38 (a) "Commercial recording or audiovisual work" means a
39 recording or audiovisual work whose owner, assignee, authorized
40 agent, or licensee has disseminated or intends to disseminate
41 such recording or audiovisual work for sale, rental, or for
42 performance or exhibition to the public, including under
43 license, but does not include an excerpt consisting of less than
44 substantially all of a recording or audiovisual work. A
45 recording or audiovisual work may be commercial regardless of
46 whether a person who electronically disseminates it seeks
47 commercial advantage or private financial gain from the
48 dissemination. The term does not include video games, depictions
49 of video game play, or the streaming of video game activity.
50 (b) "Electronic dissemination" means initiating a
51 transmission of, making available, or otherwise offering a
52 commercial recording or audiovisual work for distribution

53 through the Internet or other digital network, regardless of
54 whether another person has previously electronically
55 disseminated the same commercial recording or audiovisual work.
56 (c) "E-mail address" means an electronic mail address as
57 defined in s. 668.602.
58 (4) DISCLOSURE OF INFORMATION.—
59 (a) A person who owns or operates a website or online
60 service dealing in substantial part in the electronic
61 dissemination of commercial recordings or audiovisual works,
62 directly or indirectly, to consumers in this state shall clearly
63 and conspicuously disclose his or her true and correct name,
64 physical address, and telephone number or e-mail address on his
65 or her website or online service in a location readily
66 accessible to a consumer using or visiting the website or online
67 service.
68 (b) The following locations are deemed readily accessible
69 for purposes of this subsection:
70 1. A landing or home web page or screen;
71 2. An "about" or "about us" web page or screen;
72 3. A "contact" or "contact us" web page or screen;
73 4. An information web page or screen; or
74 5. Another place on the website or online service commonly
75 used to display identifying information to consumers.
76 (5) INJUNCTIVE RELIEF.—
77 (a) An owner, assignee, authorized agent, or licensee of a
78 commercial recording or audio visual work aggrieved by a

79 violation of this section may bring a private cause of action to
80 obtain a declaratory judgment that an act or practice violates
81 this section and enjoin any person who has violated, is
82 violating, or is otherwise likely to violate this section.
83 (b) Upon motion of the party instituting the action, the
84 court may make appropriate orders to compel compliance with this
85 section.
86 (c) The prevailing party in a cause under this section is
87 entitled to recover necessary expenses and reasonable attorney
88 fees.
89 Section 2. This act shall take effect July 1, 2015.

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	____	

1 Committee/Subcommittee hearing bill: Business & Professions
2 Subcommittee
3 Representative Nuñez offered the following:
4
5 **Amendment**
6 Between lines 57 and 58, insert:
7 (d) "Website" means a set of related webpages served from
8 a single web domain. The term does not include a homepage or
9 channel page for the user account of a person that is not the
10 owner or operator of the website upon which such user homepage
11 or channel page appears.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 271 (2015)

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	___	

---

1 Committee/Subcommittee hearing bill: Business & Professions
2 Subcommittee
3 Representative Nuñez offered the following:
4
5 **Amendment**
6 Remove line 78 and insert:
7 commercial recording or audio visual work that was
8 electronically disseminated by a website or online service in

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 ______

---

1 Committee/Subcommittee hearing bill: Business & Professions
2 Subcommittee
3 Representative Nuñez offered the following:
4
5 **Amendment**
6 Remove lines 81-82 and insert:
7 this section and enjoin any person who knowingly has violated,
8 is violating, or is otherwise likely to violate this section. As
9 a condition precedent to filing a civil action under this
10 section, the aggrieved party must make reasonable efforts to
11 place an individual alleged to be in violation of this section
12 on notice that the individual may be in violation of this
13 section and that failure to cure within 14 days may result in a
14 civil action filed in a court of competent jurisdiction.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 401 Public Lodging & Public Food Service Establishments
SPONSOR(S): Magar
TIED BILLS: **IDEN./SIM. BILLS:** SB 558

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Gonzalez	Luczynski
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The Division of Hotels and Restaurants ("Division") within the Department of Business and Professional Regulation ("Department"), enforces the provisions of ch. 509, F.S., and all other applicable laws relating to the license, inspection and regulation of public lodging establishments and public food service establishments.

Under current law, public food service establishments are inspected one to four times per year, based on a risk-based inspection frequency. Establishments' inspection frequency is determined annually. This bill allows a completely risk-based inspection frequency requiring no minimum or maximum annual inspections and enables the Division to reassess a public food service establishment's inspection frequency more than once annually.

Currently, the Department is required to provide each inspected establishment operator and event sponsor of proposed temporary food service events with the food-recovery brochure. The bill requires the Department only to notify the inspected establishment or temporary event sponsor of the food-recovery brochure.

Public food service establishments holding current licenses from the Division may operate at temporary food service events without obtaining a separate license only if the event is three days or less in duration. The bill allows public food service establishments holding current licenses to operate at all temporary food service events without a separate license, regardless of the duration of the event.

The bill allows the Division to deliver electronic copies of lodging and food service establishment inspection reports to operators. Also, the bill requires operators to make copies of inspection reports available to the Division at the time of inspection. Thus, according to the Department, the bill allows operators to maintain the inspection report in any format, including electronic, on the premises, so long as the inspection report can be readily retrieved upon public request or inspection by the Division.

The bill sets a flat rate delinquent license renewal fee of $50 for all license renewals within 60 days after expiration.

This bill has a substantial negative fiscal impact to the State. The estimated reduction in revenue is $461,420, which is slightly offset by a reduction in expenditures of approximately $40,000.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation - Public Food Service Establishment Inspections

The Division of Hotels and Restaurants ("Division") within the Department of Business and Professional Regulation ("Department"), is charged with enforcing the provisions of ch. 509, F.S., and all other applicable laws relating to the inspection and regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare. The Division licenses public food service establishments within the state, and is responsible for inspections and quality assurance.[1]

Public food service establishments do not include eating places maintained by schools for student and faculty use; eating places maintained by a church or religious organization, eating places on airplanes, trains, buses, or watercrafts; places certified or licensed by the Health Care Administration or the Department of Agriculture; or movie theatre concession stands, and other places which serve beverages, popcorn, and other prepackaged food without additions or preparation.

The division conducted 108,248 public food services inspections in fiscal year 2013-2014.[2]

In 2008, OPPAGA reviewed Florida's food safety programs and recommended that "the Legislature direct the agencies to adopt a consistent methodology for measuring performance and authorize DBPR to use a risk-based approach to target its resources to restaurants that pose the greatest threat to public health."[3] In a 2010 follow-up report, OPPAGA restated its recommendation and noted that "Risk-based inspection frequency models consider the risk posed by different types of facilities, and enable regulators to target limited resources to the highest risk facilities."[4]

Effective, January 1, 2013, the Division adopted provisions of the 2009 Food and Drug Administration ("FDA") Food Code, which establishes provisions for reducing risk factors known to cause or contribute to foodborne illness. The new risk designations for Food Code provisions establish a three-tiered system which replaces the designations of "critical" or "non-critical" violations. The new designations include "High Priority," "Intermediate," and "Basic."

Currently, public food service establishments are inspected between one to four times per year, based on a risk-based inspection frequency classification. Establishments' risk-based inspection frequency is determined annually based on the risk presented by the establishment's type of food and food preparation processes, type of service, and compliance history.

The classification guidelines for determining the minimum number of annual inspections are presented in the following table:[5]

---

[1] s. 509.032, F.S.
[2] Division of Hotels and Restaurants, Annual Report: FY 2013-2014, pg. 14.
[3] State Food Safety Programs Should Improve Performance and Financial Self-Sufficiency, OPPAGA Report No. 08-67, December 2008.
[4] State Food Safety Programs Should Improve Performance and Financial Self-Sufficiency, OPPAGA Report No. 10-44, December 2010.
[5] Rule 61C-1.002, F.A.C.

Classification	Public Food Service Establishment Classification Guidelines	Minimum Annual Inspections
Level 1	Establishments licensed as annual temporary public food service establishments or vending machines; or Establishments that: • Do not cook raw animal food; or • Cook raw animal food, but do not cool any cooked or heated foods.	1
Level 2	Establishments that: • Cook raw animal food and cool any cooked or heated foods; or • Conduct a special process as described in 3-502.11 or 3-502.12, Food Code, as adopted by reference in Rule 61C-1.001, F.A.C.; or • Serve a raw or undercooked animal food that requires a consumer advisory under 3-603.11, Food Code, as adopted by reference in Rule 61C-1.001, F.A.C. or Rule 61C-4.010, F.A.C.	2
Level 3	Establishments with a history of non-compliance resulting in three or more disciplinary Final Orders filed with the Agency Clerk within the previous two annual inspection cycles; or Establishments that serve a highly susceptible population as defined in the Food Code, as adopted by reference in Rule 61C-1.001, F.A.C.	3
Level 4	Establishments with a confirmed foodborne illness within the previous calendar year as reported by the Florida Department of Health.	4

Effect of the Bill

The bill changes the inspection frequency for public food service establishments from one to four times a year to a completely risk-based inspection frequency requiring no minimum or maximum annual inspections. The bill also enable the Division to reassess a public food service establishment's inspection frequency in real-time upon identifying a change in the risk level, rather than waiting for the next annual reassessment. Such risk-based frequency categories and minimum annual reassessment are designed to support the development of data to classify establishments within the correct frequency category in real-time based upon public health risk and to allow the Division to focus its resources on establishments that pose higher risks.

The bill does not change the Division's authority to perform inspections at such other times as the Division determines is necessary to ensure the public's health, safety, and welfare, as well as, to investigate complaints.

Present Situation - Food-Recovery Brochure

The food-recovery brochure was developed pursuant to s. 595.420(7), F.S., for public information purposes. The brochure is required to be updated annually and details the need for food recovery programs, the benefit of food recovery programs, the manner in which organizations may become involved in food recovery programs, the protection afforded to such programs, and the food recovery entities or food banks that exist in the state.

In inspecting public food service establishments, the Department is required to provide each inspected establishment with the food-recovery brochure.[6] The Department is also required to provide the

[6] s. 509.032(2)(g), F.S.

brochure along with other educational materials to event sponsors of proposed temporary food service events.[7]

The Florida Department of Agriculture and Consumer Services ("DACS") develops and prints the food-recovery brochure, but prints a limited number of copies and does not provide brochures to the Division for dissemination. The food-recovery brochure is available on the DACS website in a PDF format.

Effect of the Bill

The bill revises the duties with respect to distribution of the food-recovery brochure. Rather than requiring the Department to provide each inspected establishment or temporary food service event sponsor with the food-recovery brochure, the Department is only required to notify the inspected establishments and event sponsors of the brochure.

Present Situation - Temporary Food Service Events

The Division licenses and inspects public food service establishments and food vendors at temporary food service events, defined as "any event of 30 or fewer consecutive days in duration ... where food is prepared, served or sold to the general public."[8] In FY 2013-2014, the Division licensed and inspected 7,718 public food service establishments and food vendors at temporary food service events.

Public food service establishments and other food service vendors are required to obtain an individual or annual license from the Division for temporary food service events.[9] There are two types of individual event licenses for temporary food service events: 1-3 day event licenses at a cost of $91 and 4-30 day event licenses at a cost of $105, per event. A temporary food service event annual license, which entitles the licensee to participate in an unlimited number of food service events during the license period, can also be purchased for $456.[10]

Currently, public food service establishments holding current licenses from the Division may operate under the regulations of such a license at temporary food service events if the event is of three days or less in duration.[11] The licensees may operate at a temporary food service event without having to obtain a separate temporary food service event license, but are still subject to inspections at the event.

Effect of the Bill

The bill allows public food service establishments holding current licenses to operate at temporary food service events without a separate license, regardless of the duration of the temporary food service event. This bill does not change the definition of temporary food service event, which is limited to 30 days or fewer.

Present Situation - Public Food Service Establishment Inspection Reports

Notice served by the Division are required to be in writing and delivered personally to the operator of the public lodging establishment or public food service establishment.[12] If the operator of an establishment refuses to accept service or evades service or the agent is otherwise unable to effect service after due diligence, the Division may post such notice in a conspicuous place at the establishment.

[7] s. 509.032(3)(c)2., F.S.
[8] Rule 61C-1.001(31), F.A.C.
[9] s. 509.032(3), F.S
[10] Rule 61C-1.008, F.A.C.
[11] s. 509.032(3)(c)3.b., F.S.
[12] s. 509.091, F.S.

Division inspectors record inspection results electronically on personal digital assistants (PDAs) or manually on paper inspection forms. Inspection results are uploaded to DBPR's Single Licensing System and made available for public review on DBPR's website.

Public food service establishment and public lodging establishment operators are required to maintain the latest inspection report or a copy on the premises of the establishment.[13] Operators are required to make such reports or copies available to the public upon request.

Effect of the Bill

The bill provides the Division the option to deliver electronic inspection reports to licensees. The Division may continue to provide hard copies of inspection reports upon request of the licensee. The bill requires operators of establishments to make copies of inspection reports available to the Division at the time of inspection of the establishment.

Present Situation - Delinquent Fees for License Renewal of Public Lodging Establishments

Public food service establishments and public lodging establishments are required to renew their licenses annually.[14] If the license is not renewed by the expiration date, the licensee is assessed a delinquent fee.[15] The Division is required to adopt delinquent fees by rule. Statute prescribes a maximum late fee of $50 for licenses renewed within 30 days of the expiration date and a maximum of $100 for licenses renewed more than 30 days, but less than 60 days, after the expiration date.

Effect of the Bill

The bill reduces the license renewal fee for delinquent licenses by setting a flat rate of $50 instead of two separate rates. The maximum fee of $100 for licenses more than 30 days late is removed, and a flat rate of $50 is set for any late renewal from 1-60 days. Licensed expired more than 60 days will still be subject to an administrative complaint as prescribed in rule.

B. SECTION DIRECTORY:

Section 1: Amends s. 509.032, F.S., relating to inspections for licensed public food service establishments and the food-recovery brochure.

Section 2: Amends s. 509.091, F.S., relating to electronic lodging inspection reports and food service inspection reports.

Section 3: Amends s. 509.101, F.S., relating to copies of food service inspection reports to be maintained by operators of food service establishments.

Section 4: Amends s. 509.251, F.S., relating to delinquent fees for license renewal.

Section 5: Provides an effective date of July 1, 2015.

[13] s. 509.101, F.S.
[14] s. 509.241, F.S.
[15] s. 509.251, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill will reduce the Department's revenue by approximately $461,420 per year. Section 1 reduces revenue by eliminating separate licenses for temporary food service events for licensed public food service establishments, which accounts for a reduction of $130,620. Section 4 reduces revenue by reducing the delinquent fee, from $100 to $50, for licenses expired 30-60 days, which accounts for a reduction of $330,880.

2. Expenditures:

   Uncertain. The bill will reduce the Department's expenditures by reducing the amount of thermal paper used per year as a result of electronic transmittal of inspection reports. A 1% reduction of thermal paper use would result in savings of $509.87, 5% reduction will lead to $2,549.34 in savings, 10% reduction will lead to $5,098.68 in savings, and 15% reduction will lead to $7,648.02 in savings.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will reduce expenditures for licensed public food service establishments that operate at temporary food service events by eliminating the cost of obtaining a separate license. Per establishment savings depend upon the type of license obtained, ranging from $105 per 4-30 day event to $456 for an annual license. Also, any establishment with a license expired more than 30 days would pay a reduced delinquent fee, saving $50 per establishment. Total private sector expenditure reductions would be equivalent to the Division's revenue reduction.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The Division would be required to adopt procedures for electronic transmittal of the inspection reports and rules relating to how often the Division reassesses public food service establishment inspection frequencies. Also, the Division would need to amend the rules adopting the delinquent fee and disciplinary guidelines relating to operating on an expired license.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

The language deleted in s. 509.032(2)(a), F.S., removes the Division's duty to adopt a rule regarding risk-based inspection frequency for licensed establishments. The stricken language makes it unclear whether the Division has a duty to inspect licensed establishments at all. The language following the stricken language begins with "the division shall reassess the inspection frequency ... at least annually" This gives the Division the duty to reassess risk classifications for establishments at least annually, but provides no explicit duty to inspect an establishment.

Additionally, the Division may be required to adopt rules and procedures for determining risk classifications and inspection frequencies for licensed establishments. The stricken language contains rule-making guidance to the Division for determining risk-based inspection frequencies.

The sponsor has agreed to file an amendment to address these issues.

Performance Measures

In removing the minimum number statutorily required inspections per establishment and moving toward completely risk-based inspection frequencies, it is uncertain how the Division will establish performance measures for inspectors under the Long Range Program Plan to ensure efficiency and accurate calculation of the Division's budget. Currently the Division measures performance based on the percentage of statutorily required inspections completed each year. Without a required minimum or maximum of inspections, the number inspections performed each year will vary. The Division may want to establish a performance measure that determines the effectiveness of the new inspection process based on its ability to increase compliance with food service establishments.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
2 An act relating to public lodging and public food
3 service establishments; amending s. 509.032, F.S.;
4 deleting a requirement that the Division of Hotels and
5 Restaurants of the Department of Business and
6 Professional Regulation adopt rules providing the
7 risk-based inspection frequency for licensed public
8 food service establishments; revising how often the
9 division must reassess the inspection frequency of a
10 licensed public food service establishment; revising
11 the department's duties with respect to distribution
12 of a specified food-recovery brochure; deleting a
13 restriction on the length of time that a licensed
14 public food service establishment may operate at a
15 temporary food service event; amending s. 509.091,
16 F.S.; authorizing the division to deliver lodging
17 inspection reports and food service inspection reports
18 electronically; amending s. 509.101, F.S.; requiring
19 operators of public food service establishments to
20 maintain copies of food service inspection reports and
21 make them available to the division; amending s.
22 509.251, F.S.; revising certain delinquent fees for
23 license renewal; providing an effective date.
24
25 Be It Enacted by the Legislature of the State of Florida:
26

27 Section 1. Paragraphs (a) and (g) of subsection (2) and
28 paragraph (c) of subsection (3) of section 509.032, Florida
29 Statutes, are amended to read:
30 509.032 Duties.—
31 (2) INSPECTION OF PREMISES.—
32 (a) The division has jurisdiction and is responsible for
33 all inspections required by this chapter. The division is
34 responsible for quality assurance. The division shall inspect
35 each licensed public lodging establishment at least biannually,
36 except for transient and nontransient apartments, which shall be
37 inspected at least annually. Each establishment licensed by the
38 division shall be inspected at such other times as the division
39 determines is necessary to ensure the public's health, safety,
40 and welfare. ~~The division shall, by no later than July 1, 2014,~~
41 ~~adopt by rule a risk-based inspection frequency for each~~
42 ~~licensed public food service establishment. The rule must~~
43 ~~require at least one, but not more than four, routine~~
44 ~~inspections that must be performed annually, and may include~~
45 ~~guidelines that consider the inspection and compliance history~~
46 ~~of a public food service establishment, the type of food and~~
47 ~~food preparation, and the type of service.~~ The division shall
48 ~~annually~~ reassess the inspection frequency of all licensed
49 public food service establishments at least annually. Public
50 lodging units classified as vacation rentals or timeshare
51 projects are not subject to this requirement but shall be made
52 available to the division upon request. If, during the

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

53 inspection of a public lodging establishment classified for
54 renting to transient or nontransient tenants, an inspector
55 identifies vulnerable adults who appear to be victims of
56 neglect, as defined in s. 415.102, or, in the case of a building
57 that is not equipped with automatic sprinkler systems, tenants
58 or clients who may be unable to self-preserve in an emergency,
59 the division shall convene meetings with the following agencies
60 as appropriate to the individual situation: the Department of
61 Health, the Department of Elderly Affairs, the area agency on
62 aging, the local fire marshal, the landlord and affected tenants
63 and clients, and other relevant organizations, to develop a plan
64 that improves the prospects for safety of affected residents
65 and, if necessary, identifies alternative living arrangements
66 such as facilities licensed under part II of chapter 400 or
67 under chapter 429.
68 (g) In inspecting public food service establishments, the
69 department shall notify ~~provide~~ each inspected establishment of
70 ~~with~~ the food-recovery brochure developed under s. 595.420.
71 (3) SANITARY STANDARDS; EMERGENCIES; TEMPORARY FOOD
72 SERVICE EVENTS.—The division shall:
73 (c) Administer a public notification process for temporary
74 food service events and distribute educational materials that
75 address safe food storage, preparation, and service procedures.
76 1. Sponsors of temporary food service events shall notify
77 the division at least ~~not less than~~ 3 days before the scheduled
78 event of the type of food service proposed, the time and

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

79 location of the event, a complete list of food service vendors
80 participating in the event, the number of individual food
81 service facilities each vendor will operate at the event, and
82 the identification number of each food service vendor's current
83 license as a public food service establishment or temporary food
84 service event licensee. Notification may be completed orally, by
85 telephone, in person, or in writing. A public food service
86 establishment or food service vendor may not use this
87 notification process to circumvent the license requirements of
88 this chapter.
89 2. The division shall keep a record of all notifications
90 received for proposed temporary food service events and shall
91 provide appropriate educational materials to and notify the
92 event sponsors of~~, including~~ the food-recovery brochure
93 developed under s. 595.420.
94 3.a. A public food service establishment or other food
95 service vendor must obtain one of the following classes of
96 license from the division: an individual license, for a fee of
97 no more than $105, for each temporary food service event in
98 which it participates; or an annual license, for a fee of no
99 more than $1,000, that entitles the licensee to participate in
100 an unlimited number of food service events during the license
101 period. The division shall establish license fees, by rule, and
102 may limit the number of food service facilities a licensee may
103 operate at a particular temporary food service event under a
104 single license.

105 b. Public food service establishments holding current
106 licenses from the division may operate under the regulations of
107 such a license at temporary food service events ~~of 3 days or~~
108 ~~less in duration~~.
109 Section 2. Section 509.091, Florida Statutes, is amended
110 to read:
111 509.091 Notices; form and service.—Each notice served by
112 the division pursuant to this chapter must be in writing and
113 must be delivered personally by an agent of the division or by
114 registered letter to the operator of the public lodging
115 establishment or public food service establishment. If the
116 operator refuses to accept service or evades service or the
117 agent is otherwise unable to effect service after due diligence,
118 the division may post such notice in a conspicuous place at the
119 establishment. The division may deliver lodging inspection
120 reports and food service inspection reports electronically to
121 the operator of a public lodging establishment or public food
122 service establishment.
123 Section 3. Subsection (1) of section 509.101, Florida
124 Statutes, is amended to read:
125 509.101 Establishment rules; posting of notice; food
126 service inspection report; maintenance of guest register; mobile
127 food dispensing vehicle registry.—
128 (1) Any operator of a public lodging establishment or a
129 public food service establishment may establish reasonable rules
130 and regulations for the management of the establishment and its

131 guests and employees; and each guest or employee staying,
132 sojourning, eating, or employed in the establishment shall
133 conform to and abide by such rules and regulations so long as
134 the guest or employee remains in or at the establishment. Such
135 rules and regulations shall be deemed to be a special contract
136 between the operator and each guest or employee using the
137 services or facilities of the operator. Such rules and
138 regulations shall control the liabilities, responsibilities, and
139 obligations of all parties. Any rules or regulations established
140 pursuant to this section shall be printed in the English
141 language and posted in a prominent place within such public
142 lodging establishment or public food service establishment. In
143 addition, any operator of a public food service establishment
144 shall maintain a copy of the latest food service inspection
145 report ~~or a duplicate copy on premises~~ and shall make it
146 available to the division at the time of an inspection of the
147 establishment and to the public upon request.
148 Section 4. Paragraph (b) of subsection (1) and paragraph
149 (b) of subsection (2) of section 509.251, Florida Statutes, are
150 amended to read:
151 509.251 License fees.—
152 (1) The division shall adopt, by rule, a schedule of fees
153 to be paid by each public lodging establishment as a
154 prerequisite to issuance or renewal of a license. Such fees
155 shall be based on the number of rental units in the
156 establishment. The aggregate fee per establishment charged any

157 public lodging establishment shall not exceed $1,000; however,
158 the fees described in paragraphs (a) and (b) may not be included
159 as part of the aggregate fee subject to this cap. Vacation
160 rental units or timeshare projects within separate buildings or
161 at separate locations but managed by one licensed agent may be
162 combined in a single license application, and the division shall
163 charge a license fee as if all units in the application are in a
164 single licensed establishment. The fee schedule shall require an
165 establishment which applies for an initial license to pay the
166 full license fee if application is made during the annual
167 renewal period or more than 6 months prior to the next such
168 renewal period and one-half of the fee if application is made 6
169 months or less prior to such period. The fee schedule shall
170 include fees collected for the purpose of funding the
171 Hospitality Education Program, pursuant to s. 509.302, which are
172 payable in full for each application regardless of when the
173 application is submitted.

174 (b) A license renewal filed with the division ~~within 30~~
175 ~~days~~ after the expiration date shall be accompanied by a
176 delinquent fee as prescribed by rule, not to exceed $50, in
177 addition to the renewal fee and any other fees required by law.
178 ~~A license renewal filed with the division more than 30 but not~~
179 ~~more than 60 days after the expiration date shall be accompanied~~
180 ~~by a delinquent fee as prescribed by rule, not to exceed $100,~~
181 ~~in addition to the renewal fee and any other fees required by~~
182 ~~law.~~

183 (2) The division shall adopt, by rule, a schedule of fees
184 to be paid by each public food service establishment as a
185 prerequisite to issuance or renewal of a license. The fee
186 schedule shall prescribe a basic fee and additional fees based
187 on seating capacity and services offered. The aggregate fee per
188 establishment charged any public food service establishment may
189 not exceed $400; however, the fees described in paragraphs (a)
190 and (b) may not be included as part of the aggregate fee subject
191 to this cap. The fee schedule shall require an establishment
192 which applies for an initial license to pay the full license fee
193 if application is made during the annual renewal period or more
194 than 6 months prior to the next such renewal period and one-half
195 of the fee if application is made 6 months or less prior to such
196 period. The fee schedule shall include fees collected for the
197 purpose of funding the Hospitality Education Program, pursuant
198 to s. 509.302, which are payable in full for each application
199 regardless of when the application is submitted.
200 (b) A license renewal filed with the division ~~within 30~~
201 ~~days~~ after the expiration date shall be accompanied by a
202 delinquent fee as prescribed by rule, not to exceed $50, in
203 addition to the renewal fee and any other fees required by law.
204 ~~A license renewal filed with the division more than 30 but not~~
205 ~~more than 60 days after the expiration date shall be accompanied~~
206 ~~by a delinquent fee as prescribed by rule, not to exceed $100,~~
207 ~~in addition to the renewal fee and any other fees required by~~
208 ~~law.~~

209 Section 5. This act shall take effect July 1, 2015.

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 ______

---

1 Committee/Subcommittee hearing bill: Business & Professions
2 Subcommittee
3 Representative Magar offered the following:
4
5 **Amendment (with title amendment)**
6 Remove lines 40-208 and insert:
7 and welfare. The division shall~~, by no later than July 1, 2014,~~
8 adopt by rule a risk-based inspection frequency for each
9 licensed public food service establishment. The rule must
10 require at least one, but not more than four, routine
11 inspections that must be performed annually, and may include
12 guidelines that consider the inspection and compliance history
13 of a public food service establishment, the type of food and
14 food preparation, and the type of service. The division shall
15 ~~annually~~ reassess the inspection frequency of all licensed
16 public food service establishments at least annually. Public
17 lodging units classified as vacation rentals or timeshare

18 projects are not subject to this requirement but shall be made
19 available to the division upon request. If, during the
20 inspection of a public lodging establishment classified for
21 renting to transient or nontransient tenants, an inspector
22 identifies vulnerable adults who appear to be victims of
23 neglect, as defined in s. 415.102, or, in the case of a building
24 that is not equipped with automatic sprinkler systems, tenants
25 or clients who may be unable to self-preserve in an emergency,
26 the division shall convene meetings with the following agencies
27 as appropriate to the individual situation: the Department of
28 Health, the Department of Elderly Affairs, the area agency on
29 aging, the local fire marshal, the landlord and affected tenants
30 and clients, and other relevant organizations, to develop a plan
31 that improves the prospects for safety of affected residents
32 and, if necessary, identifies alternative living arrangements
33 such as facilities licensed under part II of chapter 400 or
34 under chapter 429.

35 (g) In inspecting public food service establishments, the
36 department shall notify ~~provide~~ each inspected establishment of
37 the availability of ~~with~~ the food-recovery brochure developed
38 under s. 595.420.

39 (3) SANITARY STANDARDS; EMERGENCIES; TEMPORARY FOOD
40 SERVICE EVENTS.—The division shall:

41 (c) Administer a public notification process for temporary
42 food service events and distribute educational materials that
43 address safe food storage, preparation, and service procedures.

44 1. Sponsors of temporary food service events shall notify
45 the division not less than 3 days before the scheduled event of
46 the type of food service proposed, the time and location of the
47 event, a complete list of food service vendors participating in
48 the event, the number of individual food service facilities each
49 vendor will operate at the event, and the identification number
50 of each food service vendor's current license as a public food
51 service establishment or temporary food service event licensee.
52 Notification may be completed orally, by telephone, in person,
53 or in writing. A public food service establishment or food
54 service vendor may not use this notification process to
55 circumvent the license requirements of this chapter.

56 2. The division shall keep a record of all notifications
57 received for proposed temporary food service events and shall
58 provide appropriate educational materials to the event sponsors
59 and notify the event sponsors of the availability of~~, including~~
60 the food-recovery brochure developed under s. 595.420.

61 3.a. A public food service establishment or other food
62 service vendor must obtain one of the following classes of
63 license from the division: an individual license, for a fee of
64 no more than $105, for each temporary food service event in
65 which it participates; or an annual license, for a fee of no
66 more than $1,000, that entitles the licensee to participate in
67 an unlimited number of food service events during the license
68 period. The division shall establish license fees, by rule, and
69 may limit the number of food service facilities a licensee may

70 operate at a particular temporary food service event under a
71 single license.
72 b. Public food service establishments holding current
73 licenses from the division may operate under the regulations of
74 such a license at temporary food service events ~~of 3 days or~~
75 ~~less in duration~~.
76 Section 2. Section 509.091, Florida Statutes, is amended
77 to read:
78 509.091 Notices; form and service.—
79 <u>(1)</u> Each notice served by the division pursuant to this
80 chapter must be in writing and must be delivered personally by
81 an agent of the division or by registered letter to the operator
82 of the public lodging establishment or public food service
83 establishment. If the operator refuses to accept service or
84 evades service or the agent is otherwise unable to effect
85 service after due diligence, the division may post such notice
86 in a conspicuous place at the establishment.
87 <u>(2) Notwithstanding subsection (1), the division may</u>
88 <u>deliver lodging inspection reports and food service inspection</u>
89 <u>reports to the operator of the public lodging establishment or</u>
90 <u>public food service establishment by electronic means.</u>
91 Section 3. Subsection (1) of section 509.101, Florida
92 Statutes, is amended to read:
93 509.101 Establishment rules; posting of notice; food
94 service inspection report; maintenance of guest register; mobile
95 food dispensing vehicle registry.—

96 (1) Any operator of a public lodging establishment or a
97 public food service establishment may establish reasonable rules
98 and regulations for the management of the establishment and its
99 guests and employees; and each guest or employee staying,
100 sojourning, eating, or employed in the establishment shall
101 conform to and abide by such rules and regulations so long as
102 the guest or employee remains in or at the establishment. Such
103 rules and regulations shall be deemed to be a special contract
104 between the operator and each guest or employee using the
105 services or facilities of the operator. Such rules and
106 regulations shall control the liabilities, responsibilities, and
107 obligations of all parties. Any rules or regulations established
108 pursuant to this section shall be printed in the English
109 language and posted in a prominent place within such public
110 lodging establishment or public food service establishment. In
111 addition, any operator of a public food service establishment
112 shall maintain a copy of the latest food service inspection
113 report ~~or a duplicate copy on premises~~ and shall make it
114 available to the division at the time of any division inspection
115 of the establishment and to the public, upon request.
116 Section 4. Subsections (1) and (2) of section 509.251,
117 Florida Statutes, are amended to read:
118 509.251 License fees.—
119 (1) The division shall adopt, by rule, a schedule of fees
120 to be paid by each public lodging establishment as a
121 prerequisite to issuance or renewal of a license. Such fees

122 shall be based on the number of rental units in the
123 establishment. The aggregate fee per establishment charged any
124 public lodging establishment may ~~shall~~ not exceed $1,000;
125 however, the fees described in paragraphs (a) and (b) may not be
126 included as part of the aggregate fee subject to this cap.
127 Vacation rental units or timeshare projects within separate
128 buildings or at separate locations but managed by one licensed
129 agent may be combined in a single license application, and the
130 division shall charge a license fee as if all units in the
131 application are in a single licensed establishment. The fee
132 schedule shall require an establishment which applies for an
133 initial license to pay the full license fee if application is
134 made during the annual renewal period or more than 6 months
135 before ~~prior to~~ the next such renewal period and one-half of the
136 fee if application is made 6 months or less before ~~prior to~~ such
137 period. The fee schedule shall include fees collected for the
138 purpose of funding the Hospitality Education Program, pursuant
139 to s. 509.302, which are payable in full for each application
140 regardless of when the application is submitted.

141 (a) Upon making initial application or an application for
142 change of ownership, the applicant shall pay to the division a
143 fee as prescribed by rule, not to exceed $50, in addition to any
144 other fees required by law, which shall cover all costs
145 associated with initiating regulation of the establishment.

146 (b) A license renewal filed with the division ~~within 30~~
147 ~~days~~ after the expiration date shall be accompanied by a

148 delinquent fee as prescribed by rule, not to exceed $50, in
149 addition to the renewal fee and any other fees required by law.
150 ~~A license renewal filed with the division more than 30 but not~~
151 ~~more than 60 days after the expiration date shall be accompanied~~
152 ~~by a delinquent fee as prescribed by rule, not to exceed $100,~~
153 ~~in addition to the renewal fee and any other fees required by~~
154 ~~law.~~
155 (2) The division shall adopt, by rule, a schedule of fees
156 to be paid by each public food service establishment as a
157 prerequisite to issuance or renewal of a license. The fee
158 schedule shall prescribe a basic fee and additional fees based
159 on seating capacity and services offered. The aggregate fee per
160 establishment charged any public food service establishment may
161 not exceed $400; however, the fees described in paragraphs (a)
162 and (b) may not be included as part of the aggregate fee subject
163 to this cap. The fee schedule shall require an establishment
164 which applies for an initial license to pay the full license fee
165 if application is made during the annual renewal period or more
166 than 6 months before ~~prior to~~ the next such renewal period and
167 one-half of the fee if application is made 6 months or less
168 before ~~prior to~~ such period. The fee schedule shall include fees
169 collected for the purpose of funding the Hospitality Education
170 Program, pursuant to s. 509.302, which are payable in full for
171 each application regardless of when the application is
172 submitted.

173 (a) Upon making initial application or an application for
174 change of ownership, the applicant shall pay to the division a
175 fee as prescribed by rule, not to exceed $50, in addition to any
176 other fees required by law, which shall cover all costs
177 associated with initiating regulation of the establishment.
178 (b) A license renewal filed with the division ~~within 30~~
179 ~~days~~ after the expiration date shall be accompanied by a
180 delinquent fee as prescribed by rule, not to exceed $50, in
181 addition to the renewal fee and any other fees required by law.
182 ~~A license renewal filed with the division more than 30 but not~~
183 ~~more than 60 days after the expiration date shall be accompanied~~
184 ~~by a delinquent fee as prescribed by rule, not to exceed $100,~~
185 ~~in addition to the renewal fee and any other fees required by~~
186 ~~law.~~
187
188 ---
189 **T I T L E A M E N D M E N T**
190 Remove lines 4-10 and insert:
191 revising the frequency at which the Division of Hotels
192 and Restaurants of the Department of Business and
193 Professional Regulation must reassess the inspection
194 frequency of public food service establishments;
195 revising

HB 4021

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4021 Financial Reporting
SPONSOR(S): Steube
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 796

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Whittier	Luczynski
2) Civil Justice Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units which may be owned by one or more persons, but have an undivided share of access to common facilities, and are governed by an association. A cooperative is a form of real property ownership created pursuant to ch. 719, F.S., whereby the real property is owned by the cooperative association, and individual units are leased to the residents, who own shares in the cooperative association. A homeowners' association is a corporation responsible for the operation of a community or mobile home subdivision and is created pursuant to ch. 720, F.S.

State law requires that condominium associations, cooperative associations, and homeowners' associations prepare and complete, or contract for the preparation and completion of, a financial report for the preceding fiscal year. The financial statements must be based upon the following provisions:

- An association with total annual revenues of $150,000 or more, but less than $300,000, shall prepare compiled financial statements.
- An association with total annual revenues of at least $300,000, but less than $500,000, shall prepare reviewed financial statements.
- An association with total annual revenues of $500,000 or more shall prepare audited financial statements.
- An association with total annual revenues of less than $150,000 shall prepare a report of cash receipts and expenditures.
- An association that operates fewer than 50 units, regardless of the association's annual revenues, shall ["may" for homeowners' associations] prepare a report of cash receipts and expenditures in lieu of financial statements.

The bill removes the provision, from all three chapters of law, that an association operating fewer than 50 units, regardless of the association's annual revenues, shall ["may" for homeowners' associations] prepare a report of cash receipts and expenditures in lieu of financial statements; thereby the year-end financial reports would be based solely on the level of annual revenues. This change should help ensure transparency and reduce the risk of fraud.

There appears to be no fiscal impact on state or local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Condominium Associations

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units which maybe owned by one or more persons, but have an undivided share of access to common facilities.[1] A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.[2] A declaration governs the relationships among condominium unit owners and the condominium association.

In accordance with s. 718.111(13), F.S., within 90 days after the end of the fiscal year, or annually on a date provided in the bylaws, the association is required to prepare and complete, or contract for the preparation and completion of, a financial report for the preceding fiscal year. Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association must mail to each unit owner at the address last furnished to the association by the unit owner, or hand deliver to each unit owner, a copy of the financial report or a notice that a copy of the financial report will be mailed or hand delivered to the unit owner, without charge, upon receipt of a written request from the unit owner.

Specifically, financial reporting by condominium associations must adhere to the following provisions enumerated in s. 718.111, F.S.:

(13)(a) An association that meets the criteria of this paragraph shall prepare a complete set of financial statements in accordance with generally accepted accounting principles. The financial statements must be based upon the association's total annual revenues, as follows:

1. An association with total annual revenues of $150,000 or more, but less than $300,000, shall prepare compiled financial statements.
2. An association with total annual revenues of at least $300,000, but less than $500,000, shall prepare reviewed financial statements.
3. An association with total annual revenues of $500,000 or more shall prepare audited financial statements.

(b) 1. An association with total annual revenues of less than $150,000 shall prepare a report of cash receipts and expenditures.[3]

2. An association that operates fewer than 50 units, regardless of the association's annual revenues, **shall** prepare a report of cash receipts and expenditures in lieu of financial statements required by paragraph (a).

---

[1] Section 718.103(11), F.S.

[2] Section 718.104(2), F.S.

[3] A report of cash receipts and disbursements must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional and management fees and expenses, taxes, costs for recreation facilities, expenses for refuse collection and utility services, expenses for lawn care, costs for building maintenance and repair, insurance costs, administration and salary expenses, and reserves accumulated and expended for capital expenditures, deferred maintenance, and any other category for which the association maintains reserves.

Cooperative Associations

A cooperative is a form of real property ownership created pursuant to ch. 719, F.S. The real property is owned by the cooperative association,[4] and individual units are leased to the residents, who own shares in the cooperative association.[5] The lease payment amount is the pro-rata share of the operational expenses of the cooperative. Cooperatives operate similarly to condominiums and the laws regulating cooperatives are in many instances nearly identical.

In accordance with s. 719.104(4)(a), F.S., within 90 days following the end of the fiscal or calendar year or annually on such date as provided in the bylaws of the association, the board of administration shall prepare and complete, or contract with a third party to prepare and complete, a financial report covering the preceding fiscal or calendar year. Within 21 days after the financial report is completed by the association or received from the third party, but no later than 120 days after the end of the fiscal year, calendar year, or other date provided in the bylaws, the association shall provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member.[6]

Specifically, financial reporting by cooperative associations must adhere to the following provisions enumerated in s. 719.104, F.S.:

> (4)(b) Except as provided in paragraph (c), an association whose total annual revenues meet the criteria of this paragraph shall prepare or cause to be prepared a complete set of financial statements according to the generally accepted accounting principles adopted by the Board of Accountancy. The financial statements shall be as follows:
> 1. An association with total annual revenues between $150,000 and $299,999 shall prepare a compiled financial statement.
> 2. An association with total annual revenues between $300,000 and $499,999 shall prepare a reviewed financial statement.
> 3. An association with total annual revenues of $500,000 or more shall prepare an audited financial statement.
>
> (c) 1. An association with total annual revenues of less than $150,000 shall prepare a report of cash receipts and expenditures.[7]
> 2. An association in a community of fewer than 50 units, regardless of the association's annual revenues, **shall** prepare a report of cash receipts and expenditures in lieu of the financial statements required by paragraph (b), unless the declaration or other recorded governing documents provide otherwise.

---

[4] Section 719.103(2), F.S.

[5] Section 719.103(26), F.S.

[6] According to s. 719.104(4)(b)4., F.S.,

> The requirement to have the financial statement compiled, reviewed, or audited does not apply to an association if a majority of the voting interests of the association present at a duly called meeting of the association have voted to waive this requirement for the fiscal year. In an association in which turnover of control by the developer has not occurred, the developer may vote to waive the audit requirement for the first 2 years of operation of the association, after which time waiver of an applicable audit requirement shall be by a majority of voting interests other than the developer. The meeting shall be held prior to the end of the fiscal year, and the waiver shall be effective for only one fiscal year. An association may not waive the financial reporting requirements of this section for more than 3 consecutive years.

[7] A report of cash receipts and expenditures must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including the following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves, if maintained by the association.

Homeowners' Associations

A homeowners' association is a corporation responsible for the operation of a community or mobile home subdivision and is created pursuant to ch. 720, F.S. Only homeowners' associations whose covenants and restrictions include mandatory assessments are regulated by the statute.[8] There is no state agency that directly regulates homeowners' associations.

In accordance with s. 720.303(7), F.S., within 90 days after the end of the fiscal year, or annually on the date provided in the bylaws, the association shall prepare and complete, or contract with a third party for the preparation and completion of, a financial report for the preceding fiscal year. Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association shall provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member.

Specifically, financial reporting by homeowners' associations must adhere to the following provisions enumerated in s. 720.303, F.S.:

> (7)(a) An association that meets the criteria of this paragraph shall prepare or cause to be prepared a complete set of financial statements in accordance with generally accepted accounting principles as adopted by the Board of Accountancy. The financial statements shall be based upon the association's total annual revenues, as follows:
>
> 1. An association with total annual revenues of $150,000 or more, but less than $300,000, shall prepare compiled financial statements.
> 2. An association with total annual revenues of at least $300,000, but less than $500,000, shall prepare reviewed financial statements.
> 3. An association with total annual revenues of $500,000 or more shall prepare audited financial statements.
>
> (b) 1. An association with total annual revenues of less than $150,000 shall prepare a report of cash receipts and expenditures.[9]
>
> 2. An association in a community of fewer than 50 parcels, regardless of the association's annual revenues, **may** prepare a report of cash receipts and expenditures in lieu of financial statements required by paragraph (a) unless the governing documents provide otherwise.

Effect of Proposed Changes

Under the financial reporting requirements for condominiums associations, cooperative associations, and homeowners' associations, the bill removes the provisions that an association operating fewer than 50 units ["parcels" for homeowners' associations], regardless of the association's annual revenues, shall ["may" for homeowners' associations] prepare a report of cash receipts and expenditures in lieu of financial statements; thereby the year-end financial reports would be based solely on the level of annual revenues. This change should help ensure transparency and reduce the risk of fraud.

B. SECTION DIRECTORY:

Section 1. Amends s. 718.111, F.S., relating to financial reporting by condominium associations.

Section 2. Amends s. 719.104, F.S., relating to financial reporting by cooperative associations.

---

[8] Section 720.301(9), F.S.

[9] A report of cash receipts and disbursement must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves if maintained by the association.

Section 3. Amends s. 720.303, F.S., relating to financial reporting by homeowners' associations.

Section 4. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown.

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:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to financial reporting; amending ss.
3 718.111, 719.104, and 720.303, F.S.; deleting
4 provisions with respect to the preparation by certain
5 condominium associations, cooperative associations,
6 and homeowners' associations of annual reports of cash
7 receipts and expenditures in lieu of certain financial
8 statements; providing an effective date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Paragraph (b) of subsection (13) of section
13 718.111, Florida Statutes, is amended to read:
14 718.111 The association.—
15 (13) FINANCIAL REPORTING.—Within 90 days after the end of
16 the fiscal year, or annually on a date provided in the bylaws,
17 the association shall prepare and complete, or contract for the
18 preparation and completion of, a financial report for the
19 preceding fiscal year. Within 21 days after the final financial
20 report is completed by the association or received from the
21 third party, but not later than 120 days after the end of the
22 fiscal year or other date as provided in the bylaws, the
23 association shall mail to each unit owner at the address last
24 furnished to the association by the unit owner, or hand deliver
25 to each unit owner, a copy of the financial report or a notice
26 that a copy of the financial report will be mailed or hand

27 delivered to the unit owner, without charge, upon receipt of a
28 written request from the unit owner. The division shall adopt
29 rules setting forth uniform accounting principles and standards
30 to be used by all associations and addressing the financial
31 reporting requirements for multicondominium associations. The
32 rules must include, but not be limited to, standards for
33 presenting a summary of association reserves, including a good
34 faith estimate disclosing the annual amount of reserve funds
35 that would be necessary for the association to fully fund
36 reserves for each reserve item based on the straight-line
37 accounting method. This disclosure is not applicable to reserves
38 funded via the pooling method. In adopting such rules, the
39 division shall consider the number of members and annual
40 revenues of an association. Financial reports shall be prepared
41 as follows:
42 (b)1. An association with total annual revenues of less
43 than $150,000 shall prepare a report of cash receipts and
44 expenditures.
45 ~~2. An association that operates fewer than 50 units,~~
46 ~~regardless of the association's annual revenues, shall prepare a~~
47 ~~report of cash receipts and expenditures in lieu of financial~~
48 ~~statements required by paragraph (a).~~
49 2.~~3.~~ A report of cash receipts and disbursements must
50 disclose the amount of receipts by accounts and receipt
51 classifications and the amount of expenses by accounts and
52 expense classifications, including, but not limited to, the

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

53 following, as applicable: costs for security, professional and
54 management fees and expenses, taxes, costs for recreation
55 facilities, expenses for refuse collection and utility services,
56 expenses for lawn care, costs for building maintenance and
57 repair, insurance costs, administration and salary expenses, and
58 reserves accumulated and expended for capital expenditures,
59 deferred maintenance, and any other category for which the
60 association maintains reserves.
61 Section 2. Paragraph (c) of subsection (4) of section
62 719.104, Florida Statutes, is amended to read:
63 719.104 Cooperatives; access to units; records; financial
64 reports; assessments; purchase of leases.—
65 (4) FINANCIAL REPORT.—
66 (c)1. An association with total annual revenues of less
67 than $150,000 shall prepare a report of cash receipts and
68 expenditures.
69 ~~2. An association in a community of fewer than 50 units,~~
70 ~~regardless of the association's annual revenues, shall prepare a~~
71 ~~report of cash receipts and expenditures in lieu of the~~
72 ~~financial statements required by paragraph (b), unless the~~
73 ~~declaration or other recorded governing documents provide~~
74 ~~otherwise.~~
75 2.~~3.~~ A report of cash receipts and expenditures must
76 disclose the amount of receipts by accounts and receipt
77 classifications and the amount of expenses by accounts and
78 expense classifications, including the following, as applicable:

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

79 costs for security, professional, and management fees and
80 expenses; taxes; costs for recreation facilities; expenses for
81 refuse collection and utility services; expenses for lawn care;
82 costs for building maintenance and repair; insurance costs;
83 administration and salary expenses; and reserves, if maintained
84 by the association.
85 Section 3. Paragraph (b) of subsection (7) of section
86 720.303, Florida Statutes, is amended to read:
87 720.303 Association powers and duties; meetings of board;
88 official records; budgets; financial reporting; association
89 funds; recalls.—
90 (7) FINANCIAL REPORTING.—Within 90 days after the end of
91 the fiscal year, or annually on the date provided in the bylaws,
92 the association shall prepare and complete, or contract with a
93 third party for the preparation and completion of, a financial
94 report for the preceding fiscal year. Within 21 days after the
95 final financial report is completed by the association or
96 received from the third party, but not later than 120 days after
97 the end of the fiscal year or other date as provided in the
98 bylaws, the association shall, within the time limits set forth
99 in subsection (5), provide each member with a copy of the annual
100 financial report or a written notice that a copy of the
101 financial report is available upon request at no charge to the
102 member. Financial reports shall be prepared as follows:
103 (b)1. An association with total annual revenues of less
104 than $150,000 shall prepare a report of cash receipts and

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

105 expenditures.
106 ~~2. An association in a community of fewer than 50 parcels,~~
107 ~~regardless of the association's annual revenues, may prepare a~~
108 ~~report of cash receipts and expenditures in lieu of financial~~
109 ~~statements required by paragraph (a) unless the governing~~
110 ~~documents provide otherwise.~~
111 2.~~3.~~ A report of cash receipts and disbursement must
112 disclose the amount of receipts by accounts and receipt
113 classifications and the amount of expenses by accounts and
114 expense classifications, including, but not limited to, the
115 following, as applicable: costs for security, professional, and
116 management fees and expenses; taxes; costs for recreation
117 facilities; expenses for refuse collection and utility services;
118 expenses for lawn care; costs for building maintenance and
119 repair; insurance costs; administration and salary expenses; and
120 reserves if maintained by the association.
121 Section 4. This act shall take effect July 1, 2015.