State Affairs Committee

Thursday, March 19, 2015
12:30 PM
Morris Hall (17 HOB)

Meeting Packet

Steve Crisafulli
Speaker

Matt Caldwell
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

State Affairs Committee

Start Date and Time:	Thursday, March 19, 2015 12:30 pm
End Date and Time:	Thursday, March 19, 2015 02:30 pm
Location:	Morris Hall (17 HOB)
Duration:	2.00 hrs

Consideration of the following bill(s):

CS/HB 71 Service Animals by Judiciary Committee, Smith
CS/HB 359 Miami-Dade County Lake Belt Area by Agriculture & Natural Resources Subcommittee, Diaz, M.
CS/HB 569 Agritourism by Local Government Affairs Subcommittee, Combee, Raburn
HB 625 Florida Civil Rights Act by Cortes, B., Berman
CS/HB 687 Land Application of Septage by Agriculture & Natural Resources Subcommittee, Drake
HM 727 Diplomatic Relations with Cuba by Diaz, M., Nuñez
HB 4007 Division of Bond Finance by Gaetz
HB 7015 Department of Agriculture and Consumer Services by Agriculture & Natural Resources Subcommittee, Raburn
HB 7049 OGSR/Minor Petitioning Court for Waiver of Parental Notice by Government Operations Subcommittee, Brodeur
HB 7051 OGSR/Board of Funeral, Cemetery, & Consumer Services by Government Operations Subcommittee, Santiago
HB 7053 OGSR/Office of Financial Regulation Examination Techniques and Procedures by Government Operations Subcommittee, Santiago

NOTICE FINALIZED on 03/17/2015 15:58 by Love.John

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 71 Service Animals
SPONSOR(S): Judiciary Committee; Smith and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 414

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	10 Y, 0 N	Toliver	Williamson
2) Judiciary Committee	17 Y, 0 N, As CS	Weber	Havlicak
3) State Affairs Committee		Toliver LT	Camechis

SUMMARY ANALYSIS

Florida law provides that an individual with a disability, defined as a person who is deaf, hard of hearing, blind, visually impaired, or otherwise physically disabled, is entitled to equal access to public accommodations, public employment, and housing accommodations. The individual may be accompanied by a trained service animal in all areas of public accommodations that the public is normally allowed to occupy. Any person who denies or interferes with the right of a person with a disability or a service animal trainer to access a place of public accommodation commits a second degree misdemeanor.

The bill revises the definition of the term "individual with a disability" to add an individual with a physical or mental impairment that substantially limits one or more major life activities. A "physical or mental impairment" is defined, in part, as a physiological disorder or condition that affects at least one bodily function or a mental or psychological disorder as specified by the Diagnostic and Statistical Manual of Mental Disorders. The term "major life activity" is defined as a function such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. The bill expands the definition of the term "public accommodation" to include a timeshare that is a transient public lodging establishment and exempts air carriers covered by the Air Carrier Access Act of 1986 under the definition of "public accommodation".

The bill requires a public accommodation to modify its policies to permit the use of a service animal by an individual with a disability. The bill further specifies that a public accommodation may not ask about the nature or extent of an individual's disability in order to determine if an animal is a service animal or pet. However, a public accommodation may ask if the animal is a service animal required because of a disability and what work the animal has been trained to perform. Additionally, the bill requires a service animal to be kept under the control of its handler. The bill authorizes a public accommodation to remove the animal if the animal is not under the handler's control, is not housebroken, or poses a serious threat to others. The criminal penalty for interference with the right of a disabled individual or service animal trainer to use a place of public accommodation is modified to include the requirement that a person also perform 30 hours of community service for an organization that serves individuals with disabilities or for another entity, at the discretion of the court.

Finally, the bill provides that knowingly and willfully misrepresenting oneself as being qualified to use a service animal or being a trainer of a service animal is a second degree misdemeanor. It also requires the person to perform 30 hours of community service for an organization that serves individuals with disabilities, or for another entity, at the discretion of the court.

The bill may have an insignificant, fiscal impact on state and local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Americans with Disabilities Act[1]

The federal Americans with Disabilities Act (ADA) prohibits discrimination against people with disabilities[2] in employment,[3] the provision of public services,[4] and in public accommodations.[5] This prohibition requires entities covered by the law to provide reasonable accommodations to disabled persons. One such accommodation provides that a disabled person is entitled to be accompanied by a service animal[6] in all areas of a public accommodation or a public entity that is otherwise open to the public.[7] A public accommodation or a public entity may not ask about the nature of a person's disability, but may ask if an animal is required because of a disability, and may ask what tasks the animal has been trained to perform.[8] A public accommodation or a public entity may remove a service animal if it is out of control and the animal's handler does not take effective action to remove it, or if the animal is not housebroken.[9]

Air Carrier Access Act of 1986[10]

The federal Air Carrier Access Act of 1986 provides that no air carrier may discriminate in providing air transportation against an otherwise qualified individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of impairment, or who is regarded as having such an impairment.[11] Federal law further provides that generally a state may not enact or enforce a law related to a price, route, or service of an air carrier covered under applicable law.[12]

Federal regulations promulgated by the United States Department of Transportation provide for the use of service and emotional support animals on air carriers, and allow the use of service animals for those with psychiatric disabilities on air carriers.[13]

Federal Fair Housing Act[14]

The federal Fair Housing Act (FHA) prohibits any person from discriminating in the sale or rental of a dwelling based on a handicap.[15, 16] Failure to provide a reasonable accommodation, including permitting

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[1] 42 U.S.C. s. 12101, *et seq.*

[2] Under the ADA, the term "disability" means a physical or mental impairment that substantially limits one or more major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment. 42 U.S.C. s. 12102(1).

[3] 42 U.S.C. s. 12112.

[4] 42 U.S.C. s. 12132.

[5] 42 U.S.C. s. 12182.

[6] The term "service animal" is defined in part as "any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability[...]The work or tasks performed by a service animal must be directly related to the individual's disability...[T]he provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition." 28 C.F.R. s. 35.104.

[7] 28 C.F.R. ss. 35.136(g) and 36.302(c)(7).

[8] 28 C.F.R. s. 35.136(f).

[9] 28 C.F.R. ss. 35.136(b) and 36.302(c)(2).

[10] 49 U.S.C. s. 41705.

[11] *Id.*

[12] 49 U.S.C. s. 41713.

[13] 14 C.F.R. s. 382.117

[14] 42 U.S.C. s. 3601, *et seq.*

[15] Under the FHA, the definition of the term "handicap" mirrors the definition of the term "disability" under the ADA. *See* 42 U.S.C. s. 3602(h) and 3604(f). *See supra*, fn 2. Nevertheless, the United States Department of Justice and the United States Department of Housing and Urban Development, who jointly administer the FHA under 42 U.S.C. ss. 3614(a) and 3612(a), contend that ADA's definition of "service animals" should not inform the FHA's broader definition of assistance animals. *See Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities*, 75 Fed. Reg. 56236, 2010 WL 3561890, (Sept 15, 2010); *Pet Ownership for the Elderly and Persons with Disabilities*, 73 Fed. Reg. 63834, 2008 WL 4690497 (Oct. 27, 2008).

the use of an assistance animal, to a disabled person may constitute a violation of the prohibition on discrimination based on a handicap.[17] Accommodation of untrained emotional support animals also may be required under the FHA if such accommodation is reasonably necessary to allow a person with a handicap an equal opportunity to enjoy and use housing.[18]

Florida Service Animal Law

Florida law provides that an individual with a disability[19] is entitled to equal privileges of access in public accommodations,[20] public employment,[21] and housing accommodations.[22] An individual with a disability has the right to be accompanied by a trained service animal[23] in all areas of public accommodations that the public is normally allowed to occupy.[24] A trainer of a service animal, while engaged in the training of the animal, has the same rights of access and obligations of liability for damage as an individual with a disability who is accompanied by a service animal.[25] Public accommodations are not required to modify or provide any vehicle, premises, facility, or service to a higher degree of accommodation than is required for a person not so disabled.[26]

Documentation that a service animal is trained is not a precondition for providing service to a person accompanied by a service animal.[27] A public accommodation may ask an individual with a service animal if the animal is a service animal and what tasks the animal has been trained to perform.[28] A public accommodation may remove a service animal if the animal poses a direct threat to the health and safety of others. Allergies and fear of animals are not sufficient for removal.[29] While no deposit may be required of a disabled individual as a precondition of allowing that person to be accompanied by a service animal, the individual is responsible for the care of the animal and for damage caused by the animal.[30] If a service animal is removed by the public accommodation, it must provide the disabled individual the option of continuing access to the public accommodation without having the service animal on the premises.[31]

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[16] 42 U.S.C. s. 3604(f).

[17] *See* 24 C.F.R. ss. 5.303 and 960.705.

[18] *Janush v. Charities Housing Development Corp.*, 169 F.Supp.2d 1133, 1136 (N.D. Cal. 2000) (denying a motion to dismiss a claim to permit keeping birds and cats as emotional support animals because "plaintiff has adequately plead that she is handicapped, that defendants knew of her handicap, that accommodation of the handicap may be necessary and that defendants refused to make such accommodation..."); *Fair Housing of the Dakotas, Inc. v. Goldmark Property Management, Inc.*, 778 F.Supp.2d 1028, 1036 (the court held that "the FHA encompasses all types of assistance animals regardless of training, including those that ameliorate a physical disability and those that ameliorate a mental disability.")

[19] The term "individual with a disability" means a person who is deaf, hard of hearing, blind, visually impaired, or otherwise physically disabled. Section 413.08(1)(b), F.S.

[20] Section 413.08(2), F.S. The term "public accommodation" means a common carrier, airplane, motor vehicle, railroad train, motor bus, streetcar, boat, or other public conveyance or mode of transportation; hotel; lodging place; place of public accommodation, amusement, or resort; and other places to which the general public is invited. Section 413.08(1)(c), F.S.

[21] Section 413.08(5), F.S.

[22] Section 413.08(6), F.S. The term "housing accommodation" means any real property or portion thereof which is used or occupied, or intended, arranged, or designed to be used or occupied, as the home, residence, or sleeping place of one or more persons, but does not include any single-family residence, the occupants of which rent, lease, or furnish for compensation not more than one room therein. Section 413.08(1)(a), F.S.

[23] The term "service animal" means an animal that is trained to perform tasks for an individual with a disability. The tasks may include, but are not limited to, guiding a person who is visually impaired or blind, alerting a person who is deaf or hard of hearing, pulling a wheelchair, assisting with mobility or balance, alerting and protecting a person who is having a seizure, retrieving objects, or performing other special tasks. A service animal is not a pet. Section 413.08(1)(d), F.S.

[24] Section 413.08(3), F.S.

[25] Section 413.08(8), F.S.

[26] Section 413.08(2), F.S.

[27] Section 413.08(3)(a), F.S.

[28] *Id.*

[29] Section 413.08(3)(e), F.S.

[30] Section 413.08(3)(b) and (c), F.S.

[31] Section 413.08(3) (e), F.S.

Any person who denies or interferes with the rights of access to public accommodations, or otherwise interferes with the rights, of a person with a disability or a trainer of a service animal while engaged in the training of such an animal, commits a second degree misdemeanor,[32] punishable by imprisonment of up to 60 days or a fine not to exceed $500.[33]

It is the policy of the state that individuals with a disability be employed by the state or its subdivisions, or in other employment funded in whole or in part by public funds. An individual with a disability may not be refused employment on the basis of disability alone, unless it is shown that the particular disability prevents the performance of the work involved.[34] A covered employer who discriminates in employment against a person with a disability commits a second degree misdemeanor, unless it is shown that the particular disability prevents the satisfactory performance of the work involved.[35]

An individual with a disability is entitled to rent, lease, or purchase any housing accommodations subject to the same conditions that are applicable to all persons.[36] An individual with a disability who has a service animal is entitled to full and equal access to all housing accommodations, and may not be required to pay extra compensation for such animal. The individual is liable for any harm to the premises or another person on the premises caused by the animal.[37]

Effect of the Bill

The bill revises the definition of the term "individual with a disability" to add a person with a physical or mental impairment that substantially limits one or more major life activities. A "physical or mental impairment" is defined, in part, as a physiological disorder that affects one or more bodily functions, or a mental or psychological disorder as specified by the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association. The bill also defines the term "major life activity" as a function such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

The bill specifically includes within the definition of "public accommodation" a timeshare that is a transient public lodging establishment as defined in s. 509.013, F.S. and excludes air carriers covered by the Air Carrier Access of Act of 1986 from the definition of "public accommodation".[38]

The bill expands the definition of "service animal" to add animals trained to work or perform tasks to assist with physical, sensory, psychiatric, intellectual, or other mental disabilities. The work or tasks performed for the purpose of the definition must be directly related to the disability,[39] and do not include any crime-deterrent effect due to an animal's presence or the provision of emotional support, well-being, comfort, or companionship. The bill specifies that for subsections (2), (3), and (4) of s. 413.08, F.S., a service animal is limited to a dog or miniature horse.

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[32] Section 413.08(4), F.S.
[33] Sections 775.082 and 775.083, F.S.
[34] Section 413.08(5), F.S.
[35] Section 413.08(7), F.S.
[36] Section 413.08(6), F.S.
[37] Section 413.08(6)(b), F.S.
[38] The term "transient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests. Section 509.013(4)(a)1., F.S.
[39] The bill provides that the work or tasks a service animal may perform include, but are not limited to, guiding an individual who is visually impaired or blind, alerting an individual who is deaf or hard of hearing, pulling a wheelchair, assisting with mobility or balance, alerting and protecting an individual who is having a seizure, retrieving objects, alerting an individual to the presence of allergens, providing physical support and assistance with balance and stability to an individual with a mobility disability, helping an individual with a psychiatric or neurological disability by preventing or interrupting impulsive or destructive behaviors, reminding an individual with mental illness to take prescribed medications, calming an individual with posttraumatic stress disorder during an anxiety attack, or doing other specific work or performing other special tasks.

The bill requires a public accommodation to modify its policies, practices, and procedures to permit use of a service animal by a person with a disability. The bill also provides that a service animal must be kept under the control of its handler. Specifically, the service animal must have a harness, leash, or other tether. The service animal must be under the handler's control by means of voice control, signals, or other effective means if the handler is unable to use a harness, leash, or other tether, because of a disability or because the use of such would interfere with the service animal's safe, effective performance of work or tasks.

A public accommodation may remove the animal if it is not under the handler's control and the handler does not take effective measures to control it, the animal is not housebroken, or the animal's behavior poses a serious threat to others. A public accommodation may not ask about the nature or extent of an individual's disability in order to determine whether an animal is a service animal or pet, but it may ask whether an animal is a service animal required because of a disability and what work the animal has been trained to perform.

The bill modifies current criminal penalty provisions applicable to any person who interferes with the admittance to or enjoyment of a public accommodation or, with regard to a public accommodation, otherwise interferes with the rights of an individual with a disability or the trainer of a service animal while engaged in the training of an animal. It requires the person to also perform 30 hours of community service for an organization that serves individuals with disabilities or for another entity, at the discretion of the court, to be completed in not more than six months.

The bill clarifies that s. 413.08, F.S., which provides that an individual with a disability is entitled to access to housing accommodations on the same conditions applicable to all persons, does not limit the rights or remedies of a housing accommodation or an individual with a disability that are granted by federal law or another law of this state with regard to other assistance animals.

Finally, the bill provides that it is a second degree misdemeanor for a person to knowingly and willfully misrepresent oneself as using a service animal and being qualified to use a service animal, or as a trainer of a service animal, punishable by imprisonment of up to 60 days or a fine not to exceed $500.[40] In addition, such person must perform 30 hours of community service for an organization that serves individuals with disabilities or another entity, at the discretion of the court, to be completed in not more than six months.

B. SECTION DIRECTORY:

Section 1 amends s. 413.08, F.S., relating to service animals and the rights and responsibilities of an individual with a disability.

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

[40] Sections 775.082(4)(b) and 775.083(1)(e), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

   See Fiscal Comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

   See Fiscal Comments section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

The bill provides that knowingly and willfully misrepresenting oneself to be qualified to use a service animal or to be a trainer of a service animal is a second degree misdemeanor. The fiscal impact associated with the new penalty is likely to be insignificant.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 11, 2015, the Judiciary Committee adopted an amendment and reported the bill favorably as amended. The amendment inserted an exemption for airlines from the definition of "public accommodation"

and deleted the lines that exempted airlines from the provision that limits the definition of "service animal" under Florida law to a dog or miniature horse.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.

A bill to be entitled

An act relating to service animals; amending s. 413.08, F.S.; providing and revising definitions; requiring a public accommodation to permit use of a service animal by an individual with a disability under certain circumstances; providing conditions for a public accommodation to exclude or remove a service animal; revising penalties for certain persons or entities who interfere with use of a service animal in specified circumstances; providing a penalty for knowing and willful misrepresentation with respect to use or training of a service animal; providing an effective date.

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

Section 1. Section 413.08, Florida Statutes, is amended to read:

413.08 Rights and responsibilities of an individual with a disability; use of a service animal; prohibited discrimination in public employment, public accommodations, and ~~or~~ housing accommodations; penalties.—

(1) As used in this section and s. 413.081, the term:

(a) "Housing accommodation" means any real property or portion thereof which is used or occupied, or intended, arranged, or designed to be used or occupied, as the home,

residence, or sleeping place of one or more persons, but does not include any single-family residence, the occupants of which rent, lease, or furnish for compensation not more than one room therein.

(b) "Individual with a disability" means a person who has a physical or mental impairment that substantially limits one or more major life activities of the individual ~~is deaf, hard of hearing, blind, visually impaired, or otherwise physically disabled~~. As used in this paragraph, the term:

1. "Major life activity" means a function such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working ~~"Hard of hearing" means an individual who has suffered a permanent hearing impairment that is severe enough to necessitate the use of amplification devices to discriminate speech sounds in verbal communication~~.

2. "Physical or mental impairment" means:

a. A physiological disorder or condition, disfigurement, or anatomical loss that affects one or more bodily functions; or

b. A mental or psychological disorder that meets one of the diagnostic categories specified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association, such as an intellectual or developmental disability, organic brain syndrome, traumatic brain injury, posttraumatic stress disorder, or an emotional or mental illness ~~"Physically disabled" means~~

~~any person who has a physical impairment that substantially limits one or more major life activities~~.

(c) "Public accommodation" means a common carrier, airplane, motor vehicle, railroad train, motor bus, streetcar, boat, or other public conveyance or mode of transportation; hotel; a timeshare that is a transient public lodging establishment as defined in s. 509.013; lodging place; place of public accommodation, amusement, or resort; and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons. The term does not include air carriers covered by the Air Carrier Access Act of 1986, 49 U.S.C. s. 41705, and by regulations adopted by the United States Department of Transportation to implement such act.

(d) "Service animal" means an animal that is trained to do work or perform tasks for an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The work done or tasks performed must be directly related to the individual's disability and may include, but are not limited to, guiding an individual ~~a person~~ who is visually impaired or blind, alerting an individual ~~a person~~ who is deaf or hard of hearing, pulling a wheelchair, assisting with mobility or balance, alerting and protecting an individual ~~a person~~ who is having a seizure, retrieving objects, alerting an individual to the presence of allergens, providing physical support and assistance with balance and stability to an

individual with a mobility disability, helping an individual with a psychiatric or neurological disability by preventing or interrupting impulsive or destructive behaviors, reminding an individual with mental illness to take prescribed medications, calming an individual with posttraumatic stress disorder during an anxiety attack, or doing other specific work or performing other special tasks. A service animal is not a pet. For purposes of subsections (2), (3), and (4), the term "service animal" is limited to a dog or miniature horse. The crime-deterrent effect of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for purposes of this definition.

(2) An individual with a disability is entitled to full and equal accommodations, advantages, facilities, and privileges in all public accommodations. A public accommodation must modify its policies, practices, and procedures to permit use of a service animal by an individual with a disability. This section does not require any person, firm, business, or corporation, or any agent thereof, to modify or provide any vehicle, premises, facility, or service to a higher degree of accommodation than is required for a person not so disabled.

(3) An individual with a disability has the right to be accompanied by a service animal in all areas of a public accommodation that the public or customers are normally permitted to occupy.

(a) The service animal must be under the control of its handler and must have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control by means of voice control, signals, or other effective means.

(b) ~~(a)~~ Documentation that the service animal is trained is not a precondition for providing service to an individual accompanied by a service animal. A public accommodation may not ask about the nature or extent of an individual's disability. To determine the difference between a service animal and a pet, a public accommodation may ask if an animal is a service animal required because of a disability and what work or ~~what~~ tasks the animal has been trained to perform ~~in order to determine the difference between a service animal and a pet~~.

(c) ~~(b)~~ A public accommodation may not impose a deposit or surcharge on an individual with a disability as a precondition to permitting a service animal to accompany the individual with a disability, even if a deposit is routinely required for pets.

(d) ~~(c)~~ An individual with a disability is liable for damage caused by a service animal if it is the regular policy and practice of the public accommodation to charge nondisabled persons for damages caused by their pets.

(e) ~~(d)~~ The care or supervision of a service animal is the responsibility of the individual owner. A public accommodation is not required to provide care or food or a special location for the service animal or assistance with removing animal excrement.

(f) ~~(e)~~ A public accommodation may exclude or remove any animal from the premises, including a service animal, if the animal is out of control and the animal's handler does not take effective action to control it, the animal is not housebroken, or the animal's behavior poses a direct threat to the health and safety of others. Allergies and fear of animals are not valid reasons for denying access or refusing service to an individual with a service animal. If a service animal is excluded or removed for being a direct threat to others, the public accommodation must provide the individual with a disability the option of continuing access to the public accommodation without having the service animal on the premises.

(4) Any person, firm, or corporation, or the agent of any person, firm, or corporation, who denies or interferes with admittance to, or enjoyment of, a public accommodation or, with regard to a public accommodation, otherwise interferes with the rights of an individual with a disability or the trainer of a service animal while engaged in the training of such an animal pursuant to subsection (8), commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083 and must perform 30 hours of community service for an organization

that serves individuals with disabilities, or for another entity or organization at the discretion of the court, to be completed in not more than 6 months.

(5) It is the policy of this state that an individual with a disability be employed in the service of the state or political subdivisions of the state, in the public schools, and in all other employment supported in whole or in part by public funds, and an employer may not refuse employment to such a person on the basis of the disability alone, unless it is shown that the particular disability prevents the satisfactory performance of the work involved.

(6) An individual with a disability is entitled to rent, lease, or purchase, as other members of the general public, any housing accommodations offered for rent, lease, or other compensation in this state, subject to the conditions and limitations established by law and applicable alike to all persons.

(a) This section does not require any person renting, leasing, or otherwise providing real property for compensation to modify her or his property in any way or provide a higher degree of care for an individual with a disability than for a person who is not disabled.

(b) An individual with a disability who has a service animal or who obtains a service animal is entitled to full and equal access to all housing accommodations provided for in this section, and such a person may not be required to pay extra

compensation for such ~~the service~~ animal. However, such a person is liable for any damage done to the premises or to another person on the premises by the ~~such an~~ animal. A housing accommodation may request proof of compliance with vaccination requirements.

(c) This subsection does not limit the rights or remedies of a housing accommodation or an individual with a disability that are granted by federal law or another law of this state with regard to other assistance animals.

(7) An employer covered under subsection (5) who discriminates against an individual with a disability in employment, unless it is shown that the particular disability prevents the satisfactory performance of the work involved, or any person, firm, or corporation, or the agent of any person, firm, or corporation, providing housing accommodations as provided in subsection (6) who discriminates against an individual with a disability, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(8) Any trainer of a service animal, while engaged in the training of such an animal, has the same rights and privileges with respect to access to public facilities and the same liability for damage as is provided for those persons described in subsection (3) accompanied by service animals.

(9) A person who knowingly and willfully misrepresents herself or himself, through conduct or verbal or written notice,

as using a service animal and being qualified to use a service animal or as a trainer of a service animal commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083 and must perform 30 hours of community service for an organization that serves individuals with disabilities, or for another entity or organization at the discretion of the court, to be completed in not more than 6 months.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 359 Miami-Dade County Lake Belt Area
SPONSOR(S): Diaz, Jr.
TIED BILLS: None **IDEN./SIM. BILLS:** SB 510

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	13 Y, 0 N, As CS	Gregory	Blalock
2) Finance & Tax Committee	15 Y, 1 N	Pewitt	Langston
3) State Affairs Committee		Gregory	Camechis

SUMMARY ANALYSIS

The Miami-Dade County Lake Belt Area (Lake Belt) encompasses 77.5 square miles of environmentally sensitive land at the western edge of the Miami-Dade County urban area. The Lake Belt contains deposits of limestone and sand suitable for production of construction aggregates, cement, and road base materials. Rock mined from the Lake Belt supplies one half of the limestone used annually in Florida.

In 1992, the Legislature established the Lake Belt Committee (Committee). Under current law, the mining companies operating in the Lake Belt must pay a combination of fees based on the number of tons of limestone or sand extracted from the area. The fees are used to conduct wetland mitigation activities, fund seepage mitigation projects, and fund water treatment plant upgrades.

The bill includes the following revisions to the Lake Belt statutes:

- Requires amendments to local zoning and subdivision regulations so that properties located within one mile of the Lake Belt are compatible with limestone mining activities. Further, the bill prohibits amendments to local zoning and subdivision regulations that would result in an increase in residential density in certain parts of the Lake Belt until active mining operations cease within two miles of the property.
- Reduces the mitigation fees from 45 cents per ton to 25 cents per ton beginning January 1, 2016, to 15 cents per ton beginning January 1, 2017, and to 5 cents per ton beginning January 1, 2018. The reason for the mitigation fee reduction is because there are sufficient funds in the Lake Belt Mitigation Trust Fund to cover the cost of projected mitigation requirements.
- Requires proceeds from the mitigation fee to be used to conduct water quality monitoring to ensure the protection of water resources within the Lake Belt.
- Removes the requirement that the South Florida Water Management District use the water treatment plant upgrade fee to pay for seepage mitigation projects. The Committee previously approved sufficient funds to complete the seepage mitigation project.
- Replaces the water treatment plant upgrade fee with an environmentally endangered lands (EEL) fee. The bill also reduces the fee from 15 cents to 5 cents per ton of limerock and sand sold. If the Department of Environmental Protection determines that mining activities have, directly or indirectly, resulted in pathogens contaminating certain groundwater wellfields, then the proceeds of the EEL fee must first be used to upgrade a water treatment plant.
- Proceeds from the EEL fee must be used solely for the acquisition, preservation, enhancement, restoration, conservation, and maintenance of wetland and threatened forest communities located in Miami-Dade County (not just near the Lake Belt).

The estimated impact to total local government revenues is -$6.2 million in the first year (2015-2016) and -$15.7 million on a recurring basis, split between the South Florida Water Management District and Miami-Dade County. However, there is projected to be sufficient funds in the Lake Belt Mitigation Trust Fund to cover projected future mitigation requirements.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Miami-Dade County Lake Belt Area (Lake Belt) encompasses 77.5 square miles of environmentally sensitive land at the western edge of the Miami-Dade County urban area.[1] Generally, the Lake Belt is bounded by the Ronald Reagan Turnpike to the east, the Miami-Dade-Broward County line to the north, Krome Avenue to the west, and Tamiami Trail to the south; along with certain lands south of Tamiami Trail.[2]

The Lake Belt contains deposits of limestone and sand suitable for production of construction aggregates, cement, and road base materials.[3] Mining companies extract rock from the Lake Belt. This supplies one-half of the limestone used annually in Florida.[4] In south Florida, groundwater occurs so near the surface of the ground that when rock is mined from the Lake Belt, even in shallow pits, the excavation areas fill with water and man-made "lakes" are formed.[5] The "lakes" that form after rock is mined are the features after which the "Lake Belt" is named.[6]

The wetlands and lakes of the Lake Belt offer the potential to buffer the Everglades from the potentially adverse impacts of urban development.[7] The Northwest Wellfield, located at the eastern edge of the Lake Belt, is the largest drinking water wellfield in Florida and supplies approximately 40 percent of the potable water for Miami-Dade County.[8]

In 1992, the Florida Legislature recognized the importance of the Lake Belt and established the Lake Belt Committee (Committee).[9] The Legislature charged the Committee with the task of developing a long-term plan for the Lake Belt to address a number of critical concerns.[10] Through a cooperative process involving government agencies, mining interests, non-mining interests, and environmental groups, the Committee completed the Miami-Dade County Lake Belt Plan (Lake Belt Plan).[11] The Legislature accepted the Lake Belt Plan and recommendations of the Committee in 1997.[12] The Lake

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[1] South Florida Water Management District, *Regional Contacts, Miami-Dade*, http://my.sfwmd.gov/portal/page/portal/xweb%20about%20us/miami%20dade%20service%20center (last visited January 22, 2015).
[2] Section 373.4149(1), F.S.
[3] Section 373.4149, F.S.
[4] South Florida Water Management District, *Regional Contacts, Miami-Dade*, http://my.sfwmd.gov/portal/page/portal/xweb%20about%20us/miami%20dade%20service%20center (last visited January 22, 2015).
[5] Id.
[6] Id.
[7] South Florida Water Management District, *Regional Contacts, Miami-Dade*, http://my.sfwmd.gov/portal/page/portal/xweb%20about%20us/miami%20dade%20service%20center (last visited January 22, 2015).
[8] Id.
[9] S. 21 Ch. 92-132, Laws of Fla.; Originally called the Northwest Dade County Freshwater Lake Plan Implementation Committee.
[10] Id.
[11] Phase I Plan in 1997 and Phase II Plan in 2000. South Florida Water Management District, *Regional Contacts, Miami-Dade*, http://my.sfwmd.gov/portal/page/portal/xweb%20about%20us/miami%20dade%20service%20center (last visited January 22, 2015).
[12] Lake Belt Mitigation Committee, 1997 Progress Report p. 2. available at http://www.sfwmd.gov/portal/pls/portal/portal_apps.repository_lib_pkg.repository_browse?p_keywords=lbannual&p_thumbnails=no (last visited February 13, 2015).

Belt Plan guides the mitigation[13] that is required to offset the impacts to wetlands caused by the mining operations in the Lake Belt.

Mitigation Fee

The Lake Belt statute requires that the mining companies operating in the Lake Belt pay a mitigation fee of 45 cents per ton of limestone or sand extracted from the area.[14] The statute requires that the proceeds of the mitigation fee must be used to conduct mitigation activities that are appropriate to offset the loss of the value and functions of wetlands as a result of mining activities, and must be used in a manner consistent with the recommendations contained in the reports submitted to the Legislature by the Committee.[15] Such mitigation may include:

- The purchase, enhancement, restoration, and management of wetlands and uplands;
- The purchase of mitigation credit from a permitted mitigation bank; and
- Any structural modifications to the existing drainage system to enhance the hydrology of Lake Belt.[16]

Funds may also be used to reimburse other funding sources, including the Save Our Rivers Land Acquisition Program, the Internal Improvement Trust Fund, the South Florida Water Management District (SFWMD), and Miami-Dade County, for the purchase of lands that were acquired in areas appropriate for mitigation due to rock mining and to reimburse governmental agencies that exchanged land for mitigation due to rock mining.[17] The mitigation fee is collected from the mining industry by the Department of Revenue and transferred to the SFWMD's Lake Belt Mitigation Trust Fund.[18] Payment of the mitigation fee satisfies the mitigation requirements imposed under ss. 373.403 through 373.439, F.S.,[19] and any applicable county ordinance for loss of the value and functions from mining of the wetlands.[20]

The mitigation fee imposed by the Lake Belt statute could have been suspended until revived by the Legislature if the United States Army Corps of Engineers (USACE) had not issued a permit for mining in the Lake Belt by September 30, 2000.[21] Permits were issued in 2002 and subsequently challenged in federal court.[22] The USACE issued new permits in 2010.[23]

Water Treatment Plant Upgrade Fee

The Lake Belt statute also requires mining companies operating in the Lake Belt to pay a water treatment plant upgrade fee of 15 cents per ton of limestone or sand extracted from the Lake Belt.[24] In 2006, the Legislature created this fee to upgrade a water treatment plant that treats water coming from

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[13] "Mitigation" means an action or series of actions to offset the adverse impacts that would otherwise cause an activity that requires an Environmental Resource Permit to fail to meet the criteria set forth in the statutes and rules. Mitigation usually consists of restoration, enhancement, creation, preservation, or a combination thereof. Rule 62-330.021, F.A.C., incorporating by reference Environmental Resource Permit Applicant's Handbook, Volume I, Section 2.0.

[14] Section 373.41492(2), F.S.

[15] Section 373.41492(6)(a), F.S.

[16] Id.

[17] Id.

[18] Section 373.41492(3), F.S.

[19] A discussion of what is typically required for mitigation can be found in the Environmental Resource Permit Applicant's Handbook, Volume I, Section 10.3, incorporated by reference in Chapter 62-330, F.A.C.

[20] Section 373.41492(7), F.S.

[21] Section 373.41492(8), F.S.

[22] *See* Sierra Club v. Flowers, 423 F. Supp.2d 1306 (S.D. Fla. 2006); Sierra Club v. Strock, 494 F. Supp.2d 1188 (S.D. Fla. 2007).

[23] Lake Belt Mitigation Committee, Annual Report for 2013 p. 8. available at http://www.sfwmd.gov/portal/pls/portal/portal_apps.repository_lib_pkg.repository_browse?p_keywords=lbannual&p_thumbnails=no (last visited January 22, 2015).

[24] Section 373.41492(2), F.S.

the Northwest Wellfield in Miami-Dade County.[25] Originally, the water treatment plant upgrade fee was deposited into a trust fund established by Miami-Dade County.

In 2012, the Legislature expanded the authorized uses of the proceeds of the water treatment plant upgrade fee to allow them to be used to pay for seepage mitigation projects performed by SFWMD, including groundwater or surface water management structures designed to improve wetland habitat.[26] The new law changed the recipient of the proceeds of the water treatment plant upgrade fee from Miami-Dade County to the SFWMD and specified that these funds would be deposited into the Lake Belt Mitigation Trust Fund until:

- A total of $20 million, less administrative costs, is deposited in the Lake Belt Mitigation Trust Fund; or
- Quarterly pathogen sampling demonstrates that the water in any quarry lake in the vicinity of the Northwest Wellfield would be classified as being in Bin 2 or higher.[27]

According to the statute, as soon as either of these qualifications is triggered, Miami-Dade County would again be the recipient of the water treatment plant upgrade fee proceeds.

Local Government Land Use Planning in the Lake Belt

Current law also requires that rezonings or amendments to local government comprehensive plans concerning properties within one mile of the Lake Belt be compatible with limestone mining activities.[28] In addition, rezonings, variances, or amendments to local government comprehensive plans for any residential purpose cannot be approved for any property located in certain areas until there is no active mining within two miles of the property.[29]

Effect of Proposed Changes

The bill includes the following revisions to the Lake Belt statutes:

- Amends s. 373.4149(4), F.S., to require amendments to local zoning and subdivision regulations concerning properties located within one mile of the Lake Belt to be compatible with limestone mining activities. Further, the bill prohibits amendments to local zoning and subdivision regulations that would result in an increase in residential density in certain parts of the Lake Belt until active mining operations cease within two miles of the property.
- Amends s. 373.41492(1), F.S., to allow the per ton mitigation fee assessed on limestone sold from the Lake Belt to be used for water quality monitoring purposes.
- Amends s. 373.41492(2), F.S., to gradually reduce the mitigation fees collected for each ton of limerock and sand sold from the Lake Belt. The mitigation fee will be reduced from 45 cents per ton to 25 cents per ton beginning January 1, 2016, then to 15 cents per ton beginning January 1, 2017, and then to 5 cents per ton beginning January 1, 2018, and thereafter. The reason for the mitigation fee reduction is because there are sufficient funds in the Lake Belt Mitigation Trust Fund to cover the cost of projected mitigation requirements.[30] Over time, most of the land areas designated for mitigation within the Lake Belt was restored. The remaining projects within Miami-Dade County were all small and insufficient to meet the needs of the Lake Belt Plan.[31]

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[25] Section 2 Ch. 2006-13, Laws of Fla.
[26] Section 1 Ch. 2012-107, Laws of Fla.
[27] Section 373.41492(3)(b), F.S. Bin 2 is an average source water concentration of cryptosporidium equal to or more than 0.075 oocysts/L, but less than 1.0 oocysts/L.
[28] Section 373.41492(4), F.S.
[29] Id.
[30] Email from Amanda Marsh, Office of Legislative Affairs, Department of Environmental Protection, FW: HB - 359 Miami-Dade Lake Belt Bill (February 4, 2015), on file with Agricultural & Natural Resources Subcommittee staff; Lake Belt Mitigation Committee, Annual Report for 2012 p. 5.; available at http://www.sfwmd.gov/portal/pls/portal/portal_apps.repository_lib_pkg.repository_browse?p_keywords=lbannual&p_thumbnails=no (last visited February 4, 2015).
[31] Id.

Thus, in 2012, the Committee approved a plan to allow mitigation on land in Hendry County that formally served as a citrus grove.[32] The SFWMD owns this land.[33] The mitigation fee will be used to reimburse the SFWMD for the land and to pay for the mitigation activities.[34] This proposed mitigation is projected to exceed the amount of mitigation needed to complete limestone and sand mining in the Lake Belt.[35] There are currently sufficient projected funds to complete this project with the new mitigation fee structure.

- Amends s. 373.41492(6), F.S., to remove the requirement that the water treatment plant upgrade fees be used to pay for seepage mitigation projects. The SFWMD has completed two miles of a planned five-mile seepage barrier to block seepage from moving out of Everglades National Park.[36] The monitoring results from the initial construction of two miles of the barrier showed the project decreased the amount of seepage leaving Everglades National Park.[37] Modeling results showed that increasing the seepage barrier to five miles would result in increasing the area beneficially affected in Everglades National Park from approximately 12,000 acres to more than 30,000 acres.[38] There are currently previously approved funds in the Lake Belt Mitigation Fund to complete this project.[39]
- Amends s. 373.41492(2), F.S., to replace the water treatment plant upgrade fee with an environmentally endangered lands (EEL) fee. The EEL fee will be deposited into a trust fund established by Miami-Dade County. According to the Lake Belt 2014 Annual Report, thousands of sampling events from the lakes over the years have demonstrated that water treatment is not needed to mitigate the effects of the mining operations.[40] The bill reduces the fee from 15 cents to 5 cents per ton of limerock and sand sold, and makes various revisions to conform the statutes to the replacement of the water treatment plant upgrade fee with the EEL fee. Miami-Dade County must use the proceeds from the EEL fee solely for the acquisition, preservation, enhancement, restoration, conservation, and maintenance of wetland and threatened forest communities located in Miami-Dade County (not just near the Lake Belt). Acquisition of these lands is above normal mitigation requirements to offset impacts caused by the mining activity. The bill directs the Department of Revenue to administer, collect, and enforce the fee.
- Amends s. 373.41492(6), F.S., to require the SFWMD to use the proceeds from the mitigation fee to conduct water quality monitoring to ensure the protection of water resources within the Lake Belt.
- Amends s. 373.41492(6)(a), F.S., to delete the requirement that the mitigation in the Lake Belt must be approved by the Committee. This provision is already adequately provided for in s. 373.41492(6)(b), F.S.
- Amends s. 373.41492(6)(a), F.S., to require the EEL fee be used to upgrade a water treatment plant that treats water coming from the Northwest Wellfield, if the Department of Environmental

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[32] Lake Belt Mitigation Committee, Annual Report for 2012 p. 5.; available at http://www.sfwmd.gov/portal/pls/portal/portal_apps.repository_lib_pkg.repository_browse?p_keywords=lbannual&p_thumbnails=no (last visited February 4, 2015).

[33] Lake Belt Committee, June 29, 2012 Meeting Summary p. 4; available at http://www.sfwmd.gov/portal/pls/portal/portal_apps.repository_lib_pkg.repository_browse?p_keywords=lakebeltmc2012&p_thumbnails=no (last visited January 26, 2014).

[34] Lake Belt Committee, November 20 2013 Meeting Summary p. 3; available at http://www.sfwmd.gov/portal/pls/portal/portal_apps.repository_lib_pkg.repository_browse?p_keywords=lakebeltmc2013&p_thumbnails=no (last visited January 26, 2014).

[35] Lake Belt Committee, December 4, 2012 Meeting Summary p. 4; available at http://www.sfwmd.gov/portal/pls/portal/portal_apps.repository_lib_pkg.repository_browse?p_keywords=lakebeltmc2012&p_thumbnails=no (last visited January 26, 2014); Lake Belt Mitigation Committee, Annual Report for 2013 p. 8.; available at http://www.sfwmd.gov/portal/pls/portal/portal_apps.repository_lib_pkg.repository_browse?p_keywords=lbannual&p_thumbnails=no (last visited January 22, 2015).

[36] Miami-Dade Limestone Products Association, L-31N Seepage Barrier Project Presentation (March 5, 2014) available at Florida Department of Environmental Protection.

[37] Id.

[38] Id.

[39] Id.

[40] Lake Belt 2014 Annual Report, Water Quality Section and Appendix p. 2-3 (available at Florida Department of Environmental Protection).

Protection (DEP) determines that due to the direct or indirect result of rock mining activities within the Lake Belt Area, the quarterly pathogen sampling conducted as a condition of the permits issued by the DEP for rock mining activities in the Miami-Dade County Lake Belt Area demonstrates that the water in any quarry lake monitored pursuant to the monitoring plan would be classified as being in Bin 2 or higher as defined in the Environmental Protection Agency's Long Term 2 Enhanced Surface Water Treatment Rule.

- Deletes s. 373.41492(8), F.S., which provides that the mitigation fee imposed by the Lake Belt statute must be suspended until revived by the Legislature if the United States Army Corps of Engineers (USACE) does not issue a permit for mining in the Lake Belt by September 30, 2000.
- The bill reenacts subsections 373.41495(1), (2), and (3), F.S., relating to the Lake Belt Mitigation Trust Fund to incorporate the amendments to s. 373.41492, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 373.4149, F.S., relating to the Miami-Dade Lake Belt Plan.

Section 2. Amends s. 373.41492, F.S., relating to the Miami-Dade County Lake Belt Mitigation Plan.

Section 3. Reenacts subsections (1), (2), and (3) of s. 373.41492, F.S., relating to the Lake Belt Mitigation Trust Fund.

Section 4. Providing 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:

   The Revenue Estimating Conference met on February 26, 2015 and adopted estimates on the impact of the bill. The estimated impact to total local government revenues is -$6.2 million in the first year (2015-2016) and -$15.7 million on a recurring basis, split between the South Florida Water Management District and Miami-Dade County.

   For South Florida Water Management District, in the first year there is a -$7.8 million impact, growing to -$12.6 million on a recurring basis. For Miami-Dade County, in the first year the impact is +$1.6 million, but becomes negative in subsequent years. The recurring impact to Miami-Dade County is -$3.1 million.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill appears to have a positive economic impact on companies that mine limestone and sand in Lake Belt. The mitigation fee will gradually be reduced from 45 cents per ton to 5 cents per ton over a three-year period. Further, the water treatment plant upgrade fee of 15 cents per ton will be eliminated and replaced with the 5 cents per ton EEL fee.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 18, 2015, the Agricultural & Natural Resources Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments made the following revisions to the bill:

- Provides that if certain water quality standards are not met in the quarries in the Lake Belt Area, as determined by DEP, then the EEL fee must be used to upgrade a water treatment plant to treats water coming from the Northwest Wellfield; and
- Deletes the requirement that the proceeds of the mitigation fee be approved by the Lake Belt Committee. This provision is already adequately provided for in s. 373.41492(6)(b), F.S.

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

A bill to be entitled

An act relating to the Miami-Dade County Lake Belt Area; amending s. 373.4149, F.S.; requiring amendments to local zoning and subdivision regulations concerning properties located within a certain area to be compatible with limestone mining activities; prohibiting amendments to local zoning and subdivision regulations which would result in an increase in residential density for certain property until there is no mining activity within a certain distance; amending s. 373.41492, F.S.; conforming a cross-reference; including monitoring as an environmental purpose for which the per-ton mitigation fee may be applied; decreasing the amount of the per-ton mitigation fee for limerock and sand sold after certain dates; imposing an environmentally endangered lands fee; rescinding the water treatment plant upgrade fee; requiring the Department of Revenue to administer, enforce, and collect the environmentally endangered lands fee; adding water quality monitoring to the required uses for mitigation fee proceeds; removing a requirement that such uses be approved by the Miami-Dade County Lake Belt Mitigation Committee; requiring the environmentally endangered lands fee to be used solely for purposes related to wetland and threatened forest communities located in Miami-Dade

County after proceeds are used for water treatment plant upgrades under certain conditions; reenacting s. 373.41495(1),(2), and (3), F.S., relating to the Lake Belt Mitigation Trust Fund to incorporate the amendment made to s. 373.41492, F.S., in reference thereto; providing an effective date.

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

Section 1. Subsection (4) of section 373.4149, Florida Statutes, is amended to read:

373.4149 Miami-Dade County Lake Belt Plan.—

(4) The identification of the Miami-Dade County Lake Belt Area shall not preempt local land use jurisdiction, planning, or regulatory authority in regard to the use of land by private land owners. When amending local comprehensive plans, or implementing zoning regulations, development regulations, or other local regulations, Miami-Dade County shall strongly consider limestone mining activities and ancillary operations, such as lake excavation, including use of explosives, rock processing, cement, concrete and asphalt products manufacturing, and ancillary activities, within the rock mining supported and allowable areas of the Miami-Dade County Lake Plan adopted by subsection (1); provided, however, that limerock mining activities are consistent with wellfield protection. Rezonings, ~~or~~ amendments to local zoning and subdivision regulations, and

amendments to local comprehensive plans concerning properties that are located within 1 mile of the Miami-Dade Lake Belt Area shall be compatible with limestone mining activities. No rezonings, variances, amendments to local zoning and subdivision regulations which would result in an increase in residential density, or amendments to local comprehensive plans for any residential purpose may be approved for any property located in sections 35 and 36 and the east one-half of sections 24 and 25, Township 53 South, Range 39 East until such time as there is no active mining within 2 miles of the property. This section does not preclude residential development that complies with current regulations.

Section 2. Section 373.41492, Florida Statutes, is amended to read:

373.41492 Miami-Dade County Lake Belt Mitigation Plan; mitigation for mining activities within the Miami-Dade County Lake Belt.—

(1) The Legislature finds that the impact of mining within the rock mining supported and allowable areas of the Miami-Dade County Lake Belt Plan adopted by s. 373.4149(1) can best be offset by the implementation of a comprehensive mitigation plan. The Lake Belt Mitigation Plan consists of those provisions contained in subsections (2)-(8) ~~(2)-(9)~~. The per-ton mitigation fee assessed on limestone sold from the Miami-Dade County Lake Belt Area and sections 10, 11, 13, 14, Township 52 South, Range 39 East, and sections 24, 25, 35, and 36, Township 53 South,

Range 39 East, shall be used for acquiring environmentally sensitive lands and for restoration, monitoring, maintenance, and other environmental purposes. It is the intent of the Legislature that the per-ton mitigation fee not be a revenue source for purposes other than enumerated in this section. Further, the Legislature finds that the public benefit of a sustainable supply of limestone construction materials for public and private projects requires a coordinated approach to permitting activities on wetlands within Miami-Dade County in order to provide the certainty necessary to encourage substantial and continued investment in the limestone processing plant and equipment required to efficiently extract the limestone resource. It is the intent of the Legislature that the Lake Belt Mitigation Plan satisfy all local, state, and federal requirements for mining activity within the rock mining supported and allowable areas.

(2) To provide for the mitigation of wetland resources lost to mining activities within the Miami-Dade County Lake Belt Plan, effective October 1, 1999, a mitigation fee is imposed on each ton of limerock and sand extracted by any person who engages in the business of extracting limerock or sand from within the Miami-Dade County Lake Belt Area and the east one-half of sections 24 and 25 and all of sections 35 and 36, Township 53 South, Range 39 East. The mitigation fee is imposed for each ton of limerock and sand sold from within the properties where the fee applies in raw, processed, or

manufactured form, including, but not limited to, sized aggregate, asphalt, cement, concrete, and other limerock and concrete products. The mitigation fee imposed by this subsection for each ton of limerock and sand sold shall be 25 ~~45~~ cents per ton, beginning on January 1, 2016; 15 cents per ton beginning on January 1, 2017; and 5 cents per ton beginning on January 1, 2018, and thereafter. To pay for Miami-Dade County ~~seepage mitigation~~ projects, an environmentally endangered lands ~~including groundwater and surface water management structures designed to improve wetland habitat and approved by the Lake Belt Mitigation Committee, and to upgrade a water treatment plant that treats water coming from the Northwest Wellfield in Miami-Dade County, a water treatment plant upgrade~~ fee is imposed within the same Lake Belt Area subject to the mitigation fee and upon the same kind of mined limerock and sand subject to the mitigation fee. The environmentally endangered lands ~~water treatment plant upgrade~~ fee imposed by this section ~~subsection~~ for each ton of limerock and sand sold shall be 5 ~~15~~ cents per ton~~, and the collection of this fee shall cease once the total amount of proceeds collected for this fee reaches the amount of the actual moneys necessary to design and construct the water treatment plant upgrade, as determined in an open, public solicitation process~~. Any limerock or sand that is used within the mine from which the limerock or sand is extracted is exempt from the fees. The amount of the mitigation fee and the environmentally endangered lands ~~water treatment plant upgrade~~

fee imposed under this section must be stated separately on the invoice provided to the purchaser of the limerock or sand product from the limerock or sand miner, or its subsidiary or affiliate, for which the fee or fees apply. The limerock or sand miner, or its subsidiary or affiliate, who sells the limerock or sand product shall collect the mitigation fee and the water treatment plant upgrade fee and forward the proceeds of the fees to the Department of Revenue on or before the 20th day of the month following the calendar month in which the sale occurs. The proceeds of a fee imposed by this section include all funds collected and received by the Department of Revenue relating to the fee, including interest and penalties on a delinquent fee. The amount deducted for administrative costs may not exceed 3 percent of the total revenues collected under this section and may equal only those administrative costs reasonably attributable to the fee.

(3) The mitigation fee and the environmentally endangered lands ~~water treatment plant upgrade~~ fee imposed by this section must be reported to the Department of Revenue. Payment of the mitigation and the environmentally endangered lands ~~water treatment plant upgrade~~ fees must be accompanied by a form prescribed by the Department of Revenue.

(a) The proceeds of the mitigation fee, less administrative costs, must be transferred by the Department of Revenue to the South Florida Water Management District and deposited into the Lake Belt Mitigation Trust Fund.

(b) Beginning July 1, 2015 ~~2012~~, ~~the proceeds of~~ the water treatment plant upgrade fee previously imposed by this section is rescinded and is no longer imposed on the sale of mined limerock and sand~~, less administrative costs, must be transferred by the Department of Revenue to the South Florida Water Management District and deposited into the Lake Belt Mitigation Trust Fund until:~~

~~1. A total of $20 million from the proceeds of the water treatment plant upgrade fee, less administrative costs, is deposited into the Lake Belt Mitigation Trust Fund; or~~

~~2. The quarterly pathogen sampling conducted as a condition of the permits issued by the department for rock mining activities in the Miami-Dade County Lake Belt Area demonstrates that the water in any quarry lake in the vicinity of the Northwest Wellfield would be classified as being in Bin 2 or higher as defined in the Environmental Protection Agency's Long Term 2 Enhanced Surface Water Treatment Rule.~~

(c) The proceeds of the environmentally endangered lands fee ~~Upon the earliest occurrence of the criterion under subparagraph (b)1. or subparagraph (b)2., the proceeds of the water treatment plant upgrade fee~~, less administrative costs, must be transferred by the Department of Revenue to a trust fund established by Miami-Dade County, for the sole purpose authorized by paragraph (6)(a).

(4)(a) The Department of Revenue shall administer, collect, and enforce the mitigation and environmentally

endangered lands ~~treatment plant upgrade~~ fees authorized under this section in accordance with the procedures used to administer, collect, and enforce the general sales tax imposed under chapter 212. The provisions of chapter 212 with respect to the authority of the Department of Revenue to audit and make assessments, the keeping of books and records, and the interest and penalties imposed on delinquent fees apply to this section. The fees may not be included in computing estimated taxes under s. 212.11, and the dealer's credit for collecting taxes or fees provided for in s. 212.12 does not apply to the fees imposed by this section.

(b) In administering this section, the Department of Revenue may employ persons and incur expenses for which funds are appropriated by the Legislature. The Department of Revenue shall adopt rules and prescribe and publish forms necessary to administer this section. The Department of Revenue shall establish audit procedures and may assess delinquent fees.

(5) Each January 1, beginning January 1, 2010, through December 31, 2011, the per-ton mitigation fee shall be increased by 2.1 percentage points, plus a cost growth index. The cost growth index shall be the percentage change in the weighted average of the Employment Cost Index for All Civilian Workers (ecu 10001I), issued by the United States Department of Labor for the most recent 12-month period ending on September 30, and the percentage change in the Producer Price Index for All Commodities (WPU 00000000), issued by the United States

Department of Labor for the most recent 12-month period ending on September 30, compared to the weighted average of these indices for the previous year. The weighted average shall be calculated as 0.6 times the percentage change in the Employment Cost Index for All Civilian Workers (ecu 10001I), plus 0.4 times the percentage change in the Producer Price Index for All Commodities (WPU 00000000). If either index is discontinued, it shall be replaced by its successor index, as identified by the United States Department of Labor.

(6)(a) The proceeds of the mitigation fee must be used to conduct mitigation activities that are appropriate to offset the loss of the value and functions of wetlands as a result of mining activities and to conduct water quality monitoring to ensure the protection of water resources within the Lake Belt Area ~~and be approved by the Miami-Dade County Lake Belt Mitigation Committee~~. Such mitigation may include the purchase, enhancement, restoration, and management of wetlands and uplands in the Everglades watershed, the purchase of mitigation credit from a permitted mitigation bank, and any structural modifications to the existing drainage system to enhance the hydrology of the Miami-Dade County Lake Belt Area or the Everglades watershed. Funds may also be used to reimburse other funding sources, including the Save Our Rivers Land Acquisition Program, the Internal Improvement Trust Fund, the South Florida Water Management District, and Miami-Dade County, for the purchase of lands that were acquired in areas appropriate for

mitigation due to rock mining and to reimburse governmental agencies that exchanged land under s. 373.4149 for mitigation due to rock mining. ~~The proceeds of the water treatment plant upgrade fee deposited into the Lake Belt Mitigation Trust Fund shall be used solely to pay for seepage mitigation projects, including groundwater or surface water management structures designed to improve wetland habitat and approved by the Lake Belt Mitigation Committee.~~ The proceeds of the environmentally endangered lands ~~water treatment plant upgrade~~ fee which are transmitted to a trust fund established by Miami-Dade County shall be used solely for the acquisition, preservation, enhancement, restoration, conservation, and maintenance of wetland and threatened forest communities located ~~to upgrade a water treatment plant that treats water coming from the Northwest Wellfield~~ in Miami-Dade County. However, the proceeds of the environmentally endangered lands fee must first be used to upgrade a water treatment plant that treats water coming from the Northwest Wellfield in Miami-Dade County if, following a formal determination by the department that due to the direct or indirect result of rock mining activities within the Lake Belt Area, the quarterly pathogen sampling conducted as a condition of the permits issued by the department for rock mining activities in the Miami-Dade County Lake Belt Area demonstrates that the water in any quarry lake monitored pursuant to the monitoring plan would be classified as being in Bin 2 or higher as defined in the United States Environmental Protection

Agency's Long Term 2 Enhanced Surface Water Treatment Rule ~~As used in this section, the terms "upgrade a water treatment plant" or "treatment plant upgrade" mean those works necessary to treat or filter a surface water source or supply or both~~.

(b) Expenditures of the mitigation fee must be approved by an interagency committee consisting of representatives from each of the following: the Miami-Dade County Department of Environmental Resource Management, the Department of Environmental Protection, the South Florida Water Management District, and the Fish and Wildlife Conservation Commission. In addition, the limerock mining industry shall select a representative to serve as a nonvoting member of the interagency committee. At the discretion of the committee, additional members may be added to represent federal regulatory, environmental, and fish and wildlife agencies.

(7) Payment of the mitigation fee imposed by this section satisfies the mitigation requirements imposed under ss. 373.403-373.439 and any applicable county ordinance for loss of the value and functions from mining of the wetlands identified as rock mining supported and allowable areas of the Miami-Dade County Lake Plan adopted by s. 373.4149(1). In addition, it is the intent of the Legislature that the payment of the mitigation fee imposed by this section satisfy all federal mitigation requirements for the wetlands mined.

~~(8) If a general permit by the United States Army Corps of Engineers, or an appropriate long-term permit for mining,~~

~~consistent with the Miami-Dade County Lake Belt Plan, this section, and ss. 373.4149, 373.4415, and 378.4115 is not issued on or before September 30, 2000, the fee imposed by this section is suspended until revived by the Legislature.~~

(8)~~(9)~~(a) The interagency committee established in this section shall annually prepare and submit to the governing board of the South Florida Water Management District a report evaluating the mitigation costs and revenues generated by the mitigation fee.

(b) No sooner than January 31, 2010, and no more frequently than every 2 years thereafter, the interagency committee shall submit to the Legislature a report recommending any needed adjustments to the mitigation fee, including the annual escalator provided for in subsection (5), to ensure that the revenue generated reflects the actual costs of the mitigation.

Section 3. For the purpose of incorporating the amendment made by this act to section 373.41492, Florida Statutes, in a reference thereto, subsections (1), (2), and (3) of section 373.41495, Florida Statutes, are reenacted to read:

373.41495 Lake Belt Mitigation Trust Fund; bonds.—

(1) The Lake Belt Mitigation Trust Fund is hereby created, to be administered by the South Florida Water Management District. Funds shall be credited to the trust fund as provided in s. 373.41492, to be used for the purposes set forth therein.

(2) The South Florida Water Management District may issue

revenue bonds pursuant to s. 373.584, payable from revenues from the Lake Belt Mitigation fee imposed under s. 373.41492.

(3) Net proceeds from the Lake Belt Mitigation fee and any revenue bonds issued under subsection (2) shall be deposited into the trust fund and, together with any interest earned on such moneys, shall be applied to Lake Belt mitigation projects as provided in s. 373.41492.

Section 4. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 569 Agritourism
SPONSOR(S): Local Government Affairs Subcommittee; Combee and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 594

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	13 Y, 0 N	Gregory	Blalock
2) Local Government Affairs Subcommittee	12 Y, 0 N, As CS	Darden	Miller
3) State Affairs Committee		Gregory	Camechis

SUMMARY ANALYSIS

An "agritourism activity" is any agricultural related activity consistent with a bona fide farm or ranch or in a working forest that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy activities, including farming, ranching, historical, cultural, or harvest-your-own activities and attractions. In order to continue farming, operators of small and medium-sized farms must at times find ways to diversify and expand their incomes, either through new enterprises on the farm or off-farm employment. Agritourism is one of the many methods farmers use to diversify and increase their income.

In 2013, the Florida Legislature passed SB 1106, which prohibited local governments from adopting any ordinances, regulations, rules, or policies that prohibit, restrict, regulate, or otherwise limit an agritourism activity on land that has been classified as agricultural land under Florida's greenbelt law. However, some local governments continue to enforce such laws that were adopted prior to the passage of SB 1106 in 2013.

The bill prohibits local governments from enforcing any local ordinance, regulation, rule, or policy that prohibits, restricts, regulates, or otherwise limits an agritourism activity on land classified as agricultural land under Florida's greenbelt law.

The bill may have an indeterminate negative fiscal impact on local governments by prohibiting them from enforcing local ordinances, regulations, rules, or policies that prohibit, restrict, regulate, or otherwise limit an agritourism activity on land classified as agricultural under Florida's greenbelt law.

Article VII, section 18(b) of the Florida Constitution may apply because counties and municipalities may be unable to collect certain fees or fines pertaining to such regulations; however, it is likely the insignificant fiscal impact exemption applies, since very few jurisdictions have existing ordinances that would be unenforceable under this bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

An "agritourism activity" is any agricultural related activity consistent with a bona fide farm or ranch or in a working forest that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy activities, including farming, ranching, historical, cultural, or harvest-your-own activities and attractions.[1] In order to continue farming, operators of small and medium-sized farms find ways to diversify and expand their incomes, either through new enterprises on the farm or off-farm employment.[2] Agritourism is one of the many methods farmers use to diversify and expand their income.

Agritourism has an extensive history in the United States. Farm-related recreation and tourism can be traced back to the late 1800s, when families visited farming relatives in an attempt to escape from the city's summer heat. Visiting the country became even more popular with the widespread use of the automobile in the 1920s. Rural recreation gained interest again in the 1930s and 1940s by people seeking an escape from the stresses of the Great Depression and World War II. These demands for rural recreation led to widespread interest in horseback riding, farm petting zoos, and farm nostalgia during the 1960s and 1970s. Farm vacations, bed and breakfasts, and commercial farm tours were popularized in the 1980s and 1990s.[3]

Today, agritourism may include farm tours or farm stays, fishing, hunting, festivals, historical recreations, workshops or educational activities, wildlife study, horseback riding, cannery tours, cooking classes, wine tastings, barn dances, and harvest-your-own activities. The use of these resources can have a positive effect on both the agricultural enterprise and the surrounding community. Not only does this tourism have the potential to add value to the operations themselves, but it also creates awareness about the importance of agriculture.[4]

Many states, including Florida, have adopted legislation to promote agritourism. In 2007, the Florida Legislature passed HB 1427 authorizing the Department of Agriculture and Consumer Services to provide marketing advice, technical expertise, promotional support, and product development related to agritourism to assist the following entities in their agritourism initiatives:

- Enterprise Florida, Inc.;
- Convention and visitor bureaus;
- Tourist development councils;
- Economic development organizations; and
- Local governments.[5]

In addition, the bill provided that conducting agritourism activities on a bona fide farm or on lands classified as agricultural pursuant to s. 193.461, F.S., would not result in the property owner having his or her agricultural land classification limited, restricted, or divested.[6] Section 193.461, F.S., also known as Florida's "greenbelt law," allows properties classified as a bona fide agricultural operation to be

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[1] S. 570.86(1), F.S.
[2] Wendy Francesconi and Taylor Stein, *Expanding Florida's Farming Business to Incorporate Tourism*, University of Florida Institute of Food and Agricultural Sciences available at: http://edis.ifas.ufl.edu/fr242 (last visited March 6, 2015).
[3] Considering an Agritainment Enterprise in Tennessee (Agricultural Extension Service, The University of Tennessee, PB 1648) available at: http://trace.tennessee.edu/utk_agexmkt/12/ (last visited March 6, 2015).
[4] Analysis of SB 2754 (2007).
[5] Ch. 2007-244, Laws of Fla., codified as s. 570.85, F.S.
[6] S. 570.87(1), F.S.

taxed according to the "use" value of the agricultural operation, rather than the development value. Generally, tax assessments for qualifying lands are lower than tax assessments for other uses.

In 2013, the Florida Legislature passed SB 1106, which provided the intent of the Legislature to eliminate duplication of regulatory authority over agritourism.[7] The bill prohibited a local government from adopting ordinances, regulations, rules, or policies that prohibit, restrict, regulate, or otherwise limit an agritourism activity on land that has been classified as agricultural land under Florida's greenbelt law.[8] The bill also provided limited liability protection for landowners conducting agritourism activities on their property.[9]

However, while local governments may not adopt laws that limit agritourism activities on land classified as agricultural land under Florida's greenbelt law, some local governments continue to enforce such laws that were adopted prior to the passage of SB 1106 in 2013.

Effect of Proposed Changes

The bill amends s. 570.85, F.S., to prohibit local governments from enforcing any local ordinance, regulation, rule, or policy that prohibits, restricts, regulates, or otherwise limits an agritourism activity on land classified as agricultural land under Florida's greenbelt law.

B. SECTION DIRECTORY:

Section 1. Amending s. 570.85, F.S., relating to regulation of agritourism activities.

Section 2. Providing 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:

   The bill may have an indeterminate negative fiscal impact on local governments by prohibiting them from enforcing local ordinances, regulations, rules, or policies that prohibit, restrict, regulate, or otherwise limit an agritourism activity on land classified as agricultural under Florida's greenbelt law. Thus, counties and municipalities may be unable to collect certain fees or fines pertaining to such regulations.

2. Expenditures:

   None.

[7] Ch. 2013-179, Laws of Fla., codified as s. 570.86, F.S.
[8] S. 570.85, F.S.
[9] S. 570.88, F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill encourages agritourism by lessening the regulations on agricultural land owners who engage in agritourism activities.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill reduces the authority of counties and municipalities to raise revenues by prohibiting them from enforcing ordinances, regulations, rules, or policies that prohibit, restrict, regulate, or otherwise limit an agritourism activity on land classified as agricultural under Florida's greenbelt law. Thus, counties and municipalities may be unable to collect certain fees or fines pertaining to such regulations. Article VII, section 18(b) of the Florida Constitution requires a two-thirds vote of the membership of each house of the Legislature in order to enact a general law that reduces the authority of municipalities and counties to raise revenues in the aggregate. Article VII, section 18(d) of the Florida Constitution provides an exemption if the law is determined to have an insignificant fiscal impact. An insignificant fiscal impact means an amount not greater than the average statewide population for the applicable fiscal year times ten cents.[10] A fiscal estimate is not available for this bill. If it is determined that this bill has more than an insignificant fiscal impact, the bill will require a two-thirds vote of the membership of each house of the Legislature for passage.

2. Other:

While the Florida Constitution grants local governments broad regulatory authority under home rule powers, such ordinances must yield to state statutes.[11] Legislation limiting the regulatory powers of counties and municipalities has been previously found to be within the powers of the Legislature.[12]

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2015, the Local Government Affairs Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment conforms the bill to its Senate companion, clarifying the bill prevents the enforcement of local ordinances.

This analysis is drawn to the bill as amended.

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[10] The total state population is estimated to be 19,507,369. University of Florida, Bureau of Economic and Business Research, Florida Estimates of Population, available at http://www.bebr.ufl.edu/data/state/Florida (last visited February 2, 2015).

[11] Fla. Const. art. VIII, s 2(b); Masone v. City of Aventura, 147 So.3d 492, 494 (Fla. 2014).

[12] *See* Cross Key Waterways v. Askew, 351 So. 2d 1062, 1065 (Fla. 1st DCA1977) (power exercised by counties and municipalities is a delegation of state power); *compare* Phantom of Clearwater, Inc. v. Pinellas County, 894 So. 2d 1011, 1018-1019 (Fla. 2d DCA 2005) (state preemption must be stated with clear language of intent).

A bill to be entitled

An act relating to agritourism; amending s. 570.85, F.S.; prohibiting a local government from enforcing a local ordinance, regulation, rule, or policy that prohibits, restricts, regulates, or otherwise limits an agritourism activity on land classified as agricultural land; providing an effective date.

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

Section 1. Subsection (1) of section 570.85, Florida Statutes, is amended to read:

570.85 Agritourism.—

(1) It is the intent of the Legislature to eliminate duplication of regulatory authority over agritourism as expressed in this section. Except as otherwise provided for in this section, and notwithstanding any other provision of law, a local government may not adopt or enforce a local ~~an~~ ordinance, regulation, rule, or policy that prohibits, restricts, regulates, or otherwise limits an agritourism activity on land classified as agricultural land under s. 193.461. This subsection does not limit the powers and duties of a local government to address an emergency as provided in chapter 252.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 625 Florida Civil Rights Act
SPONSOR(S): Cortes and Berman
TIED BILLS: None **IDEN./SIM. BILLS:** SB 982

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	11 Y, 1 N	Robinson	Bond
2) State Affairs Committee		Moore AM	Camechis
3) Judiciary Committee			

SUMMARY ANALYSIS

Title II of the federal Civil Rights Act of 1964 (Title II) prohibits discrimination on the basis of race, color, religion, or national origin in certain places of public accommodation, such as hotels, restaurants, and places of entertainment. Title VII of the federal Civil Rights Act of 1964 (Title VII) prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin. Title VII was amended in 1978 to specifically include discrimination based on pregnancy, childbirth, and related medical conditions as prohibited forms of sex discrimination in employment.

Patterned after Title II and Title VII, but providing even broader protections, the Florida Civil Rights Act of 1992 (FCRA) was enacted to "secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status..." in places of public accommodation and employment. However, although Title VII expressly includes pregnancy status as a component of sex discrimination in employment, the FCRA does not. The fact that the FCRA is patterned after Title VII but does not expressly prohibit discrimination based on pregnancy status has caused division among both federal and state courts as to whether the Legislature intended to provide protection on the basis of pregnancy status in employment. In 2014, the Florida Supreme Court concluded that discrimination based on pregnancy is subsumed within the prohibition in the FCRA against sex discrimination in employment practices, consistent with the express provisions of Title VII. The decision did not address whether discrimination based on pregnancy is subsumed within the prohibition in the FCRA against sex discrimination in places of public accommodation.

The bill codifies the Florida Supreme Court decision by amending the FCRA to expressly provide that discrimination on the basis of pregnancy is a prohibited employment practice. The bill also amends the FRCA to prohibit discrimination on the basis of pregnancy in places of public accommodation.

The bill does not appear to have a fiscal impact on the state or local governments.

The effective date of the bill is July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Title II and VII of the Civil Rights Act of 1964[1]

Title II of the federal Civil Rights Act of 1964 (Title II) prohibits discrimination on the basis of race, color, religion, or national origin in certain places of public accommodation, such as hotels, restaurants, and places of entertainment. Title VII of the Civil Rights Act of 1964 (Title VII) prohibits discrimination in employment on the basis of race, color, religion, national origin, or sex. Title VII applies to employers with 15 or more employees[2] and outlines a number of unlawful employment practices. For example, Title VII makes it unlawful for an employer to refuse to hire, discharge, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment based on race, color, religion, national origin, or sex.[3]

Pregnancy Discrimination Act[4]

In 1976, the United States Supreme Court ruled in *General Electric Co. v. Gilbert*[5] that Title VII did not include pregnancy discrimination as a form of sex discrimination under its prohibition against unlawful employment practices. In response to the decision, Congress passed the Pregnancy Discrimination Act (PDA) in 1978. The PDA amended Title VII to expressly define the terms "because of sex" and "on the basis of sex," to prohibit discrimination against a woman due to pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.[6] Under the PDA, an employer cannot discriminate against a woman on the basis of pregnancy in hiring, fringe benefits (such as health insurance), pregnancy and maternity leave, harassment, or any other term or condition of employment.[7]

Florida Civil Rights Act of 1992

Patterned after Title II and Title VII, but providing broader protections, the Florida Civil Rights Act of 1992 (FCRA) was enacted to "secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status..."[8] in employment and public accommodations.[9] Similar to Title VII, the FCRA provides a number of actions that, if undertaken because of or on the basis of an individual's race, color, religion, sex, national origin, age, handicap, or marital status, are considered unlawful employment practices, including:[10]

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[1] 42 U.S.C. § 2000a *et seq.;* 42 U.S.C. § 2000e *et seq.*
[2] 42 U.S.C. § 2000e(b)
[3] 42 U.S.C. § 2000e-2(a).
[4] Pub. L. No. 95-555, 95th Cong. (Oct. 31, 1978), codified as 42 U.S.C. § 2000e(k).
[5] 429 U.S. 125, 145 (1976).
[6] The PDA defines the terms "because of sex" or "on the basis of sex" to include pregnancy, childbirth, or related conditions and women who are affected by pregnancy, childbirth, or related conditions. It further states that these individuals must be treated the same for employment purposes, including the receipt of benefits, as any other person who is not so affected but has similar ability or inability to work.
[7] For more information, see U.S. Equal Employment Opportunity Commission, Facts about Pregnancy Discrimination, http://www.eeoc.gov/facts/fs-preg.html (last visited February 24, 2015).
[8] Section 760.01, F.S.
[9] "Public accommodations" means places of public accommodation, lodgings, facilities principally engaged in selling food for consumption on the premises, gasoline stations, places of exhibition or entertainment, and other covered establishments. Section 760.02(11), F.S.
[10] Section 760.10, F.S. Note that this section does not apply to a religious corporation, association, educational institution, or society which conditions employment opportunities to members of that religious corporation, association, educational institution, or society.

- Failing to hire an individual, or otherwise discriminating against an individual with respect to compensation, terms, conditions, or privileges of employment;
- Limiting, segregating, or classifying employees or applicants for employment in ways that would deprive such individuals of employment opportunities or adversely affect an individual's status as an employee;
- Failing or refusing to refer an individual for employment;
- Excluding or expelling an individual from membership in a labor organization or limiting, segregating, or classifying the membership of a labor organization;
- Discriminating in admission to, or employment in, any program established to provide apprenticeship or other training for a profession, occupation, or trade;
- Discriminating in licensing, certification, credentials, examinations, or an organizational membership required to engage in a profession, occupation, or trade; and
- Printing or publishing ads related to membership in certain labor organizations or employment that indicate a preference, limitation, specification, or discrimination.

Unlike Title VII, the FCRA has not been amended to specifically include discrimination based on the pregnancy status of an individual as an unlawful employment practice. The FCRA also does not prohibit pregnancy discrimination in places of public accommodation.

Pregnancy Discrimination in Florida

The fact that the FCRA is patterned after Title VII but has not been amended to expressly include pregnancy status as a component of sex discrimination in employment has caused division among both federal and state courts as to whether the Florida Legislature intended to provide protection from discrimination on the basis of pregnancy under state law. Thus, the ability to bring a claim based on pregnancy discrimination varied among the jurisdictions.

The earliest case to address the issue of pregnancy discrimination under Florida law was *O'Laughlin v. Pinchback*.[11] In this case, the plaintiff alleged that she was terminated from her position as a correctional officer based on pregnancy. The First District Court of Appeal held that the Florida Human Rights Act[12] (predecessor to the FCRA) stood as "an obstacle to the accomplishment and execution of the full purposes and objectives of Congress by not recognizing that discrimination against pregnant employees is sex based discrimination."[13] The court held that both federal and state law should be read in concert to provide the maximum protection against discrimination. Therefore, Title VII, as amended, preempted Florida law "to the extent that Florida's law offers less protection to its citizens than does the corresponding federal law."[14] By finding the Florida Human Rights Act to be preempted by federal law, the court did not reach the question of whether the Florida law on its own prohibits pregnancy discrimination. However, the court did note that Florida law had not been amended to include a prohibition against pregnancy-based discrimination.[15]

The Fourth District Court of Appeal in *Carsillo v. City of Lake Worth*[16] found that since the FCRA is patterned after Title VII, which considers pregnancy discrimination to be sex discrimination, the FCRA also bars such discrimination.[17] The court recognized that the Florida statute had never been amended, but concluded that since Congress' original intent, as expressed by the PDA, was to prohibit this type of

[11] 579 So.2d 788 (Fla. 1st DCA 1991).
[12] This case was brought under the Florida Human Rights Act of 1977, which was the predecessor to the Florida Civil Rights Act of 1992, Chs. 69-287, 72-48, and 77-341, L.O.F., and which was also patterned after Title VII.
[13] *O'Laughlin,* at 792.
[14] *Id.*
[15] *Id.* at 791.
[16] 995 So.2d 1118 (Fla. 4th DCA 2008), *rev. denied*, 20 So.3d 848 (Fla. 2009).
[17] *Id.* at 1119.

discrimination, it was unnecessary for Florida to amend its statute to import the intent of the law after which it was patterned.[18]

In contrast, the Third District Court of Appeal in *Delva v. Continental Group, Inc.* (*Delva I*)[19] held that the FCRA does not prohibit pregnancy discrimination based on the *O'Laughlin* court's analysis that the FCRA had not been amended to include pregnancy status.[20] The issue before the court was narrowly defined to whether the FCRA prohibited discrimination in employment on the basis of pregnancy; therefore, it did not address the preemption holding in *O'Laughlin.* The court certified the conflict[21] with the *Carsillo* case to the Florida Supreme Court.[22]

In 2014, the Florida Supreme Court reviewed the *Delva I* decision in *Delva v. Continental Group, Inc.* (*Delva II*)[23] and quashed the decision, holding that:

> The statutory phrase making it an "unlawful employment practice for an employer... to discriminate...because of...sex," as used in the FCRA, includes discrimination based on pregnancy, which is a natural condition and primary characteristic unique to the female sex."[24]

The court reasoned that such a construction of the FCRA was consistent with legislative intent, as expressed in the FCRA itself, that the FCRA be liberally construed to further its purpose to secure for all individuals within the state freedom from discrimination because of sex.[25] Indeed, the court found that to conclude that the FCRA does not protect women from discrimination based on pregnancy—a primary characteristic of the female sex—would undermine the very protection provided in the FCRA to prevent an employer from discriminating against women because of their sex.[26] The court ascribed no legal significance to the Legislature's failure to amend the FCRA to include pregnancy discrimination after the *Gilbert* decision and rejected the argument that the failure to do so was an indication of the Legislature's intent not to include pregnancy within the meaning of sex discrimination.[27]

The decision did not address whether discrimination based on pregnancy is subsumed within the prohibition in the FCRA against sex discrimination in places of public accommodation.

Claims and Remedies under Title VII and the FCRA

A Florida employee may now file a charge of an unlawful employment practice based upon pregnancy discrimination with either the federal Equal Employment Opportunity Commission (EEOC) or the Florida Commission on Human Relations (FCHR).

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[18] *Id.* at 1120.
[19] 96 So.3d 956 (Fla. 3d DCA 2012).
[20] *Id.* at 958.
[21] *Id.*
[22] Federal courts interpreting the FCRA similarly wrestled with whether pregnancy status is covered by its provisions. Like the state courts, the federal courts that found that the FCRA does provide a cause of action based on pregnancy discrimination did so because the FCRA is patterned after Title VII, which bars pregnancy discrimination. *See Jolley v. Phillips Educ. Grp. of Cent. Fla., Inc.*, 1996 WL 529202 (M.D. Fla. 1996), *Terry v. Real Talent, Inc.*, 2009 WL 3494476 (M.D. Fla. 2009), *Constable v. Agilysys, Inc.*, 2011 WL 2446605 (M.D. Fla. 2011), and *Glass v. Captain Katanna's, Inc.*, 950 F.Supp.2d 1235 (M.D. Fla. 2013). The courts that found that the FCRA does not prohibit pregnancy discrimination primarily did so because the Legislature has not amended the FCRA to specifically protect pregnancy status. *See Frazier v. T- Mobile USA, Inc.*, 495 F.Supp.2d 1185 (M.D. Fla. 2003), *Boone v. Total Renal Laboratories, Inc.*, 565 F.Supp.2d 1323 (M.D. Fla. 2008), and *DuChateau v. Camp Dresser & McKee, Inc.*, 822 F.Supp.2d 1325 (S.D. Fla. 2011).
[23] 137 So. 3d 371 (Fla. 2014)
[24] *Id.* at *372.*
[25] *Id.*
[26] *Id.* at 375.
[27] *Id.*

A person who wishes to file a complaint with the EEOC must do so within 300 days of a violation in a jurisdiction with a fair employment practices agency (such as Florida, which has the FCHR).[28] The EEOC must investigate and make a reasonable cause determination within 120 days after the date of the filing.[29] If the EEOC finds an absence of reasonable cause, the EEOC will dismiss the charge. If the EEOC finds reasonable cause, the EEOC must engage in informal conferencing, conciliation, and persuasion to remedy the unlawful employment practice.[30] After the EEOC concludes its investigation and issues a "right-to-sue" letter to the plaintiff, the plaintiff must file a claim in federal court under Title VII within 90 days of receipt of the letter.[31]

A person who wishes to file a complaint with the FCHR must do so within 365 days of a violation.[32] The FCHR must make a reasonable cause determination within 180 days after the filing of the complaint.[33] If the FCHR finds reasonable cause, the plaintiff may bring either a civil action or request an administrative hearing.[34] A plaintiff is required to file a state claim in civil court under the FCRA within one year of the determination of reasonable cause by the FCHR.[35]

Remedies available to persons who bring claims based upon pregnancy discrimination differ depending on whether the claim is brought under Title VII or under the FCRA. If a plaintiff prevails under Title VII or the FCRA, the plaintiff might be entitled to an order prohibiting the discriminatory practice, as well as reinstatement or hiring, with or without back pay.[36] Depending upon the number of persons employed by the defendant employer, a Title VII claimant may also recover from $50,000 to $300,000 in aggregated compensatory and punitive damages.[37] In contrast, there is no limit on compensatory damages under the FCRA, which include "damages for mental anguish, loss of dignity, and any other intangible injuries."[38] Punitive damages under the FCRA may not exceed $100,000.[39] However, the total recovery, including back pay, for a claimant who brings a discrimination claim against the state or its subdivisions is limited under the FCRA to $300,000.[40]

Effect of the Bill

The bill codifies the Florida Supreme Court decision in *Delva II* by amending the FCRA to expressly provide that discrimination on the basis of pregnancy is a prohibited employment practice. The bill also amends the FCRA to prohibit discrimination on the basis of pregnancy in places of public accommodation. Accordingly, pregnancy is afforded the same protection as other statuses or classes identified in the FCRA. A woman affected by pregnancy may not be discriminated against:

- By places of public accommodation; or
- With respect to employment, provided that the discriminatory act constitutes an unlawful employment practice.

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[28] 42 U.S.C. § 2000e-5(e)(1). The enforcement procedures referenced in this paper do not apply to individuals affected by federal agencies, who have a separate process. 29 C.F.R. part 1614.
[29] 42 U.S.C. §. 2000e-5(b).
[30] *Id.*
[31] 42 U.S.C. § 2000e-5(f)(1).
[32] Section 760.11(1), F.S.
[33] Section 760.11(3), F.S.
[34] Section 760.11(4), F.S.
[35] Section 760.11(5), F.S.
[36] Section 760.11(5), F.S.; 42 U.S.C. § 2000e-5(g).
[37] 42 U.S.C. §1981a(b)(3)
[38] Section 760.11(5), F.S.
[39] Section 760.11(5), F.S.
[40] Section 760.11(5), F.S., referring to the limited waiver of sovereign immunity in section 768.28, F.S. Unlike the FCRA, there apparently is no limitation on total recovery, including back pay, for a claimant who brings suit against the state or its subdivisions under Title VII, though the caps on compensatory and punitive damages would apply.

Persons injured by a violation of the FCRA due to pregnancy discrimination are entitled to all rights and remedies under the FCRA.

B. SECTION DIRECTORY:

Section 1 amends s. 509.092, F.S., relating to public lodging establishments and public food service establishments.

Section 2 amends s. 760.01, F.S., relating to the purpose and construction of the FCRA.

Section 3 amends s. 760.05, F.S., relating to functions of the Florida Commission on Human Relations.

Section 4 amends s. 760.07, F.S., relating to remedies for unlawful discrimination.

Section 5 amends s. 760.08, F.S., relating to discrimination in places of public accommodation.

Section 6 amends s. 760.10, F.S., relating to unlawful employment practices.

Section 7 reenacts s. 760.11(1), F.S., to incorporate pregnancy discrimination into provisions relating to administrative and civil remedies for violations of the FCRA.

Section 8 provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to the Florida Civil Rights Act; amending s. 509.092, F.S.; prohibiting discrimination on the basis of pregnancy in public lodging and food service establishments; amending s. 760.01, F.S.; revising the general purpose of the Florida Civil Rights Act of 1992; amending s. 760.05, F.S.; revising the function of the Florida Commission on Human Relations; amending s. 760.07, F.S.; providing civil and administrative remedies for discrimination on the basis of pregnancy; amending s. 760.08, F.S.; prohibiting discrimination on the basis of pregnancy in places of public accommodation; amending s. 760.10, F.S.; prohibiting employment discrimination on the basis of pregnancy; prohibiting discrimination on the basis of pregnancy by labor organizations, joint labor-management committees, and employment agencies; prohibiting discrimination on the basis of pregnancy in occupational licensing, certification, and membership organizations; providing an exception to unlawful employment practices based on pregnancy; reenacting s. 760.11(1), F.S., relating to administrative and civil remedies for violations of the Florida Civil Rights Act of 1992, to incorporate the amendments made to s. 760.10(5), F.S., in a reference thereto; providing an effective date.

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

Section 1. Section 509.092, Florida Statutes, is amended to read:

509.092 Public lodging establishments and public food service establishments; rights as private enterprises.—Public lodging establishments and public food service establishments are private enterprises, and the operator has the right to refuse accommodations or service to any person who is objectionable or undesirable to the operator, but such refusal may not be based upon race, creed, color, sex, pregnancy, physical disability, or national origin. A person aggrieved by a violation of this section or a violation of a rule adopted under this section has a right of action pursuant to s. 760.11.

Section 2. Subsection (2) of section 760.01, Florida Statutes, is amended to read:

760.01 Purposes; construction; title.—

(2) The general purposes of the Florida Civil Rights Act of 1992 are to secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status and thereby to protect their interest in personal dignity, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health, and general

welfare, and to promote the interests, rights, and privileges of individuals within the state.

Section 3. Section 760.05, Florida Statutes, is amended to read:

760.05 Functions of the commission.—The commission shall promote and encourage fair treatment and equal opportunity for all persons regardless of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status and mutual understanding and respect among all members of all economic, social, racial, religious, and ethnic groups; and shall endeavor to eliminate discrimination against, and antagonism between, religious, racial, and ethnic groups and their members.

Section 4. Section 760.07, Florida Statutes, is amended to read:

760.07 Remedies for unlawful discrimination.—Any violation of any Florida statute making unlawful discrimination because of race, color, religion, gender, pregnancy, national origin, age, handicap, or marital status in the areas of education, employment, housing, or public accommodations gives rise to a cause of action for all relief and damages described in s. 760.11(5), unless greater damages are expressly provided for. If the statute prohibiting unlawful discrimination provides an administrative remedy, the action for equitable relief and damages provided for in this section may be initiated only after the plaintiff has exhausted his or her administrative remedy. The term "public accommodations" does not include lodge halls or

other similar facilities of private organizations which are made available for public use occasionally or periodically. The right to trial by jury is preserved in any case in which the plaintiff is seeking actual or punitive damages.

Section 5. Section 760.08, Florida Statutes, is amended to read:

760.08 Discrimination in places of public accommodation.—All persons are ~~shall be~~ entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation~~, as defined in this chapter,~~ without discrimination or segregation on the ground of race, color, national origin, sex, pregnancy, handicap, familial status, or religion.

Section 6. Subsections (1) and (2), paragraphs (a) and (b) of subsection (3), subsections (4) through (6), and paragraph (a) of subsection (8) of section 760.10, Florida Statutes, are amended to read:

760.10 Unlawful employment practices.—

(1) It is an unlawful employment practice for an employer:

(a) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.

(b) To limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities, or adversely affect any individual's status as an employee, because of such individual's race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.

(2) It is an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status or to classify or refer for employment any individual on the basis of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.

(3) It is an unlawful employment practice for a labor organization:

(a) To exclude or to expel from its membership, or otherwise to discriminate against, any individual because of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.

(b) To limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way that ~~which~~ would deprive or tend to deprive any individual of employment opportunities, or adversely affect any individual's status as an employee or as an applicant for employment, because of such

individual's race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.

(4) It is an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual because of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status in admission to, or employment in, any program established to provide apprenticeship or other training.

(5) Whenever, in order to engage in a profession, occupation, or trade, it is required that a person receive a license, certification, or other credential, become a member or an associate of any club, association, or other organization, or pass any examination, it is an unlawful employment practice for any person to discriminate against any other person seeking such license, certification, or other credential, seeking to become a member or associate of such club, association, or other organization, or seeking to take or pass such examination, because of such other person's race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.

(6) It is an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee to print, or cause to be printed or published, any notice or advertisement relating to employment, membership, classification, referral for employment, or apprenticeship or

other training, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, pregnancy, national origin, age, absence of handicap, or marital status.

(8) Notwithstanding any other provision of this section, it is not an unlawful employment practice under ss. 760.01-760.10 for an employer, employment agency, labor organization, or joint labor-management committee to:

(a) Take or fail to take any action on the basis of religion, sex, pregnancy, national origin, age, handicap, or marital status in those certain instances in which religion, sex, condition of pregnancy, national origin, age, absence of a particular handicap, or marital status is a bona fide occupational qualification reasonably necessary for the performance of the particular employment to which such action or inaction is related.

Section 7. For the purpose of incorporating the amendment made by this act to section 760.10(5), Florida Statutes, in a reference thereto, subsection (1) of section 760.11, Florida Statutes, is reenacted to read:

760.11 Administrative and civil remedies; construction.—

(1) Any person aggrieved by a violation of ss. 760.01-760.10 may file a complaint with the commission within 365 days of the alleged violation, naming the employer, employment agency, labor organization, or joint labor-management committee, or, in the case of an alleged violation of s. 760.10(5), the

person responsible for the violation and describing the violation. Any person aggrieved by a violation of s. 509.092 may file a complaint with the commission within 365 days of the alleged violation naming the person responsible for the violation and describing the violation. The commission, a commissioner, or the Attorney General may in like manner file such a complaint. On the same day the complaint is filed with the commission, the commission shall clearly stamp on the face of the complaint the date the complaint was filed with the commission. In lieu of filing the complaint with the commission, a complaint under this section may be filed with the federal Equal Employment Opportunity Commission or with any unit of government of the state which is a fair-employment-practice agency under 29 C.F.R. ss. 1601.70-1601.80. If the date the complaint is filed is clearly stamped on the face of the complaint, that date is the date of filing. The date the complaint is filed with the commission for purposes of this section is the earliest date of filing with the Equal Employment Opportunity Commission, the fair-employment-practice agency, or the commission. The complaint shall contain a short and plain statement of the facts describing the violation and the relief sought. The commission may require additional information to be in the complaint. The commission, within 5 days of the complaint being filed, shall by registered mail send a copy of the complaint to the person who allegedly committed the violation. The person who allegedly committed the violation may file an

answer to the complaint within 25 days of the date the complaint was filed with the commission. Any answer filed shall be mailed to the aggrieved person by the person filing the answer. Both the complaint and the answer shall be verified.

Section 8. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 687 Land Application of Septage
SPONSOR(S): Agriculture & Natural Resources Subcommittee; Drake
TIED BILLS: None **IDEN./SIM. BILLS:** SB 648

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N, As CS	Moore	Blalock
2) State Affairs Committee		Moore	Camechis

SUMMARY ANALYSIS

There are approximately 2.6 million onsite sewage treatment and disposal systems (OSTDSs or septic tanks) in the state, serving approximately 30 percent of the population. Each year, nearly 100,000 OSTDSs are pumped out, generating 100 million gallons of septage. Septage is the mixture of sludge, fatty materials, human feces, and wastewater removed during the pumping or cleaning of an OSTDS.

Current law prohibits land application of septage from OSTDSs effective January 1, 2016. However, reasonable alternative disposal options are limited to handle the septage that is currently land applied. In addition, the Department of Environmental Protection is currently conducting a study of water quality impacts of permitted land application sites. The study is projected to be completed within two years.

The bill extends the effective date of the prohibition against the land application of septage from OSTDSs from January 1, 2016, to January 1, 2018.

The bill delays the indeterminate fiscal impact on the Department of Health resulting from the loss of permit revenues. The bill delays the potential indeterminate negative fiscal impact on septic tank pumpers, septage haulers, and OSTDS owners resulting from increased costs of treating and disposing of septage using alternative methods.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Each Floridian generates approximately 100 gallons of domestic wastewater[1] each day.[2] This wastewater is collected, treated, and managed by onsite treatment and disposal systems (OSTDSs or septic systems),[3] which are permitted by the Department of Health (DOH), or by centralized wastewater treatment facilities (WWTFs), which are permitted by the Department of Environmental Protection (DEP), to protect public health, water quality, recreation, and fish and wildlife.[4]

There are approximately 2.6 million OSTDSs in the state, serving approximately 30 percent of the population.[5] Each year, nearly 100,000 OSTDSs are pumped out, generating 100 million gallons of septage.[6] Septage is the mixture of sludge, fatty materials, human feces, and wastewater removed during the pumping or cleaning of an OSTDS.[7]

Roughly 40 percent of the septage removed is treated at a DOH-permitted septage treatment facility and then applied to a DOH-permitted land application site.[8] DOH permits 88 land application sites and 90 septage treatment facilities throughout the state.[9] Septage that is not treated at a septage treatment facility and applied to land is treated at a WWTF or disposed of in a Class I landfill.[10]

Septage received at a DOH-permitted septage treatment facility is screened and treated with lime to raise the pH to 12 for a minimum of two hours or to 12.5 for thirty minutes.[11] Septage land application rates are limited by nitrogen content and, if applicable, phosphorous content.[12] Application is limited to sod farms, pasture lands, forests, highway shoulders and medians, plant nurseries, land reclamation projects, and soils used for growing human food chain crops (e.g. hay, silage).[13]

In 2010, the Legislature passed SB 550, which banned land application of septage from OSTDSs after January 1, 2016, and required DOH, in consultation with DEP, to provide a report, by February 1, 2011,

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[1] Domestic wastewater is defined, in rule 62-600.200(25), F.A.C., as the wastewater derived principally from dwellings, business buildings, institutions, and the like; sanitary wastewater; sewage.
[2] DEP, *Domestic Wastewater*, http://www.dep.state.fl.us/water/wastewater/dom/index.htm (last visited March 2, 2015).
[3] An OSTDS is defined, in section 381.0065(2)(k), F.S., as a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solids or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system, but does not include package sewage treatment facilities and other treatment works regulated by DEP under chapter 403, F.S.
[4] Section 381.0065, F.S.; Section 403.087, F.S.; DEP, *Domestic Wastewater,* http://www.dep.state.fl.us/water/wastewater/dom/index.htm (last visited March 2, 2015).
[5] DOH, *Onsite Sewage*, http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html (last visited March 2, 2015).
[6] DOH's *Report on Alternative Methods for the Treatment and Disposal of Septage*, available at http://www.floridahealth.gov/environmental-health/onsite-sewage/_documents/septage_alternatives.pdf.
[7] Section 381.0065(2)(n), F.S.
[8] DOH's *Report on Alternative Methods for the Treatment and Disposal of Septage*, available at http://www.floridahealth.gov/environmental-health/onsite-sewage/_documents/septage_alternatives.pdf
[9] Conversation with DOH staff on March 11, 2015.
[10] DOH's *Report on Alternative Methods for the Treatment and Disposal of Septage*, available at http://www.floridahealth.gov/environmental-health/onsite-sewage/_documents/septage_alternatives.pdf.
[11] Rule 64E-6.010(7), F.A.C.
[12] Id.
[13] Id.

to the Governor, the Senate President, and the House Speaker, recommending alternative methods to establish enhanced treatment levels for land application of septage.[14] The report was required to include:

- A schedule for the reduction in land application;
- Appropriate treatment levels;
- Alternative methods for treatment and disposal;
- Enhanced application site permitting requirements, including any requirements for nutrient management plans;
- The range of costs to local governments, affected businesses, and individuals for alternative treatment and disposal methods; and
- Any recommendations for legislation or rule authority needed to reduce land application of septage.[15]

On February 1, 2011, DOH's Bureau of Onsite Sewage issued its report, which contained the following findings:[16]

- The benefits of treating septage at WWTFs include making use of available WWTFs that have aeration and/or solids handling capacity, and having a centralized waste treatment operation. However, only 60 of the 2,000 WWTFs in Florida have the capacity to treat septage, resulting in approximately 70 percent of the state's counties not having an available WWTF located within their boundaries. Additionally, accepting septage at a WWTF has the potential to upset wastewater treatment processes, making septage receiving facilities (e.g. holding tanks) at WWTFs desirable, resulting in increased operation and maintenance requirements and costs. Also, some WWTFs choose not to accept grease with septage, which necessitates the transport of grease for separate treatment land application.[17]
- The benefits of septage disposal at Class I landfills include increased microbial activity within the landfill, which results in increased waste decomposition and more rapid waste stabilization. Disposal also offers containment, management of potential contaminants, and requires less area than land application. However, in order for septage to be accepted at a landfill it must be dewatered, to approximately 12 percent total solids, and the effluent from dewatering is then sent to a WWTF, which increases costs. Additionally, septage, being a wet waste stream, may create instability (e.g. differential settlement and slope instability) of the landfill, and there may be increased difficulty in operating compaction equipment due to a slick working surface.[18]
- The state could require further treatment of septage at septage treatment facilities, but the current requirement of lime stabilization for two hours at a pH of 12 meets federal regulations.[19]
- Enhancements to current land application practices could include requiring third-party oversight of septage treatment facilities and land application sites, such as:
    - Having a Class C WWTF Operator visit to oversee operations;
    - Increasing the frequency of DOH inspections;
    - Establishing regional DOH inspections; and
    - Limiting a land application site to use by one septage applier.

  In addition, enhancements to current operational procedures could include:
    - Metering of septage received at treatment facilities;
    - Requiring larger stabilization and holding tanks at treatment facilities;
    - Requiring longer treatment exposure times and post-treatment holding times;
    - Requiring electronic pH meters to replace testing with paper strips;
    - Requiring sampling of stabilized septage;
    - Tracking yearly nutrient loading based on septage sampling; and

[14] Chapter 2010-205, Laws of Fla.
[15] Id.
[16] DOH's *Report on Alternative Methods for the Treatment and Disposal of Septage*, available at http://www.floridahealth.gov/environmental-health/onsite-sewage/_documents/septage_alternatives.pdf.
[17] Id.
[18] Id.
[19] Id.

- Requiring annual soil sampling of active land application sites.[20]

In addition, DEP is currently conducting a study focusing on the leaching potential of septage land application sites to groundwater.[21] Up-gradient monitoring and monitoring tracer analysis are being used to differentiate water quality impacts of septage application, adjacent land use activities, and past and ongoing fertilizer applications at land application sites.[22] The study is projected to be completed within two years.[23]

Effect of Proposed Changes

The bill amends s. 381.0065, F.S., to extend the effective date of the prohibition against the land application of septage from OSTDSs from January 1, 2016, to January 1, 2018.

B. SECTION DIRECTORY:

Section 1. Amends s. 381.0065, F.S., relating to land application of septage.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   DOH currently issues permits for 88 land application sites and 90 septage treatment facilities, which have annual permit fees associated with these operations. If the prohibition takes effect in 2016, DOH will lose revenue by no longer permitting these operations.

2. Expenditures:

   If the prohibition takes effect in 2016, there will be an indeterminate reduction in DOH's expenditures from no longer permitting or inspecting these operations.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The land application of septage from OSTDSs provides a method for disposal that is typically lower in cost than alternative methods (e.g. treatment at a WWTF or disposal at a landfill). When the prohibition on land application takes effect in 2016, septic tank pumpers and septage haulers will have to use alternative methods, which typically cost more than land application due to increases in driving distance and disposal fees. Increased costs associated with the use of alternative methods may result in higher pumpout costs for OSTDS owners. By extending the effective date of the prohibition on the land application of septage, the bill also delays the potential indeterminate negative fiscal impact on the private sector.

[20] Id.
[21] DEP's analysis on file with Agriculture & Natural Resources Subcommittee staff.
[22] Id.
[23] Id.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2015, the Agriculture & Natural Resources Subcommittee (ANRS) adopted one amendment that extended the effective date of the prohibition against the land application of septage from OSTDSs from January 1, 2016, to January 1, 2018. This analysis is drafted to the bill as amended and passed by the ANRS.

A bill to be entitled

An act relating to the land application of septage; amending s. 381.0065, F.S.; revising the effective date of the prohibition against the land application of septage from onsite sewage treatment and disposal systems; providing an effective date.

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

Section 1. Subsection (6) of section 381.0065, Florida Statutes, is amended to read:

381.0065 Onsite sewage treatment and disposal systems; regulation.—

(6) LAND APPLICATION OF SEPTAGE PROHIBITED.—Effective January 1, 2018 ~~2016~~, the land application of septage from onsite sewage treatment and disposal systems is prohibited.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 727 Diplomatic Relations with Cuba
SPONSOR(S): Diaz, Jr.; Nunez; and others
TIED BILLS: None **IDEN./SIM. BILLS:** SM 866

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	9 Y, 4 N	Renner	Kiner
2) State Affairs Committee		Moore	Camechis

SUMMARY ANALYSIS

On December 17, 2014, President Obama announced diplomatic and economic policy changes to begin normalizing the relationship between the United States (U.S.) and Cuba. Generally, the changes include, but are not limited to:

- Allowing travel to Cuba for authorized purposes;
- Loosening the travel restrictions on travel agents and airlines;
- Raising the limits on and authorizing certain categories of remittances to Cuba;
- Allowing U.S. financial institutions to open correspondent accounts at Cuban financial institutions to ease the processing of authorized transactions;
- Authorizing certain transactions with Cuban nationals located outside of Cuba; and
- Allowing activities related to telecommunications, financial services, trade, and shipping.

This memorial expresses profound disagreement with the decision of the President to restore full diplomatic relations with Cuba, and opposes the opening of a Cuban consulate or any diplomatic office in Florida. Furthermore, the memorial urges Congress to uphold the embargo until the dictatorship is no longer in power and basic human and civil rights are again recognized in Cuba.

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

This memorial does not have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Background

In 1898, Spain relinquished control of Cuba to the U.S. with the Treaty of Paris, and in 1902, the U.S. granted Cuba its independence but retained the right to intervene only to preserve Cuban independence and stability.[1] Subsequently, in 1934, Cuba and the U.S. entered into a treaty, which, among other things, leased Guantanamo Bay naval base to the U.S.[2]

In 1959, Cuba's authoritarian regime, led by Fidel Castro, assumed power by force over the Fulgencio Batista regime. After Castro declared that Cuba was a socialist state in 1961, he developed close ties with the Soviet Union that lasted for the next 30 years.[3] Castro worked to advance geopolitical goals of the Soviet Union, funded violent insurrectional activities, and participated in foreign interventions.[4]

The relationship between the U.S. and Cuba deteriorated when the Cuban government expropriated U.S. properties, moved toward the adoption of a one-party communist system, [5] and hiked taxes on U.S. imports.[6] In response, the U.S. imposed an exports embargo on Cuba in 1960, and officially severed diplomatic relations with the Cuban government in 1961.[7] The embargo included commercial, economic, and financial restrictions. Currently, the Cuban embargo is enacted through various federal laws, including the Cuban Assets Control Regulations,[8] the Export Administration Act,[9] and the Cuban Liberty and Democratic Solidarity Act of 1996.[10]

Cuban Assets Control Regulations

The Cuban Assets Control Regulations (Regulations), implemented by the Department of the Treasury's Office of Foreign Assets Control (OFAC), was issued in 1963 in response to certain hostile actions by the Cuban government.[11] They are still in force today and affect all U.S. citizens and permanent residents wherever they are located, all people and organizations physically in the U.S., and all branches and subsidiaries of U.S. organizations throughout the world.[12] The goal of the sanctions is to isolate the Cuban government economically and deprive it of U.S. dollars.[13] The Regulations generally prohibit the following:[14]

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[1] U.S. Department of State Background Notes on Cuba, November, 2011, *available at* http://www.state.gov/outofdate/bgn/cuba/191090.htm (last visited February 23, 2015).
[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] *Id.*
[6] Council on Foreign Relations, *available at* http://www.cfr.org/cuba/us-cuba-relations/p11113 (last visited February 23, 2015).
[7] U.S. Department of State Background Notes on Cuba, November, 2011, *available at* http://www.state.gov/outofdate/bgn/cuba/191090.htm (last visited February 23, 2015).
[8] 31 CFR Part 515.
[9] 15 CFR, parts 730-774.
[10] 22 U.S. Code, §6021-6091.
[11] U.S. Department of the Treasury Overview of the Cuban Assets Control Regulations, 2001, *available at* http://www.treasury.gov/resource-center/sanctions/Documents/tab4.pdf (last visited February 23, 2015).
[12] *Id.*
[13] *Id.*
[14] *Id.*

- Products, technology, or services from being exported from the U.S., except for publications, informational materials, certain donated food, and certain goods licensed for export or re-export by the U.S. Department of Commerce (medicine and medicinal supplies, food, and agricultural commodities). This prohibition includes dealing in or assisting the sale of goods or commodities to or from Cuba, even if done entirely offshore.
- Importing Cuban-origin goods or services, either directly or through third countries.
- Transactions involving property in which Cuba or a Cuban national has an interest.
- Buying from or selling to Cuban nationals, whether they are physically located in Cuba or doing business elsewhere on behalf of Cuba.
- Cuban interests involving assets and accounts.
- Cuban gift parcels that exceed a certain amount.

Additionally, only persons with certain licenses are allowed to engage in travel-related transactions in Cuba.[15] Also, U.S. persons aged 18 or older may send to the household of any individual in Cuba "individual-to-household" cash remittances of up to $300 per household in any consecutive three-month period, provided that no member of the household is a senior-level Cuban government or senior-level Cuban communist party official.[16]

The Regulations have been amended numerous times. Specifically, the Regulations were amended under President Obama in 2009 to promote democracy and human rights in Cuba by easing travel restrictions to facilitate greater contact between separated family members in the U.S. and Cuba and by increasing the flow of remittances and information to the Cuban people.[17] The Regulations were amended again under President Obama in 2011 to increase people-to-people contact, support civil society in Cuba, enhance the free flow of information to, from, and among the Cuban people, and help promote their independence from Cuban authorities.

Export Administration Regulations

The Department of Commerce, through the Export Administration Regulations (EAR), implements the Export Administration Act of 1979,[18] which regulates the export or re-export of U.S.-origin dual-use goods, software, and technology.[19] The Department of Commerce also imposes certain export and re-export controls for foreign policy reasons, notably against countries designated by the U.S. Secretary of State as state sponsors of international terrorism. In 1982, Cuba was officially designated as a country to have repeatedly provided support for acts of international terrorism.[20,21]

Cuban Liberty and Democratic Solidarity Act of 1996

The Cuban Liberty and Democratic Solidarity Act of 1996, among other things, requires the President, upon determining that a democratically-elected government is in power in Cuba, to designate a U.S.-Cuba Council to:[22]

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[15] *Id.*
[16] *Id.*
[17] Federal Register's final rule on Cuban Assets Control Regulations, 31 CFR part 515, *available at* https://www.federalregister.gov/articles/2015/01/16/2015-00632/cuban-assets-control-regulations (last visited February 23, 2015).
[18] 50 U.S. Code, App 2401-2420.
[19] U.S. Department of State website on "A Resource on Strategic Trade Management and Export Controls," *available at* http://www.state.gov/strategictrade/overview/ (last visited February 23, 2015).
[20] U.S. Department of State website on "State Sponsors of Terrorism," *available at* http://www.state.gov/j/ct/list/c14151.htm (last visited February 23, 2015).
[21] Cuba is considered a terrorist nation by three federal laws: the Export Administration Act, the Arms Export Control Act, and the Foreign Assistance Act.
[22] Library of Congress Summary for the Cuban Liberty and Democratic Solidarity Act of 1996, Section 203, *available at* https://www.govtrack.us/congress/bills/104/hr927/summary (LIBERTAD) Act of 1996 (version) - GovTrack.us (last visited February 24, 2015).

- Ensure coordination between the U.S. government and the private sector in responding to change and promoting market-based development in Cuba;
- Establish periodic meetings between the U.S. and Cuban private sectors for the purpose of facilitating bilateral trade; and
- Requires the President, once he has sent Congress a determination that a transition or a democratically-elected government is in power in Cuba, to report to appropriate congressional committees on the assistance provided to Cuba.

Only after the President has sent a determination to Congress is the President authorized to suspend the U.S. economic embargo against Cuba.[23] Furthermore, the President is authorized to terminate the embargo **only** when a democratically-elected government is installed.[24] However, a suspension or termination of the embargo will cease to be effective upon passage by Congress of a joint resolution disapproving of such action.[25]

Cuban Political Conditions and Human Rights

Under Castro, fundamental freedoms have been restricted, political opponents have been repressed, and human rights have been violated. Raul Castro replaced his brother in 2008 as chief of state, president of Cuba, and commander-in-chief of the armed forces.[26] Cuba, as a totalitarian communist state, controls most aspects of Cuban life through the Communist Party, the government bureaucracy, and the state security apparatus.[27]

The government restricts freedom of movement, both domestically and internationally, freedom of speech, freedom of the press, and freedom of assembly.[28] The government maintains complete control over all forms of mass media, including newspapers, radio, and television.[29]

Diplomatic and Economic Changes to Cuba Sanctions

On December 17, 2014, President Obama announced diplomatic and economic changes to begin normalizing the relationship between the U.S. and Cuba. Generally, the changes include, but are not limited to:[30]

- Allowing travel to Cuba for authorized purposes;
- Loosening the travel restrictions on travel agents and airlines;
- Raising the limits on and authorizing certain categories of remittances to Cuba;
- Allowing U.S. financial institutions to open correspondent accounts at Cuban financial institutions to ease the processing of authorized transactions;
- Authorizing certain transactions with Cuban nationals located outside of Cuba; and
- Allowing activities related to telecommunications, financial services, trade, and shipping.

The U.S. Department of the Treasury and the U.S. Department of Commerce were directed to revise the Cuban Assets Control Regulations and the Export Administration Regulations to implement the changes. The regulations became effective on January 16, 2015.

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[23] *Id.* at section 204
[24] *Id.*
[25] *Id.*
[26] U.S. Department of State Background Notes on Cuba, November, 2011, *available at* http://www.state.gov/outofdate/bgn/cuba/191090.htm (last visited February 23, 2015).
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] U.S. Department of the Treasury Fact Sheet on the Regulatory Amendments to the Cuba Sanctions, *available at* http://www.treasury.gov/press-center/press-releases/Pages/jl9740.aspx (last visited February 24, 2015).

In addition to the above economic and diplomatic changes, President Obama, in his statement on the Cuba policy changes,[31] directed the Secretary of State to review Cuba's designation as a State Sponsor of Terrorism. Moreover, after the government of Canada hosted discussions with the Cuban government and the U.S. government, and at the urging of Pope Francis, it was arranged for Alan Gross, a USAID sub-contractor, to be released in exchange for three Cuban spies. Gross was imprisoned for five years and was released on humanitarian grounds. Only after Gross was released did President Obama announce the economic and diplomatic changes. A U.S. intelligence asset jailed in Cuba for 20 years was also released. Lastly, President Obama stated that the U.S. will reestablish an embassy in Havana in the coming months.

Effect of Proposed Changes

This memorial expresses profound disagreement with the decision of the President of the United States to restore full diplomatic relations with Cuba and opposes the opening of a Cuban consulate or any diplomatic office in Florida. Furthermore, the memorial urges Congress to uphold the embargo until the dictatorship is no longer in power and basic human and civil rights are again recognized in Cuba.

Copies of the memorial will be sent to the President, the President of the U.S. Senate, the Speaker of the U.S. House of Representatives, and each member of the Florida delegation to the U.S. Congress.

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

B. SECTION DIRECTORY:

Not applicable.

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.

[31] President Obama's statement on Cuba Policy Changes can be found on The White House Office of the Press Secretary's website, *available at* http://www.whitehouse.gov/the-press-office/2014/12/17/statement-president-cuba-policy-changes (last visited February 24, 2015).

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

House Memorial

A memorial to the President of the United States and the Congress of the United States expressing profound disagreement with the decision of the President to restore full diplomatic relations with Cuba, opposing the opening of a consulate or any diplomatic office in this state, and urging the upholding of the embargo.

WHEREAS, On December 17, 2014, the President of the United States announced that this country would restore full diplomatic relations with the nation of Cuba after more than 50 years of unconcealed hostility, and

WHEREAS, the Cuban people have been under the crushing yoke of a brutal communist dictatorship since 1959, led first by Fidel Castro and more recently by his brother Raul, and

WHEREAS, the actions of the Castro brothers have resulted in the impoverishment of the Cuban people and a complete and blatant disregard for human rights and democratic principles by the government of that nation, and

WHEREAS, under the Castro brothers, Cuba has been an active and ominous threat to the vital interests of the United States and all peace-loving nations, as members of Cuba's military and diplomatic corps have worked assiduously to promote violent, anti-democratic revolutions across the globe, and

WHEREAS, the diplomatic initiative announced by the President involved the release of U.S. government subcontractor

Alan Gross by Cuba after 5 years of detention due to the absurd and unfounded allegation of the Cuban government that he was a spy, and the release by the United States of three convicted Cuban spies linked to terrorist activities in this country, and

WHEREAS, numerous respected public officials, both Democratic and Republican, at the federal and state levels have denounced this restoration of diplomatic relations and strongly believe that it will do nothing to free the Cuban people from the poverty and injustice they have suffered for more than a half century and that it will only serve to support a tottering, bankrupt dictatorship, and

WHEREAS, the residents of this state are all too familiar with the viciousness of the Castro regime due to the presence of millions of Cuban-born men and women who fled from a regime intent on stealing their property and putting them at the service of a brutal military government, as they outlawed religious expression, and indoctrinated children to engage in espionage against their own family members, and

WHEREAS, these men and women are heartbroken over how the Castro brothers have destroyed the culture and economic vitality of their beloved island homeland, and

WHEREAS, it is fitting and proper for the members of the Florida Senate and the Florida House of Representatives to express profound disagreement with the decision of the President of the United States to restore full diplomatic relations with Cuba, NOW, THEREFORE,

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

That we express profound disagreement with the decision of the President of the United States to restore full diplomatic relations with Cuba, oppose the opening of a Cuban consulate or any diplomatic office in this state, and urge the Congress of the United States to uphold the embargo until such a time when this arcane dictatorship is no longer in power and the most basic human and civil rights are once again recognized in Cuba.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4007 Division of Bond Finance
SPONSOR(S): Gaetz
TIED BILLS: **IDEN./SIM. BILLS:** SB 522

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	12 Y, 0 N	Moore	Williamson
2) Finance & Tax Committee	16 Y, 0 N	Pewitt	Langston
3) State Affairs Committee		Moore	Camechis

SUMMARY ANALYSIS

The Division of Bond Finance (Division) is administratively housed within the State Board of Administration and is responsible for issuing any state bonds authorized by law or the Florida Constitution as well as bonds on behalf of any state agency authorized by law. As part of its duties, the Division is required to issue a regular newsletter to issuers, underwriters, attorneys, investors, and other parties within the bond community and the general public containing information of interest relating to state and local general obligation and revenue bonds.

The Division has not published an issue of the newsletter since the fall of 2000 because there have been no subscribers.

The bill deletes the requirement for the Division to issue the newsletter.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Division of Bond Finance (Division) was created in the State Bond Act[1] (Act) in 1969 and is administratively housed within the State Board of Administration.[2] The Governor serves as chair of the governing board of the Division, the Attorney General is the secretary, and the Chief Financial Officer serves as treasurer.[3]

The Division is responsible for issuing any state bonds authorized by law or the Florida Constitution as well as bonds on behalf of any state agency authorized by law.[4] As it is used in the Act, a state agency is defined as "any board, commission, authority, or other state agency heretofore or hereafter created by the constitution or statutes of the state."[5] In carrying out its authority, the Division is authorized to exercise all of the powers relating to bonds to the same extent as state agencies.[6]

As part of its duties, the Division serves as a clearinghouse of information relating to both general obligation bonds and revenue bonds of the state and local governments.[7] The Division is required to collect, maintain, and make available information concerning such bonds.[8] The Division is also required to issue a regular newsletter to issuers, underwriters, attorneys, investors, and other parties within the bond community and the general public containing information of interest relating to these bonds.[9] The Division is authorized to charge fees for subscriptions to the newsletter.[10]

The Division's newsletter does not have any subscribers.[11] As a result, the Division has not published an issue of the newsletter since the fall of 2000.[12] The Division has never charged a fee for the newsletter.[13]

Effect of Proposed Changes

The bill deletes the requirement for the Division to issue a regular newsletter to issuers, underwriters, attorneys, investors, and other parties within the bond community and the general public containing information of interest relating to local and state bonds.

B. SECTION DIRECTORY:

Section 1. amends s. 218.37, F.S., repealing the requirement that the Division issue a regular newsletter addressing local and state bonds.

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

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[1] The State Bond Act encompasses ss. 215.57-215.83, F.S.
[2] Section 215.62(1), F.S.
[3] *Id.*
[4] Section 215.64(2), F.S.
[5] Section 215.58(6), F.S.
[6] Section 215.64(3), F.S.
[7] Section 218.37, F.S.
[8] Section 218.37(1)(a)-(c), F.S.
[9] Section 218.37(1)(f), F.S.
[10] *Id.*
[11] According to a phone conversation with Division staff on January 14, 2015.
[12] According to email correspondence with Division staff on January 22, 2015. A copy of the email is on file with Government Operations Subcommittee staff.
[13] According to a phone conversation with Division staff on January 14, 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:

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:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Repeal of the newsletter requirement was recommended in the Auditor General's Annual Report for the period of November 1, 2013, through October 31, 2014.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to the Division of Bond Finance; amending s. 218.37, F.S.; deleting requirement that the division issue a regular newsletter addressing local and state bonds; providing an effective date.

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

Section 1. Paragraph (f) of subsection (1) of section 218.37, Florida Statutes, is amended to read:

218.37 Powers and duties of Division of Bond Finance; advisory council.—

(1) The Division of Bond Finance of the State Board of Administration, with respect to both general obligation bonds and revenue bonds, shall:

~~(f) Issue a regular newsletter to issuers, underwriters, attorneys, investors, and other parties within the bond community and the general public containing information of interest relating to local and state bonds. The division may charge fees for subscriptions to the newsletter.~~

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7015 PCB ANRS 15-01 Department of Agriculture and Consumer Services
SPONSOR(S): Agriculture & Natural Resources Subcommittee, Raburn
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1050

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Agriculture & Natural Resources Subcommittee	12 Y, 0 N	Gregory	Blalock
1) State Affairs Committee		Gregory	Camechis

SUMMARY ANALYSIS

The Proposed Committee Bill (PCB) addresses a number of issues relating to the powers and duties of the Department of Agriculture and Consumer Services (DACS), including:

- Eliminating the requirement that DACS competitively rank each Agricultural Education and Promotion Facilities funding application.
- Changing the deadline to submit a recertification application for the limited certification for urban landscape commercial fertilizer application and eliminating the $50 per month late charge for late recertification.
- Adding a definition for the word "vehicle" in chapter 500, F.S., in order to be consistent with the federal Food Safety Modernization Act, and adding definitions for the words "retail" and "wholesale" to clarify the types of food permits DACS issues.
- Authorizing DACS to sponsor "events" (not just breakfasts, luncheons, or dinners) to promote agriculture and agricultural business products.
- Authorizing DACS to acquire, secure, enjoy, use, enforce, and dispose of all patents, trademarks, copyrights, and other rights or similar interests.
- Authorizing DACS to use money deposited in the Pest Control Trust Fund to carry out any of the powers of the Division of Agricultural Environmental Services.
- Authorizing DACS to provide staff and meeting space for the Florida Agricultural Center and Horse Park Authority.
- Specifying the intent of the "Fresh From Florida" marketing brand to avoid the misconception that the brand is indicative of inspection for food safety purposes.
- Eliminating the power to adopt rules related to negotiating and entering into contracts with advertising agencies. Purchasing requirements are covered by Department of Management Services' policies and procedures.
- Changing the membership requirements for the Florida Agricultural Promotional Campaign Advisory Council so that a specific number of people from a particular industry are not required.
- Removing the requirement that DACS notify a property owner that a plant infested or infected with plant pests or noxious weeds has been found on their property if the plant is infested with pests or noxious weeds that are determined to be widely established in Florida; thus, not requiring the owner to destroy or remove the plant within 10 days.
- Eliminating the Florida Forest Service's power to dedicate its land for use by the public as a park.
- Adding definitions for "school breakfast program," "summer nutrition program," and "universal school breakfast program" to specify that they are the programs authorized by federal law.
- Replacing every instance of the term "school district" with "district school board."
- Creating a duty to provide to a "severe need school" the highest rate of reimbursement to which it is entitled under the federal school breakfast program.
- Renaming the "Florida Farm Fresh Schools Program" to the "Florida Farm to School Program."
- Changing every instance of the word "commodity" to "food" to be consistent with the federal statutes.
- Eliminating the need for dealers in agricultural products to provide a letter, accompanying a certificate of deposit, from the issuing institution acknowledging that the assignment has been properly recorded on the books of the issuing institution and will be honored by the issuing institution.
- Eliminating the requirement that each grain dealer report monthly to DACS the value of grain it received from producers for which the producers have not received payment.

The bill appears to have an insignificant negative impact fiscal impact on state and local governments. (See Fiscal Comments Section).

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Agricultural Education & Promotion Facilities Funding

Present Situation

Subject to the amount provided in the General Appropriations Act, the Legislature grants funding to local governments and fair associations (applicants) to pay for the planning, design, permitting, construction, or renovation of agricultural education and promotion facilities.[1] These funds may also be used to service debt or reimburse local governments for the planning, design, permitting, construction, or renovation of agricultural education and promotion facilities.[2] Applications must be submitted to the Department of Agriculture and Consumer Services (DACS or department) by October 1 of each year to receive funding.[3]

DACS screens these applications to certify that an application includes a qualified agriculture education and promotion facility.[4] An "agriculture education and promotion facility" is defined as an exhibition hall, arena, civic center, exposition center, or other capital project or facility which can be used for exhibitions, demonstrations, trade shows, classrooms, civic events, and other purposes that promote agriculture, horticulture, livestock, equestrian, and other resources of the state and educate the residents about these resources.[5] DACS is required to review each application and certify whether a facility is an agriculture education and promotion facility. To do so, DACS must determine that:

- The applicant is a unit of local government or fair association;
- The applicant projects the proposed facility will serve more than 25,000 visitors annually;
- The municipality or county where the facility is located has certified by resolution that the proposed facility will serve a public purpose; and
- The applicant has demonstrated that it provided, is capable of providing, or has the financial commitment to provide 40 percent of the costs incurred or related to planning, design, permitting, construction, or renovation of the facility.[6]

If DACS certifies that more than three applications are qualified agriculture and education promotion facilities, it must rank the applications in descending order of priority.[7] DACS ranks the applications based on the following criteria:

- The intended use of the funding, with priority being given for new facilities;
- The amount of local match, with priority given to the largest percentage of local match;
- The location of the facility in a brownfield, a rural enterprise zone, an agriculturally depressed area, or county that has lost its agricultural land to environmental restoration projects;
- The net increase, as a result of the facility, of total available exhibition, arena, or civic center space within the jurisdictional limits of the local government in which the facility is to be located, with priority given to the largest percentage increase of total exhibition, arena, or civic center space;
- The historical record of the applicant in promoting agriculture and educating the public about agriculture;

[1] Section 288.1175(7), F.S.
[2] Id.
[3] Section 288.1175(8), F.S.
[4] Section 288.1175(1), F.S.
[5] Section 288.1175(3), F.S.
[6] Section 288.1175(4), F.S.
[7] Section 288.1175(5), F.S.

- The highest projection of paid attendance attracted by the facility and the proposed economic impact; and
- The location of the facility with respect to an Institute of Food and Agricultural Sciences (IFAS) facility, with priority given to facilities closer in proximity to an IFAS facility.[8]

Once DACS completes its certification, evaluation, and ranking, it submits the project proposals to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives for funding consideration.[9]

Effect of Proposed Changes

The PCB amends s. 288.1175, F.S., to eliminate the requirement that DACS competitively rank each agricultural education and promotion facilities application. Further, the proposal eliminates giving priority funding consideration to:

- New facilities;
- The largest percentage of local match;
- The largest percentage increase in total exhibition, arena, or civic center space; and
- Projects in closer proximity to an IFAS facility.

Instead, DACS will evaluate each application based on the criteria and list applicants in alphabetical order prior to submitting the applications to the Legislature. According to DACS, this change is designed to manage the expectations of the applicants. The ranking system gives applicants the impression that projects will be funded in the order they are ranked, which has typically not been the case. DACS will continue to certify that each application is a qualified agriculture education and promotion facility. This change may require amending rule 5H-25.003, F.A.C.

Limited Certification for Urban Landscape Commercial Fertilizer Application

Present Situation

Under current law, the Department of Environmental Protection (DEP) and IFAS are required to develop training and testing programs in urban landscape best management practices.[10] Persons who receive a certificate demonstrating successful completion of such training may apply to DACS to receive limited certification for urban landscape commercial fertilizer application.[11] Individuals who hold such certification are not subject to additional local testing.[12]

Section 482.1562, F.S., sets forth the application requirements to receive the limited certification. Beginning January 1, 2014, all persons applying commercial fertilizer to an urban landscape must be certified by DACS.[13] Subsection (5) of s. 482.1562, F.S., provides that individuals who hold the limited certification must apply for recertification at least 90 days before the expiration of their current certification. Further, individuals must pay a $50 per month late charge in addition to the renewal fee if the limited certification application is late.

Effect of the Proposed Changes

The PCB amends s. 482.1562(5), F.S., to change the deadline to submit a recertification application from 90 days before expiration of the current certification to every four years from the date of issuance. Further, the PCB eliminates the $50 per month charge for late recertification. The PCB also grants a

[8] Section 288.1175(8), F.S.
[9] Rule 5H-25.004, F.A.C.
[10] Section 403.9338(1), F.S.
[11] Section 403.9338(2), F.S.
[12] Id.
[13] Section 482.1592, F.S.

grace period not to exceed 30 days after expiration for which a person can obtain recertification without having to go through the initial application process. DACS indicated that this change will help it better assist certificate holders by making the process consistent with other certifications requirements under chapter 482, F.S.[14]

Florida Food Safety Act Definitions

Present Situation

The Florida Food Safety Act is designed to:

- Promote public welfare by protecting the consuming public from injury by product use and the purchasing public from injury by merchandizing deceit, flowing from intrastate commerce in food;
- Provide uniform legislation so far as practical with federal regulations; and
- Promote uniform administration and enforcement of federal and state food safety laws.[15]

Currently, the Florida Food Safety Act uses the word "vehicle" throughout the chapter and lacks a definition of "retail" and "wholesale."[16]

Effect of Proposed Changes

The PCB amends s. 500.03, F.S., to add a definition for "vehicle" in order to recognize the various modes of transportation that service food establishments, and to be consistent with the federal rules implementing the Food Safety Modernization Act. Further, the PCB adds definitions of "retail" and "wholesale" to specify the types of food permits issued by the Division of Food Safety.

Powers and Organization of the Department of Agriculture and Consumer Services

Present Situation

The Legislature has granted DACS various powers to regulate and promote Florida agriculture, protect the environment, safeguard consumers, and ensure the safety of food. Many of these powers and the organization of DACS can be found in chapter 570, F.S., such as:

- DACS may stimulate, encourage, and foster the production and consumption of agricultural and agricultural business products by sponsoring trade breakfasts, luncheons, and dinners that will assist in the promotion and marketing of Florida's agricultural and agricultural business products to the consuming public.[17]
- DACS's Division of Administration possesses the power to provide electronic data processing and management information systems support for DACS.[18]
- DACS must deposit fees and fines collected under the Structural Pest Control Act into the Pest Control Trust Fund.[19] DACS may use this money to carry out the provisions of the Structural Pest Control Act, educate the pest control industry, or support research or education in pest control.[20]

[14] Department of Agriculture and Consumer Services, Agency Analysis of 2015 PCB ANRS 15-01, p. 5 (January 19, 2015).
[15] Section 500.02, F.S.
[16] Section 500.03, F.S.
[17] Section 570.07(20), F.S.
[18] Section 570.30(5), F.S.
[19] Section 482.2401, F.S.
[20] Id.; Section 570.441, F.S.

- DACS's Division of Food Safety possesses the power to analyze food and feed samples offered for sale in the state for chemical residues as required under the adulteration sections of chapters 500 (Food Products) and 580 (Commercial Feed and Feedstuff), F.S.[21]
- DACS's Division of Marketing possesses the power to enforce the provisions of ss. 604.15 through 604.34, F.S., (regulating dealers in agricultural products) and ss. 534.47 through 534.53, F.S., (regulating livestock markets).
- Under current law, DACS has not been granted the authority to secure or hold a trademark. Any agency created by statute does not have the inherent power to acquire, secure, enjoy, use, enforce, or dispose of patents, trademarks, copyrights, or other rights or similar interests.[22] Rather, such powers must be granted by the Legislature, either expressly or by necessary implication.[23]

Effect of Proposed Changes

The PCB grants DACS certain powers and moves other powers to different divisions within DACS. These changes include:

- Amending paragraph (20)(c) of s. 570.07, F.S., to grant DACS the power to sponsor "events," in addition to breakfasts, luncheons, and dinners, to stimulate, encourage, and foster the production and consumption of agricultural and agricultural business products;
- Adding subsection (44) to s. 570.07, F.S., to grant DACS the power to acquire, secure, enjoy, use, enforce, and dispose of all patents, trademarks, and copyrights and other rights or similar interests (currently the Department of State may hold the patent, trademark and copyright and the Attorney General's Office may enforce those rights). According to DACS, as the "Fresh From Florida" trademark becomes more popular, it needs the authority to take immediate action to stop its misuse;[24]
- Creating s. 570.68, F.S., to create an Office of Agriculture Technology Services to provide electronic data processing and management information systems support for DACS. According to DACS, this proposal paves the way for continued implementation of DACS's IT Strategic plan, allowing for the reclassification of the CIO position to SMS and further organizational changes as IT resources are consolidated;[25]
- Amending s. 570.441, F.S., to authorize DACS to use money deposited in the Pest Control Trust Fund to carry out any of the powers of the Division of Agricultural Environmental Services (set forth in s. 570.44, F.S.), not just the Structural Pest Control Act (chapter 482, F.S.). The powers of the Division of Agricultural and Environmental Services include state mosquito control program coordination; agricultural pesticide registration, testing, and regulation; pest control regulation; and feed, seed, and fertilizer production inspection and testing. This authorization expires June 30, 2018;
- Amending s. 570.50, F.S., to grant the Division of Food Safety the power to analyze milk, milk products, and frozen desserts offered for sale as required under the adulteration sections of chapter 502, F.S.; and
- Amending s. 570.53, F.S., to remove the power to enforce the provisions of ss. 604.15 through 604.34, F.S., (regulating dealers in agricultural products) and ss. 534.47 through 534.53, F.S., (regulating livestock markets) from the Division of Marketing and Development. The bill grants the power to regulate dealers in agricultural products to the Division of Consumer Services. According to DACS, moving the program to the Division of Consumer Services, which already

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[21] Section 570.50(5), F.S.

[22] Florida Virtual School v. K12, Inc., 148 So.3d 97, 99 (Fla. 2014).

[23] Id. The following agencies possess the power to hold trademarks: Department of Health, s. 20.43(8), F.S., Department of Management Services, s 282.702(5), F.S., Department of State, s. 286.021, F.S., Department of Transportation, s. 334.049, F.S., Water Management Districts, s. 373.608, F.S., Department of Law Enforcement, s. 943.146, F.S., State Universities, s. 1004.23, F.S.

[24] Department of Agriculture and Consumer Services, Agency Analysis of 2015 PCB ANRS 15-01, p. 6 (January 19, 2015).

[25] Id.

handles a number of similar programs, will create efficiencies by streamlining department processes.[26]

Florida Agricultural Center and Horse Park

Present Situation

In 1994, the Florida Legislature created the Florida Agricultural Center and Horse Park (Florida Horse Park) in order to provide Florida with a unique tourist experience for visitors and residents.[27] The Florida Horse Park is situated on 500 acres located south of Ocala. Numerous events occur at the Florida Horse Park throughout the year including rodeos, dressage, polo, obstacle challenges, dog shows, and trail rides.[28] A twenty-one member group appointed by the Commissioner of Agriculture called the Florida Agricultural Center and Horse Park Authority (Authority) oversees the management of the park.[29] DACS is currently required to provide administrative and staff support services for the meetings of the Authority, and to provide suitable space in the offices of the department for the meetings and the storage of records of the Authority.[30]

Effect of Proposed Changes

The PCB amends s. 570.685, F.S., to authorize DACS to provide administrative and staff support services for the meetings of the Authority, and to provide suitable space in the offices at DACS for the meetings and the storage of records of the Authority. Currently, DACS is required to provide staff and space. The amendment will leave the decision to provide staff and space to DACS's discretion. According to DACS, the Florida Horse Park provides its own staff to perform these duties and no longer needs support from DACS.

Florida Agricultural Promotion Campaign

Present Situation

DACS possesses the power to establish and coordinate the Florida Agricultural Promotional Campaign (FAPC), also known as the "Fresh From Florida" campaign.[31] This campaign is intended to increase consumer awareness and expand the market for Florida's agricultural products.[32] Florida agricultural producers may voluntarily join FAPC. FAPC members may use the "Fresh From Florida" logos, participate in industry trade shows at a reduced cost, receive point-of-purchase materials, have access to trade leads, receive the "Fresh From Florida" magazine and industry newsletter, tie in to supermarket promotions that feature Florida products in newspaper and store circular advertisements, and receive a farm sign customized with the member's business name.[33]

Currently, DACS must designate an employee to serve on the Advertising Interagency Coordinating Council.[34] This council no longer exists.

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[26] Id.
[27] Section 570.681, F.S.
[28] Florida Agricultural Center and Horse Park Authority, *Welcome to the Florida Horse Park,* http://flhorsepark.com/ (last visited December 23, 2014).
[29] Section 570.685, F.S.
[30] Section 570.685(4)(b), F.S.
[31] Section 571.24, F.S.
[32] Section 571.22, F.S.
[33] Florida Department of Agricultural and Consumer Services, *Join "Fresh From Florida,"* http://www.freshfromflorida.com/Divisions-Offices/Marketing-and-Development/Agriculture-Industry/Join-Fresh-From-Florida. (last visited December 23, 2014).
[34] Section 571.24(8), F.S.

In addition, DACS is authorized to adopt rules related to the Florida Agricultural Promotional Campaign, including rules pertaining to negotiating and entering into contracts with advertising agencies.[35]

Lastly, the Legislature created the 15-member Florida Agricultural Promotional Campaign Advisory Council to provide advice to DACS.[36] The membership must include six members representing agricultural producers, shippers, or packers; three members representing agricultural retailers; two members representing agricultural associations; one member representing a wholesaler of agricultural products; one member representing consumers; and one member representing DACS.[37]

Effect of Proposed Changes

The PCB amends ss. 571.24, 571.27, and 571.28, F.S., regarding the FAPC to:

- Specify that the intent of the marketing brand is to serve as a marketing program to promote Florida agriculture commodities, value added products, and agricultural related businesses and is not a food safety or traceability program. The purpose of this provision is to avoid the misconception that the brand indicates that food has been inspected by DACS for safety. This change will likely decrease the possibility that DACS will be held liable for possible food defects because it makes clear that DACS is not warranting the safety of products by use of the brand.
- Eliminate the requirement for DACS to designate an employee to be a member of the Advertising Interagency Coordinating Council, since this council no longer exists;
- Eliminate the power to adopt rules related to negotiating and entering into contracts with advertising agencies. Such rules are already adopted by the Department of Management Services in chapter 60A-1, F.A.C.; and
- Change the membership requirements for the Florida Agricultural Promotional Campaign Advisory Council. The PCB strikes the requirement that there be a specific number of council members from each industry category while maintaining the overall number of members and staggered terms.

Removal and Destruction of Infected and Infested Plants

Present Situation

The Division of Plant Industry may order the removal and destruction of any plant or plant product infested or infected with plant pests or noxious weeds.[38] A "plant pest" is any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or their reproductive parts, or viruses, or any organisms similar to or allied with any of the foregoing, including any genetically engineered organisms, or any infectious substances which can directly or indirectly injure or cause disease or damage in any plants or plant parts or any processed, manufactured, or other plant products.[39] A "noxious weed" is any living stage, including, but not limited to, seeds and productive parts, of a parasitic or other plant of a kind, or subdivision of a kind, which may be a serious agricultural threat in Florida or have a negative impact on the plant species protected under s. 581.185, F.S., (endangered, threatened, or commercially exploited native plants).[40] The Division of Plant Industry may take these actions in order to stop the introduction and dissemination of plants or pests that may threaten Florida's agriculture industry.

The Director of the Division of Plant Industry must provide notice to the owner or the person having charge of the premises when DACS finds an infested or infected plant or plant product.[41] Within 10

[35] Section 571.27, F.S.
[36] Section 571.28(1), F.S.
[37] Id.
[38] Section 581.181(1), F.S.
[39] Section 581.011(26), F.S.
[40] Section 581.011(19), F.S.
[41] Section 581.181(1), F.S.

days of the notice, the owner or person in charge must treat as directed or remove and destroy the infested or infected plant or plant product.[42] If the owner or person in charge does not, DACS may treat as directed or remove and destroy the infested or infected plant or plant product.[43]

Effect of Proposed Changes

The PCB amends s. 581.181, F.S., to create an exception from the destruction requirement for plant or plant products infested with pest or noxious weeds that are widely established in Florida and not regulated by DACS. According to DACS, there are times when it is unnecessary for the owner to treat or destroy the plant, but DACS lacks the discretion not to give notice to the owner that they must destroy any infested plants or plant products.[44] This change may require amendment of rule 5B-59.003, F.A.C.

Parks on Florida Forest Service Land

Present Situation

The Florida Forest Service may dedicate its land for use by the public as a park.[45] These lands must be subject to the rules and regulations adopted by DEP's Division of Recreation and Parks.[46]

Effect of Proposed Changes

The PCB repeals s. 589.26, F.S., to eliminate the Florida Forest Service's power to dedicate its land for use by the public as a park. According to DACS, the Florida Forest Service does not have any state parks or manage land for "park purposes."[47]

School Nutrition Program

Present Situation

The National School Lunch Program (NSLP) is a federally funded program that assists schools and other agencies in providing nutritious meals to children at reasonable prices. In addition to financial assistance, the NSLP provides donated commodity foods to help reduce lunch program costs.

Chapter 595, F.S., authorizes DACS to coordinate with the federal government to use federal and state funding to provide school nutrition programs. The Legislature declared that it is the policy of the state to provide standards for school food and nutrition services and to require each school district to establish and maintain an appropriate school food and nutrition service program consistent with the nutritional needs of students.[48]

Schools must apply through DACS and complete certain requirements[49] prior to the operation of a school nutrition program. Once approved, DACS will reimburse schools for each lunch and breakfast meal served provided they meet established state and federal regulations.

Chapter 595, F.S., does not contain definitions for "school breakfast program," "summer nutrition program," or "universal school breakfast program."

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[42] Id.
[43] Section 581.181(2), F.S.
[44] Department of Agriculture and Consumer Services, Agency Analysis of 2015 PCB ANRS 15-01, p. 9 (January 19, 2015).
[45] Section 589.26, F.S.
[46] Id.
[47] Department of Agriculture and Consumer Services, Agency Analysis of 2015 PCB ANRS 15-01, p. 9 (January 19, 2015).
[48] Section 595.403, F.S.
[49] Requirements found in section 595.405, F.S.

Currently, DACS must make a reasonable effort to ensure that any school designated as a "severe need school" receives the highest rate of reimbursement to which it is entitled under the federal school breakfast program for each breakfast meal served.[50] Further, DACS may advance funds from the school nutrition program's annual appropriation to sponsors in order to implement the school nutrition program.[51] There is no restriction on when or for which program the funds may be advanced.

Each school district must implement a school breakfast program that makes breakfast meals available to all students in each elementary school.[52] School districts must offer universal school breakfast programs (a no-cost program) in schools in which 80 percent or more of the students are eligible for free or reduced-price meals.[53] There is no exception to these requirements.

Each school must, to the maximum extent practicable, make breakfast meals available to students at an alternative site location.[54]

The Legislature encourages school districts to provide universal free school breakfast meals to all students.[55] The school may approve or disapprove a universal free school breakfast only after receiving public testimony concerning the proposed policy at two or more regular meetings.[56]

Each school district is required to sponsor a summer nutrition program that operates a site either:

- Within 5 miles of at least one elementary school at which 50 percent or more of the students are eligible for free or reduced-price school meals and for the duration of 35 consecutive days; or
- Within 10 miles of each elementary school at which 50 percent or more of the students are eligible for free or reduced-price school meals.

DACS must conduct, supervise, and administer all commodity distribution services related to the school nutrition program that will be carried on using federal or state funds, or funds from any other source, or commodities received and distributed from the United States or any of its agencies.[57] DACS must cooperate fully with the federal government in order to assure it receives the benefit of all federal financial allotments and assistance possible to carry out the school nutrition program.[58]

Effect of Proposed Changes

The PCB includes the following revisions to the School Nutrition Program:

- Amends s. 595.402, F.S., to add definitions for "school breakfast program," "summer nutrition program," and "universal school breakfast program" to specify that they are the programs authorized by federal law. DACS administers more than one United States Department of Agriculture (USDA) summer nutrition program. The bill amends the definition of "summer nutrition programs" to specify that certain requirements apply to all summer nutrition programs;
- Changes every instance of "school district" to "district school board." This is a non-substantive technical change;
- Amends subsection (5) of s. 595.404, F.S., to create a duty to provide to a "severe need school" the highest rate of reimbursement to which it is entitled under the federal school breakfast program for each breakfast meal served. This is consistent with the federal requirement in 7 CFR 220.9. According to DACS, the department currently provides the highest rate of

[50] Section 595.404(5), F.S.
[51] Section 595.404(12), F.S.
[52] Section 595.405(2), F.S.
[53] Id.
[54] Id.
[55] Section 595.405(4), F.S.
[56] Id.
[57] Section 595.408(1), F.S.
[58] Section 595.408(2), F.S.

reimbursement to which each severe need school is entitled.[59] Therefore, the provision will have no economic or substantive effect;

- Amends subsection (12) of s. 595.404, F.S., to specify that funds from the school nutrition program may only be advanced to the sponsors of Summer Food Service Programs. This is consistent with 7 CFR 225.9. According to DACS, the bill will have no economic or substantive effect on any interest groups or stakeholders, and will remove ambiguities from the statute that could potentially result in misinterpretation and misapplication of the law;[60]
- Adds subsection (13) of s. 595.404, F.S., to authorize DACS to collect and publish data from multiple sources on food purchased by sponsors through the Florida Farm to School Program and other school food and nutrition service programs.
- Rewrites the provisions of s. 595.405, F.S., which specifies that each school district is encouraged to provide universal, free school breakfast meals to all students and the requirement of when a universal school breakfast program must be provided. The reorganizing of the statutes combines several subsections and removes conflicting and duplicative clauses, so that the statutes are easier to read, interpret, and apply;
- Amends s. 595.406, F.S., to change the name of the "Florida Farm Fresh Schools Program" to the "Florida Farm to School Program." In 2010, the Legislature enacted the Florida Farm Fresh Schools Program to require the Florida Department of Education to coordinate with DACS to increase the presence of Florida-grown products in schools.[61] This program became part of the Florida Farm to School Program, administered by DACS, when the Legislature transferred the administration of the school nutrition programs to DACS in 2011;[62]
- Adds subsection (3) to s. 595.406, F.S., to authorize DACS to recognize sponsors who purchase at least ten percent of the food they serve from the Florida Farm to School Program;
- Amends s. 595.407, F.S., to specify that each school district must provide a summer nutrition program within 5 miles of at least one school that serves any combination of grades K through 5, not just elementary schools. This provision attempts to close a loophole where some K-8 or K-12 schools claimed they were not elementary schools, and therefore, did not have to comply. According to DACS, interpretation of this statute has varied greatly.[63] Thus, the proposed change may require district school boards to adjust the location or increase the number of summer nutrition program sites they operate;[64]
- Amends paragraph (2)(a) of 595.407, F.S., to remove the requirement that each school district provide reduced-price school meals during the summer for 35 consecutive days and replace it with the requirement for each school district provide reduced-price school meals during the summer for 35 days between the end of one school year and the beginning of the next. School districts may exclude holidays and weekends;
- Amends s. 595.408, F.S., to change every instance of the word "commodity" in the commodity distribution services statute to "food" to be consistent with the federal statutes; and
- Amends s. 595.501, F.S., to remove the phrase "school district" from the provision of chapter 595, F.S., that specifies the penalties for "any person, sponsor, or school district" that violates a provision of the chapter. The phrase is not needed because the definition of "sponsor" is inclusive of "school districts."[65]

[59] Department of Agriculture and Consumer Services, Agency Analysis of 2015 PCB ANRS 15-01, p. 9 (January 19, 2015).
[60] Id. at 10.
[61] Ch. 2010-183, Laws of Fla.
[62] Ch. 2011-206, Laws of Fla.
[63] Department of Agriculture and Consumer Services, Agency Analysis of 2015 PCB ANRS 15-01, p. 11 (January 19, 2015).
[64] Id.
[65] Section 595.402(5), F.S.

Financial Assurance Requirements for Dealers in Agricultural Products and Grain Dealers

Present Situation

Any individual or business entity who wishes to be a dealer in agricultural products[66] must receive a license from DACS and deliver a bond or certificate of deposit to DACS in favor of the Commissioner of Agriculture.[67] This financial assurance requirement is essentially a third-party beneficiary contract to protect individuals who are harmed when conducting business with dealers in agricultural products who fail to pay for products.[68]

Dealers in agricultural products who provide a certificate of deposit must also provide a letter from the issuing institution acknowledging that the assignment has been properly recorded on the books of the issuing institution and will be honored by the issuing institution.[69]

Each grain dealer[70] doing business in Florida must maintain a liquid security in an amount equal to the value of grain which the grain dealer has received from grain producers and for which the producers have not received payment.[71] Each grain dealer must report to DACS monthly the value of grain it received from producers for which the producers have not received payment.[72] This report must include a statement showing the type and amount of security maintained to cover the grain dealer's liability to producers.[73]

Effect of Proposed Changes

The PCB amends ss. 604.20 and 604.33, F.S., to:

- Eliminate the need to provide a letter, accompanying a certificate of deposit, from the issuing institution acknowledging that the assignment has been properly recorded on the books of the issuing institution and will be honored by the issuing institution. This requirement is unnecessary because issuance of the certificate of deposit is acknowledgment that the agreement has been properly recorded; and
- Eliminate the requirement that each grain dealer report monthly to DACS the value of grain it received from producers for which the producers have not received payment. According to DACS, this change eliminates a burdensome and unnecessary requirement on the few grain dealers in Florida.[74] Only four grain dealers conduct business in the state and only three are required to send in this report. All other grain dealer requirements are left in place to protect business transactions and to give DACS the authority to request this information if a complaint is filed or if malpractice is suspected.

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[66] A "dealer in agricultural products" is any person or business entity, whether itinerant or domiciled within this state, engaged in Florida in the business of purchasing, receiving, or soliciting agricultural products from the producer or the producer's agent or representative for resale or processing for sale; acting as an agent for such producer in the sale of agricultural products for the account of the producer on a net return basis; or acting as a negotiating broker between the producer or the producer's agent or representative and the buyer. Section 604.15(2), F.S.

[67] Sections 604.17, 604.19, and 604.20, F.S.

[68] In re Hallmark Builders, Inc., 205 B.R. 974, 975 (Bankr. M.D. Fla. 1996).

[69] Section 604.20, F.S.

[70] A "grain dealer" is any person engaged in this state in: (a) buying, receiving, selling, exchanging, negotiating, or processing for resale, or soliciting the sale, resale, exchange, or transfer of, grain purchased from the producer or the producer's agent or representative or received from the producer to be handled on a net return basis; or (b) receiving grain for storage. s. 604.15(6), F.S.

[71] Section 604.33, F.S.

[72] Id.

[73] Id.

[74] Department of Agriculture and Consumer Services, Agency Analysis of 2015 PCB ANRS 15-01, p. 12 (January 19, 2015).

B. SECTION DIRECTORY:

Section 1. Amends s. 288.1175, F.S., relating to agriculture education and promotion facilities.

Section 2. Amends s. 482.1562, F.S., relating to limited certification for urban landscape commercial fertilizer application.

Section 3. Amends s. 500.03, F.S., to add a definition for the words "vehicle," "retail," and "wholesale" in chapter 500, F.S.

Section 4. Amends s. 570.07, F.S., relating to the powers of DACS.

Section 5. Amends s. 570.30, F.S., relating to the powers of the DACS Division of Administration.

Section 6. Amends s. 570.441, F.S., relating to the Pest Control Trust Fund.

Section 7. Amends s. 570.50, F.S., relating to the powers of the DACS Division of Food Safety.

Section 8. Amends s. 570.53, F.S., relating to the powers of the DACS Division of Marketing and Development.

Section 9. Amends s. 570.544, F.S., relating to the powers of the DACS Division of Consumer Services.

Section 10. Creates s. 570.68, F.S., to create the DACS Office of Agriculture Technology Services.

Section 11. Amends s. 570.681, F.S., relating to the Florida Agriculture Center and Horse Park.

Section 12. Amends s. 570.685, F.S., relating the Florida Agriculture Center and Horse Park Authority.

Section 13. Amends s. 571.24, F.S., relating to the Florida Agricultural Promotional Campaign and the Advertising Interagency Coordinating Council.

Section 14. Amends s. 571.27, F.S., to eliminate the power to adopt rules related to negotiating and entering into contracts with advertising agencies.

Section 15. Amends s. 571.28, F.S., to change the membership requirements for the Florida Agricultural Promotional Campaign Advisory Council.

Section 16. Amends s. 581.181, F.S., relating to plants or plant products infested with pest or noxious weeds.

Section 17. Repeals s. 589.26, F.S., to eliminate the Florida Forest Service's power to dedicate its land for use by the public as a park.

Section 18. Amends s. 595.402, F.S., to add definitions of "school breakfast program," "summer nutrition program," and "universal school breakfast program."

Section 19. Amends s. 595.404, F.S., relating to DACS's powers for the school food and nutrition service programs.

Section 20. Amends s. 595.405, F.S., relating to school food and nutrition program requirements.

Section 21. Amends s. 595.406, F.S., to change the name of the "Florida Farm Fresh Schools Program" to the "Florida Farm to School Program."

Section 22. Amends s. 595.407, F.S., relating to children's summer nutrition program.

Section 23. Amends s. 595.408, F.S., to change every instance of the word "commodity" to "food" to be consistent with the federal statutes.

Section 24. Amends s. 595.501, F.S., relating to penalties under chapter 595, F.S.

Section 25. Amends s. 595.601, F.S., to reference s. 595.404, F.S., instead of s. 595.405, F.S.

Section 26. Amends s. 604.20, F.S., relating to dealers in agricultural products.

Section 27. Amends s. 604.33, F.S., relating to grain dealer report.

Section 28. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The PCB appears to have an insignificant negative fiscal impact on state government revenues by eliminating a late fee for limited certification for urban landscape commercial fertilizer application. DACS indicated that it expects the impact to be minimal and will be absorbed by the Division of Agricultural and Environmental Services.

2. Expenditures:

   Office of Agricultural Technology Services

   The PCB may have a negative fiscal impact associated with the creation of s. 570.68, F.S. This provision creates the Office of Agricultural Technology Services, under the supervision of a senior management class employee. Currently, the Chief Information Officer within the department is classified as a retiree that has been reemployed and not eligible to participate in a state administered retirement plan. The state does contribute a set amount to the state retirement account for employees in these ineligible classes, despite their inability to participate. The current retirement contribution rate for an ineligible employee in a regular class is 3.80 percent, while the contribution rate for an ineligible employee in a senior management class is 16.30 percent. Changing the department's current Chief Information Officer to a senior management class would result in an additional state retirement contribution of $11,795 from the Salary and Benefits appropriation category.

   If the current Chief Information Officer were to leave and the position was filled at the same annual rate with an employee that was eligible to participate in state retirement, then the retirement contribution for this regular class employee would be 7.37 percent. In this scenario, changing the position to a senior management class would increase the contribution rate to 21.14 percent and result in $12,994 in additional state retirement contributions.

   In either scenario, DACS indicated it would manage these additional costs within existing salary and benefit appropriations.

   School Nutrition Programs

   The PCB amends subsection (5) of s. 595.404, F.S., to create a duty to provide to a "severe need school" the highest rate of reimbursement to which it is entitled under the federal school breakfast program for each breakfast meal served. According to DACS, the department currently provides the highest rate of reimbursement to which each severe need school is entitled. Therefore, the provision will have no economic or substantive effect.

   Section 595.404(12), F.S., currently authorizes DACS to advance funds to program sponsors when requested. Historically, advances have only been given to participants in the Summer Food Service Program. Furthermore, the USDA only requires the department to provide an advancement of funds for participants in the Summer Food Service Program. The proposed statutory change clarifies that DACS will only advance funds when requested by sponsors of the Summer Food Service Program. According to DACS, the provision will have no economic or substantive effect on any interest groups or stakeholders.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The PCB amends s. 595.407, F.S., to specify that each school district must provide a summer nutrition program within 5 miles of at least one school that serves any combination of grades K through 5, not just an elementary school. This provision attempts to close a loophole where some K-8 or K-12 schools claimed they were not elementary schools, and therefore, did not have to comply. According to DACS, interpretation of this statute has varied greatly. Thus, the proposed change may require district school boards to adjust the location or increase the number of summer nutrition program sites they operate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The PCB amends s. 482.1562, F.S., to eliminate a late fee for limited certification for urban landscape commercial fertilizer application. This may have a positive impact on those who apply commercial fertilizer by eliminating a fee.

The PCB amends ss. 604.20 and 604.33, F.S., to eliminate certain financial assurance and licensing requirements for dealers in agricultural products and grain dealers. This may have a positive impact on those professions by eliminating the filing requirements.

The PCB amends s. 581.181, F.S., to create an exception from the destruction requirement for plant or plant products infested with pest or noxious weeds that are widely established in Florida and not regulated by DACS. This may have a positive impact on those who own plant or plant products infested with pest or noxious weeds by not requiring the owners to destroy them when they are widely established in Florida and not regulated by DACS.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The PCB eliminates the authority for DACS to adopt rules related to negotiating and entering into contracts with advertising agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

A bill to be entitled

An act relating to the Department of Agriculture and Consumer Services; amending s. 288.1175, F.S.; removing provisions requiring the department to give certain priority consideration when evaluating applications for funding of agriculture education and promotion facilities; amending s. 482.1562, F.S.; revising the date by which an application for recertification of a limited certification for urban landscape commercial fertilizer application is required; removing provisions imposing late renewal charges; providing a grace period for such recertification; amending s. 500.03, F.S.; defining terms relating to the Florida Food Safety Act; amending s. 570.07, F.S.; revising powers and duties of the department to include sponsoring events; authorizing the department to secure letters of patent, copyrights, and trademarks on work products and to engage in acts accordingly; amending s. 570.30, F.S.; removing electronic data processing and management information systems support for the department as a power and duty of the Division of Administration; amending s. 570.441, F.S.; authorizing the use of funds in the Pest Control Trust Fund for activities of the Division of Agricultural Environmental Services; amending s. 570.50, F.S.;

revising powers and duties of the Division of Food Safety to include analyzing milk, milk products, and frozen desserts offered for sale in the state; amending s. 570.53, F.S.; revising duties of the Division of Marketing and Development to remove enforcement of provisions relating to dealers in agricultural products; amending s. 570.544, F.S.; revising duties of the director of the Division of Consumer Services to include enforcement of provisions relating to dealers in agricultural products and grain dealers; creating s. 570.68, F.S.; authorizing the Commissioner of Agriculture to create an Office of Agriculture Technology Services; providing duties of the office; amending s. 570.681, F.S.; revising legislative findings with regard to the Florida Agriculture Center and Horse Park; amending s. 570.685, F.S.; authorizing rather than requiring the department to provide administrative and staff support services, meeting space, and record storage for the Florida Agriculture Center and Horse Park Authority; amending s. 571.24, F.S.; providing legislative intent of the Florida Agricultural Promotional Campaign as a marketing program; removing an obsolete provision relating to the designation of a division employee as a member of the Advertising Interagency Coordinating Council; amending s. 571.27, F.S.; removing obsolete

provisions relating to the authority of the department to adopts rules for entering into contracts with advertising agencies for services which are directly related to the Florida Agricultural Promotional Campaign; amending s. 571.28, F.S.; revising provisions specifying membership criteria of the Florida Agricultural Promotional Campaign Advisory Council; amending s. 581.181, F.S.; providing applicability of provisions requiring treatment or destruction of infested or infected plants and plant products; repealing s. 589.26, F.S., relating to the authority of the Florida Forest Service to dedicate and reserve state park lands for public use; amending s. 595.402, F.S.; defining terms relating to the school food and nutrition service program; amending s. 595.404, F.S.; revising duties of the department with regard to the school food and nutrition service program; directing the department to collect and publish data on food purchased by sponsors through the Florida Farm to School Program and other school food and nutrition service programs; amending s. 595.405, F.S.; revising requirements for the school nutrition program; providing for breakfast meals to be available to all students in schools that serve any combination of grades kindergarten through 5; amending s. 595.406, F.S.; renaming the "Florida Farm Fresh Schools

Program" as the "Florida Farm to School Program"; authorizing the department to establish by rule a recognition program for certain sponsors; amending s. 595.407, F.S.; revising provisions of the children's summer nutrition program to include certain schools that serve any combination of grades kindergarten through 5; revising provisions relating to the duration of the program; authorizing school districts to exclude holidays and weekends; amending s. 595.408, F.S.; conforming references to changes made by the act; amending s. 595.501, F.S.; requiring entities to complete corrective action plans required by the department or a federal agency to be in compliance with school food and nutrition service programs; amending s. 595.601, F.S.; correcting a cross-reference; amending s. 604.20, F.S.; removing a provision requiring an applicant for license as a dealer in agricultural products to submit a letter acknowledging assignment of a certificate of deposit from the issuing institution; amending s. 604.33, F.S.; removing provisions requiring grain dealers to submit monthly reports; authorizing rather than requiring the department to make at least one spot check annually of each grain dealer; providing an effective date.

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

Section 1. Subsection (5) of section 288.1175, Florida Statutes, is amended to read:

288.1175 Agriculture education and promotion facility.—

(5) The Department of Agriculture and Consumer Services shall ~~competitively~~ evaluate applications for funding of an agriculture education and promotion facility based on the following criteria and list the applications alphabetically by applicant name~~.~~ if the number of applicants exceeds three~~, the Department of Agriculture and Consumer Services shall rank the applications based upon criteria developed by the Department of Agriculture and Consumer Services, with priority given in descending order to the following items~~:

(a) The intended use of the funds by the applicant~~, with priority given to the construction of a new facility~~.

(b) The amount of local match~~, with priority given to the largest percentage of local match proposed~~.

(c) The location of the facility in a brownfield site as defined in s. 376.79(3), a rural enterprise zone as defined in s. 290.004, an agriculturally depressed area as defined in s. 570.74, or a county that has lost its agricultural land to environmental restoration projects.

(d) The net increase, as a result of the facility, of total available exhibition, arena, or civic center space within the jurisdictional limits of the local government in which the

facility is to be located~~, with priority given to the largest percentage increase of total exhibition, arena, or civic center space~~.

(e) The historic record of the applicant in promoting agriculture and educating the public about agriculture, including, without limitation, awards, premiums, scholarships, auctions, and other such activities.

(f) The highest projection on paid attendance attracted by the agriculture education and promotion facility and the proposed economic impact on the local community.

(g) The location of the facility with respect to an Institute of Food and Agricultural Sciences (IFAS) facility~~, with priority given to facilities closer in proximity to an IFAS facility~~.

Section 2. Subsections (5) and (6) of section 482.1562, Florida Statutes, are amended to read:

482.1562 Limited certification for urban landscape commercial fertilizer application.—

(5) An application for recertification must be made 4 years after the date of issuance ~~at least 90 days before the expiration~~ of the current certificate and be accompanied by:

(a) Proof of having completed the 4 classroom hours of acceptable continuing education required under subsection (4).

(b) A recertification fee set by the department in an amount of at least $25 but not more than $75. Until the fee is set by rule, the fee for certification is $25.

(6) ~~A late renewal charge of $50 per month shall be assessed 30 days after the date the application for recertification is due and must be paid in addition to the renewal fee. Unless timely recertified, a certificate automatically expires 90 days after the recertification date.~~ Upon expiration, or after a grace period that does not exceed 30 days after expiration, a certificate may be issued only upon reapplying in accordance with subsection (3).

Section 3. Paragraph (bb) of subsection (1) of section 500.03, Florida Statutes, is redesignated as paragraph (cc), and a new paragraph (bb) and paragraphs (dd) and (ee) are added to that subsection, to read:

500.03 Definitions; construction; applicability.—

(1) For the purpose of this chapter, the term:

(bb) "Retail" means the offering of food directly to the consumer.

(dd) "Vehicle" means a mode of transportation or mobile carrier used to transport food from one location to another, including, but not limited to, carts, vans, trucks, cars, trains and railway transport, and aircraft and watercraft type transport.

(ee) "Wholesale" means the offering of food to businesses for resale.

Section 4. Paragraph (c) of subsection (20) of section 570.07, Florida Statutes, is amended, and subsection (44) is added to that section, to read:

570.07 Department of Agriculture and Consumer Services; functions, powers, and duties.—The department shall have and exercise the following functions, powers, and duties:

(20)

(c) To sponsor events, trade breakfasts, luncheons, and dinners and distribute promotional materials and favors in connection with meetings, conferences, and conventions of dealers, buyers, food editors, and merchandising executives that will assist in the promotion and marketing of Florida's agricultural and agricultural business products to the consuming public.

The department is authorized to receive and expend donations contributed by private persons for the purpose of covering costs associated with the above described activities.

(44) The department may, in its own name:

(a) Perform all things necessary to secure letters of patent, copyrights, and trademarks on any work products of the department and enforce its rights therein.

(b) License, lease, assign, or otherwise give written consent to any person, firm, or corporation for the manufacture or use of such department work products on a royalty basis or for such other consideration as the department deems proper.

(c) Take any action necessary, including legal action, to protect such department work products against improper or unlawful use or infringement.

(d) Enforce the collection of any sums due to the department for the manufacture or use of such department work products by another party.

(e) Sell any of such department work products and execute all instruments necessary to consummate any such sale.

(f) Do all other acts necessary and proper for the execution of powers and duties conferred upon the department by this section, including adopting rules, as necessary, in order to administer this section.

Section 5. Subsection (5) of section 570.30, Florida Statutes, is amended to read:

570.30 Division of Administration; powers and duties.—The Division of Administration shall render services required by the department and its other divisions, or by the commissioner in the exercise of constitutional and cabinet responsibilities, that can advantageously and effectively be centralized and administered and any other function of the department that is not specifically assigned by law to some other division. The duties of this division include, but are not limited to:

~~(5) Providing electronic data processing and management information systems support for the department.~~

Section 6. Subsection (4) is added to section 570.441, Florida Statutes, to read:

570.441 Pest Control Trust Fund.—

(4) In addition to the uses authorized under subsection (2), moneys collected or received by the department under

chapter 482 may be used to carry out the provisions of s. 570.44. This subsection expires June 30, 2018.

Section 7. Subsection (5) of section 570.50, Florida Statutes, is amended to read:

570.50 Division of Food Safety; powers and duties.—The duties of the Division of Food Safety include, but are not limited to:

(5) Analyzing food and feed samples offered for sale in the state ~~for chemical residues~~ as required under the adulteration sections of chapters 500, 502, and 580.

Section 8. Subsection (2) of section 570.53, Florida Statutes, is amended to read:

570.53 Division of Marketing and Development; powers and duties.—The powers and duties of the Division of Marketing and Development include, but are not limited to:

~~(2) Enforcing the provisions of ss. 604.15-604.34, the dealers in agricultural products law, and ss. 534.47-534.53.~~

Section 9. Subsection (2) of section 570.544, Florida Statutes, is amended to read:

570.544 Division of Consumer Services; director; powers; processing of complaints; records.—

(2) The director shall supervise, direct, and coordinate the activities of the division and shall, under the direction of the department, enforce the provisions of ss. 604.15-604.34 and chapters 472, 496, 501, 507, 525, 526, 527, 531, 539, 559, 616, and 849.

Section 10. Section 570.68, Florida Statutes, is created to read:

570.68 Office of Agriculture Technology Services.—The commissioner may create an Office of Agriculture Technology Services under the supervision of a senior manager exempt under s. 110.205 in the Senior Management Service. The office shall provide electronic data processing and agency information technology services to support and facilitate the functions, powers, and duties of the department.

Section 11. Section 570.681, Florida Statutes, is amended to read:

570.681 Florida Agriculture Center and Horse Park; legislative findings.—It is the finding of the Legislature that:

~~(1) Agriculture is an important industry to the State of Florida, producing over $6 billion per year while supporting over 230,000 jobs.~~

(1)~~(2)~~ Equine and other agriculture-related industries ~~will~~ strengthen and benefit each other with the establishment of a statewide agriculture and horse facility.

(2)~~(3)~~ The ~~A~~ Florida Agriculture Center and Horse Park provides ~~will provide~~ Florida with a unique tourist experience for visitors and residents, thus generating taxes and additional dollars for the state.

(3)~~(4)~~ Promoting the Florida Agriculture Center and Horse Park as a joint effort between the state and the private sector allows ~~will allow~~ this facility to use ~~utilize~~ experts and

generate revenue from many areas to ensure the success of this facility.

Section 12. Paragraphs (b) and (c) of subsection (4) of section 570.685, Florida Statutes, are amended to read:

570.685 Florida Agriculture Center and Horse Park Authority.—

(4) The authority shall meet at least semiannually and elect a chair, a vice chair, and a secretary for 1-year terms.

(b) The department may provide ~~shall be responsible for providing~~ administrative and staff support services relating to the meetings of the authority and may ~~shall~~ provide suitable space in the offices of the department for the meetings and the storage of records of the authority.

(c) In conducting its meetings, the authority shall use accepted rules of procedure. The secretary shall keep a complete record of the proceedings of each meeting, which shows ~~record shall show~~ the names of the members present and the actions taken. These records shall be kept on file with the department, and such records and other documents regarding matters within the jurisdiction of the authority shall be subject to inspection by members of the authority.

Section 13. Section 571.24, Florida Statutes, is amended to read:

571.24 Purpose; duties of the department.—The purpose of this part is to authorize the department to establish and coordinate the Florida Agricultural Promotional Campaign, which

is intended to serve as a marketing program to promote Florida agricultural commodities, value-added products, and agricultural related businesses and not a food safety or traceability program. The duties of the department shall include, but are not limited to:

(1) Developing logos and authorizing the use of logos as provided by rule.

(2) Registering participants.

(3) Assessing and collecting fees.

(4) Collecting rental receipts for industry promotions.

(5) Developing in-kind advertising programs.

(6) Contracting with media representatives for the purpose of dispersing promotional materials.

(7) Assisting the representative of the department who serves on the Florida Agricultural Promotional Campaign Advisory Council.

~~(8) Designating a division employee to be a member of the Advertising Interagency Coordinating Council.~~

(8)~~(9)~~ Adopting rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this part.

(9)~~(10)~~ Enforcing and administering the provisions of this part, including measures ensuring that only Florida agricultural or agricultural based products are marketed under the "Fresh From Florida" or "From Florida" logos or other logos of the Florida Agricultural Promotional Campaign.

Section 14. Section 571.27, Florida Statutes, is amended

to read:

571.27 Rules.—The department is authorized to adopt rules that implement, make specific, and interpret the provisions of this part~~, including rules for entering into contracts with advertising agencies for services which are directly related to the Florida Agricultural Promotional Campaign. Such rules shall establish the procedures for negotiating costs with the offerors of such advertising services who have been determined by the department to be qualified on the basis of technical merit, creative ability, and professional competency. Such determination of qualifications shall also include consideration of the provisions in s. 287.055(3), (4), and (5)~~. The department is further authorized to determine, by rule, the logos or product identifiers to be depicted for use in advertising, publicizing, and promoting the sale of Florida agricultural products or agricultural-based products in the Florida Agricultural Promotional Campaign. The department may also adopt rules consistent ~~not inconsistent~~ with ~~the provisions of~~ this part as in its judgment may be necessary for participant registration, renewal of registration, classes of membership, application forms, and ~~as well as~~ other forms and enforcement measures ensuring compliance with this part.

Section 15. Subsection (1) of section 571.28, Florida Statutes, is amended to read:

571.28 Florida Agricultural Promotional Campaign Advisory Council.—

(1) ORGANIZATION.—There is ~~hereby~~ created within the department the Florida Agricultural Promotional Campaign Advisory Council, to consist of 15 members appointed by the Commissioner of Agriculture for 4-year staggered terms. The membership shall include: 13 ~~six~~ members representing agricultural producers, shippers, ~~or~~ packers, ~~three members representing agricultural~~ retailers, ~~two members representing~~ agricultural associations, and wholesalers ~~one member representing a wholesaler~~ of agricultural products, one member representing consumers, and one member representing the department. Initial appointment of the council members shall be four members to a term of 4 years, four members to a term of 3 years, four members to a term of 2 years, and three members to a term of 1 year.

Section 16. Subsection (3) is added to section 581.181, Florida Statutes, to read:

581.181 Notice of infection of plants; destruction.—

(3) This section does not apply to plants or plant products infested with pests or noxious weeds that are determined to be widely established within the state and are not specifically regulated under other provisions of law or rules adopted by the department.

Section 17. Section 589.26, Florida Statutes, is repealed.

Section 18. Subsections (4) and (5) of section 595.402, Florida Statutes, are renumbered as subsections (5) and (6), respectively, and new subsections (4), (7), and (8) are added to

that section, to read:

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

(4) "School breakfast program" means a program authorized by section 4 of the Child Nutrition Act of 1966 and administered by the department.

(7) "Summer nutrition program" means one or more of the programs authorized under 42 U.S.C. s. 1761.

(8) "Universal school breakfast program" means a program that makes breakfast available at no cost to all students regardless of their household income.

Section 19. Subsections (5) and (12) of section 595.404, Florida Statutes, are amended, and subsection (13) is added to that section, to read:

595.404 School food and nutrition service program; powers and duties of the department.—The department has the following powers and duties:

(5) To provide ~~make a reasonable effort to ensure that any school designated as~~ a "severe need school" ~~receives~~ the highest rate of reimbursement to which it is entitled under 42 U.S.C. s. 1773 for each breakfast meal served.

(12) To advance funds from the program's annual appropriation to a summer nutrition program sponsor ~~sponsors~~, when requested, in order to implement the provisions of this chapter and in accordance with federal regulations.

(13) To collect data on food purchased through the programs defined in s. 595.402(3) and s. 595.406 and to publish

that data annually.

Section 20. Section 595.405, Florida Statutes, is amended to read:

595.405 School nutrition program requirements ~~for school districts and sponsors~~.—

(1) Each ~~school~~ district school board shall consider the recommendations of the district school superintendent and adopt policies to provide for an appropriate food and nutrition service program for students consistent with federal law and department rules.

(2) Each ~~school~~ district school board shall implement school breakfast programs that make breakfast meals available to all students in each ~~elementary~~ school that serves any combination of grades kindergarten through 5. ~~Universal school breakfast programs shall be offered in schools in which 80 percent or more of the students are eligible for free or reduced-price meals. Each school shall, to the maximum extent practicable, make breakfast meals available to students at an alternative site location, which may include, but need not be limited to, alternative breakfast options as described in publications of the Food and Nutrition Service of the United States Department of Agriculture for the federal School Breakfast Program.~~

(3) Each ~~school~~ district school board must annually set prices for breakfast meals at rates that, combined with federal reimbursements and state allocations, are sufficient to defray

costs of school breakfast programs without requiring allocations from the district's operating funds, except if the district school board approves lower rates.

~~(4) Each school district is encouraged to provide universal, free school breakfast meals to all students in each elementary, middle, and high school. Each school district shall approve or disapprove a policy, after receiving public testimony concerning the proposed policy at two or more regular meetings, which makes universal, free school breakfast meals available to all students in each elementary, middle, and high school in which 80 percent or more of the students are eligible for free or reduced-price meals.~~

(4)~~(5)~~ Each ~~elementary, middle, and high~~ school operating a breakfast program shall make a breakfast meal available if a student arrives at school on the school bus less than 15 minutes before the first bell rings and shall allow the student at least 15 minutes to eat the breakfast.

(5) Each school district is encouraged to provide universal, free school breakfast meals to all students in each elementary, middle, and high school. A universal school breakfast program shall be implemented in each school in which 80 percent or more of the students are eligible for free or reduced-price meals, unless the district school board, after considering public testimony at two or more regularly scheduled board meetings, decides to not implement such a program in such schools.

(6) To increase school breakfast and universal school breakfast program participation, each school district must, to the maximum extent practicable, make breakfast meals available to students through alternative service models as described in publications of the Food and Nutrition Service of the United States Department of Agriculture for the federal School Breakfast Program.

(7) ~~(6)~~ Each ~~school~~ district school board shall annually provide ~~to all students in each elementary, middle, and high school~~ information prepared by the district's food service administration regarding available ~~its~~ school breakfast programs. The information shall be communicated through school announcements and ~~written~~ notices sent to all parents.

(8) ~~(7)~~ A ~~school~~ district school board may operate a breakfast program providing for food preparation at the school site or in central locations with distribution to designated satellite schools or any combination thereof.

~~(8) Each sponsor shall complete all corrective action plans required by the department or a federal agency to be in compliance with the program.~~

Section 21. Section 595.406, Florida Statutes, is amended to read:

595.406 Florida Farm to School ~~Fresh Schools~~ Program.—

(1) In order to implement the Florida Farm to School ~~Fresh Schools~~ Program, the department shall develop policies pertaining to school food services which encourage:

(a) Sponsors to buy fresh and high-quality foods grown in this state when feasible.

(b) Farmers in this state to sell their products to sponsors, school districts, and schools.

(c) Sponsors to demonstrate a preference for competitively priced organic food products.

(d) Sponsors to make reasonable efforts to select foods based on a preference for those that have maximum nutritional content.

(2) The department shall provide outreach, guidance, and training to sponsors, schools, school food service directors, parent and teacher organizations, and students about the benefit of fresh food products from farms in this state.

(3) The department may recognize sponsors who purchase at least 10 percent of the food they serve from the Florida Farm to School Program.

Section 22. Subsection (2) of section 595.407, Florida Statutes, is amended to read:

595.407 Children's summer nutrition program.—

(2) Each school district shall develop a plan to sponsor or operate a summer nutrition program to operate sites in the school district as follows:

(a) Within 5 miles of at least one ~~elementary~~ school that serves any combination of grades kindergarten through 5 at which 50 percent or more of the students are eligible for free or reduced-price school meals and for the duration of 35

~~consecutive~~ days between the end of the school year and the beginning of the next school year. School districts may exclude holidays and weekends.

(b) Within 10 miles of each ~~elementary~~ school that serves any combination of grades kindergarten through 5 at which 50 percent or more of the students are eligible for free or reduced-price school meals, except as operated pursuant to paragraph (a).

Section 23. Section 595.408, Florida Statutes, is amended to read:

595.408 Food ~~Commodity~~ distribution services; department responsibilities and functions.—

(1)(a) The department shall conduct, supervise, and administer all food ~~commodity~~ distribution services that will be carried on using federal or state funds, or funds from any other source, or food ~~commodities~~ received and distributed from the United States or any of its agencies.

(b) The department shall determine the benefits each applicant or recipient of assistance is entitled to receive under this chapter, provided that each applicant or recipient is a resident of this state and a citizen of the United States or is an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law.

(2) The department shall cooperate fully with the United States Government and its agencies and instrumentalities so that

the department may receive the benefit of all federal financial allotments and assistance possible to carry out the purposes of this chapter.

(3) The department may:

(a) Accept any duties with respect to food ~~commodity~~ distribution services as are delegated to it by an agency of the federal government or any state, county, or municipal government.

(b) Act as agent of, or contract with, the federal government, state government, or any county or municipal government in the administration of food ~~commodity~~ distribution services to secure the benefits of any public assistance that is available from the federal government or any of its agencies, and in the distribution of funds received from the federal government, state government, or any county or municipal government for food ~~commodity~~ distribution services within the state.

(c) Accept from any person or organization all offers of personal services, food ~~commodities~~, or other aid or assistance.

(4) This chapter does not limit, abrogate, or abridge the powers and duties of any other state agency.

Section 24. Section 595.501, Florida Statutes, is amended to read:

595.501 Penalties.—

(1) When a corrective action plan is issued by the department or a federal agency, each sponsor is required to

complete the corrective action plan to be in compliance with the program.

(2) Any person or~~,~~ sponsor~~, or school district~~ that violates any provision of this chapter or any rule adopted thereunder or otherwise does not comply with the program is subject to a suspension or revocation of their agreement, loss of reimbursement, or a financial penalty in accordance with federal or state law or both. This section does not restrict the applicability of any other law.

Section 25. Section 595.601, Florida Statutes, is amended to read:

595.601 Food and Nutrition Services Trust Fund.—Chapter 99-37, Laws of Florida, recreated the Food and Nutrition Services Trust Fund to record revenue and disbursements of Federal Food and Nutrition funds received by the department as authorized in s. 595.404 ~~595.405~~.

Section 26. Subsection (1) of section 604.20, Florida Statutes, is amended to read:

604.20 Bond or certificate of deposit prerequisite; amount; form.—

(1) Before any license is issued, the applicant ~~therefor~~ shall make and deliver to the department a surety bond or certificate of deposit in the amount of at least $5,000 or in such greater amount as the department may determine. No bond or certificate of deposit may be in an amount less than $5,000. The penal sum of the bond or certificate of deposit to be furnished

to the department by an applicant for license as a dealer in agricultural products shall be in an amount equal to twice the dollar amount of agricultural products handled for a Florida producer or a producer's agent or representative, by purchase or otherwise, during the month of maximum transaction in such products during the preceding 12-month period. An applicant for license who has not handled agricultural products for a Florida producer or a producer's agent or representative, by purchase or otherwise, during the preceding 12-month period shall furnish a bond or certificate of deposit in an amount equal to twice the estimated dollar amount of such agricultural products to be handled, by purchase or otherwise, during the month of maximum transaction during the next immediate 12 months. Such bond or certificate of deposit shall be provided or assigned in the exact name in which the dealer will conduct business subject to ~~the provisions of~~ ss. 604.15-604.34. Such bond must be executed by a surety company authorized to transact business in the state. For the purposes of ss. 604.19-604.21, the term "certificate of deposit" means a certificate of deposit at any recognized financial institution doing business in the United States. A ~~No~~ certificate of deposit may not be accepted in connection with an application for a dealer's license unless the issuing institution is properly insured by either the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. Such bond or any certificate of deposit assignment or agreement shall be upon a form prescribed or

approved by the department and shall be conditioned to secure the faithful accounting for and payment, in the manner prescribed by s. 604.21(9), to producers or their agents or representatives of the proceeds of all agricultural products handled or purchased by such dealer and to secure payment to dealers who sell agricultural products to such dealer. Such bond or certificate of deposit assignment or agreement shall include terms binding the instrument to the Commissioner of Agriculture. A certificate of deposit shall be presented with an assignment of applicant's rights in the certificate in favor of the Commissioner of Agriculture on a form prescribed by the department ~~and with a letter from the issuing institution~~ acknowledging that the assignment has been properly recorded on the books of the issuing institution and will be honored by the issuing institution. Such assignment shall be irrevocable while the dealer's license is in effect and for an additional period of 6 months after the termination or expiration of the dealer's license, if a ~~provided no~~ complaint is not pending against the licensee. If a complaint is pending, the assignment shall remain in effect until all actions on the complaint have been finalized. The certificate of deposit may be released by the assignee of the financial institution to the licensee or the licensee's successors, assignee, or heirs if ~~no~~ claims are not pending against the licensee before the department at the conclusion of 6 months after the last effective date of the license. A ~~No~~ certificate of deposit which ~~shall be accepted~~

~~that~~ contains any provision that would give the issuing institution any prior rights or claim on the proceeds or principal of such certificate of deposit may not be accepted. The department shall determine by rule the maximum amount of bond or certificate of deposit required of a dealer and whether an annual bond or certificate of deposit will be required.

Section 27. Section 604.33, Florida Statutes, is amended to read:

604.33 Security requirements for grain dealers.—Each grain dealer doing business in the state shall maintain liquid security, in the form of grain on hand, cash, certificates of deposit, or other nonvolatile security that can be liquidated in 10 days or less, or cash bonds, surety bonds, or letters of credit, that have been assigned to the department and that are conditioned to secure the faithful accounting for and payment to the producers for grain stored or purchased, in an amount equal to the value of grain which the grain dealer has received from grain producers for which the producers have not received payment. The bonds must be executed by the applicant as principal and by a surety corporation authorized to transact business in the state. The certificates of deposit and letters of credit must be from a recognized financial institution doing business in the United States. ~~Each grain dealer shall report to the department monthly, on or before a date established by rule of the department, the value of grain she or he has received from producers for which the producers have not received payment~~

~~and the types of transaction involved, showing the value of each type of transaction. The report shall also include a statement showing the type and amount of security maintained to cover the grain dealer's liability to producers.~~ The department may ~~shall~~ make at least one spot check annually of each grain dealer to determine compliance with the requirements of this section.

Section 28. This act shall take effect July 1, 2015.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: State Affairs Committee

Representative Raburn offered the following:

Amendment (with title amendment)

Remove lines 107-144

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

Remove lines 3-7 and insert:

Consumer Services; amending s. 482.1562, F.S.;

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 7015 (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	_____

Committee/Subcommittee hearing bill: State Affairs Committee

Representative Raburn offered the following:

Amendment (with title amendment)

Between lines 229 and 230, insert:

Section 6. Section 570.158, Florida Statutes is created to read:

570.158 Designations.— The department is authorized to name the Pompano State Farmers Market the Edward L. Myrick State Farmers Market. This is to honor Mr. Edward L. Myrick, a United States Army veteran and pillar in the agricultural community of Pompano. Since 1976, Mr. Edward L. Myrick played a leading role in the success of the market and continues to serve it today through his leadership and by making available fresh agricultural produce to the community at large.

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

Remove line 19 and insert:

and to engage in acts accordingly; creating s. 570.158, F.S., authorizing the department to name the Pompano State Farmers Market the Edward L. Myrick State Farmers Market; amending s. 570.30,

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 7015 (2015)

Amendment No. 3

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

Committee/Subcommittee hearing bill: State Affairs Committee

Representative Raburn offered the following:

Amendment (with title amendment)

Between lines 682 and 683, insert:

Section 28. The Board of Trustees of the Internal Improvement Trust Fund's property described as the south half of the southeast quarter of the northwest quarter and the north half of the northeast quarter of the southwest quarter of Section 9, Township 25 South, Range 29 East, Osceola County, Florida shall be deeded, by quitclaim deed, on or before December 31, 2015 to the Florida Department of Agriculture and Consumer Services. Notwithstanding the provisions of Chapters 253 and 259, Florida Statutes, the Florida Department of Agriculture and Consumer Services is directed to sell a portion of such deeded property described as that portion of the land lying South of Carroll Street of the parcel in Osceola County,

Florida described as the North half of the northeast quarter of the southwest quarter of Section 9, Township 25 South, Range 29 East for no less than the property's appraised value in accordance with s. 255.25001, Florida Statutes. All net proceeds from this sale shall be deposited in the General Inspection Trust Fund of the Florida Department of Agriculture and Consumer Services. The department shall develop a plan to utilize these net proceeds for facility repairs and construction of an agricultural diagnostic laboratory at the Bronson Animal Disease Diagnostic Laboratory located in Osceola County. The plan must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2015.

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

Remove line 102 and insert:

check annually of each grain dealer; requiring the Board of Trustees of the Internal Improvement Trust Fund to deed certain property to the Department of Agriculture and Consumer Services; requiring the Department of Agriculture and Consumer Services to sell a portion of such property; requiring the Department of Agriculture and Consumer Services to develop a plan to utilize the net proceeds of the sale for facilities repairs and construction of an agricultural diagnostic laboratory at the Bronson Animal Diagnostic Laboratory; providing an

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7049 PCB GVOPS 15-03 OGSR/Minor Petitioning Court for Waiver of Parental Notice
SPONSOR(S): Government Operations Subcommittee, Brodeur
TIED BILLS: **IDEN./SIM. BILLS:** SB 7016

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	12 Y, 0 N	Harrington	Williamson
1) State Affairs Committee		Harrington	Camechis

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Parental Notice of Abortion Act (act) requires a parent be given notice of a child's intent to have an abortion prior to the abortion. The act provides that a minor may petition the circuit court where she resides for a waiver of the notice requirement. The minor has a right to a court-appointed counsel at no cost. Once the petition is filed, the court must rule within three business days. Circuit court and appellate court records that identify a minor petitioning a court to waive parental notice requirements are confidential and exempt from disclosure.

Current law provides a public record exemption for information held by the office of criminal conflict and civil regional counsel (office) or the Justice Administrative Commission (commission). Specifically, the public record exemption makes confidential and exempt information held by the office or the commission that identifies a minor petitioning a court to waive parental notice requirements before terminating a pregnancy.

The bill reenacts the public record exemption for information held by the office or the commission that identifies a minor petitioning a court to waive parental notice requirements, which will repeal on October 2, 2015, if this bill does not become law.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act[1] sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Open Government Sunset Review Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

If, and only if, in reenacting an exemption that will repeal and the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.[2] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created[3] then a public necessity statement and a two-thirds vote for passage are not required.

Parental Notice of Abortion Act

In 1999, the Legislature enacted the Parental Notice of Abortion Act (act), which required a parent be given advance notice of a child's intent to have an abortion.[4] When the act became effective, several groups filed suit seeking injunctive and declaratory relief to block its enforcement.[5] In 2003, the Florida Supreme Court found the law violated a minor's constitutional right to privacy.[6] In 2004, the State Constitution was amended to provide that notwithstanding a minor's right to privacy, a physician must notify a minor's parent or guardian prior to an abortion, and to provide for a bypass. The amendment provides:[7]

> The Legislature shall not limit or deny the privacy right guaranteed to a minor under the United States Constitution as interpreted by the United States Supreme Court. Notwithstanding a minor's right of privacy provided in Section 23 of Article I, the Legislature is authorized to require by general law for notification to a parent or guardian of a minor before the termination of the minor's pregnancy. The Legislature shall provide exceptions to such requirement for notification and shall create a process for judicial waiver of the notification.

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[1] Section 119.15, F.S.
[2] Section 24(c), Art. I of the State Constitution.
[3] An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.
[4] Chapter 99-322, L.O.F.; codified as s. 390.01115, F.S.
[5] *North Florida Women's Health and Counseling Services v. State*, 866 So.2d 612 (Fla. 2003).
[6] *Id.*
[7] Section 22, Art. X of the State Constitution.

In 2005, the Legislature passed another Parental Notice of Abortion Act, which required an attending physician to give actual notice, in person or by phone, to a parent or legal guardian of the minor at least 48 hours before the minor's pregnancy is terminated.[8] If actual notice is not possible after a reasonable effort, the physician performing or inducing the abortion or the referring physician must give constructive notice.[9] Parental notice is not required under the act under certain circumstances.[10]

Judicial Waiver of Parental Notice

The act provides that a minor may petition the circuit court where she resides for a waiver of the notice requirements.[11] To initiate the process, she may file the petition under a pseudonym or by using her initials, as provided by court rule. The petition must contain a statement that the petitioner is pregnant and notice has not been waived. The court must advise the petitioner that she has a right to a court-appointed counsel and must provide her with counsel, if she requests, at no cost to the minor.[12]

Judicial waiver proceedings must be given precedence over other pending matters to the extent necessary to ensure the court reaches a decision promptly.[13] Once a petition is filed, the court must rule and issue written findings of fact and conclusions of law within three business days. This time period may be extended at the request of the minor.[14] If the court fails to rule within three business days, the minor may immediately petition for a hearing to the chief judge, who must ensure a hearing is held within 48 hours after the petition; an order must be entered within 24 hours after the hearing.[15]

If the circuit court decides by clear and convincing evidence that the minor is sufficiently mature to decide whether to terminate her pregnancy, the court must issue an order authorizing the minor to consent to the abortion without the notification of a parent or guardian.[16] If the court finds the minor does not possess the requisite maturity to make the determination, the court must dismiss the petition.[17] If the court determines by a preponderance of the evidence that the minor is a victim of child abuse or sexual abuse inflicted by her parent or guardian, or if the court determines by clear and convincing evidence that the notification of a parent or guardian is not in the minor's best interest, the court must issue an order authorizing the minor to consent to the abortion without notification of a parent or guardian.[18] In 2014, 242 petitions for judicial bypass were filed.[19]

Public Record Exemption for Judicial Bypass Proceedings

Current law provides a public record exemption for judicial records pertaining to parental notification bypass proceedings. Specifically, any information held by a circuit court or appellate court which could be used to identify the minor is confidential and exempt[20] from public disclosure.[21]

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[8] Chapter 2005-52, L.O.F.; codified as s. 390.01114, F.S.

[9] Section 390.01114(3)(a), F.S.

[10] Section 390.01114(3)(b), F.S., provides that parental notice is unnecessary if in the good faith clinical judgment of the physician, a medical emergency exists and there is insufficient time for the attending physician to comply with the notification; if waived not more than 30 days before the termination of pregnancy by the person who is entitled to notice; if the minor is married or has had the disability of nonage removed; if the minor has a minor child dependent on her; or if the notice is waived in a judicial bypass procedure.

[11] Section 390.01114(4)(a), F.S.

[12] *Id.*

[13] Section 390.01114(4)(b)1., F.S.

[14] *Id.*

[15] *Id.*

[16] Section 390.01114(4)(c), F.S.

[17] *Id.*

[18] Section 390.01114(4)(d), F.S.

[19] Florida Office of the State Courts Administrator, *Parental Notice of Abortion Act, Petitions Filed and Disposed by Circuit and County, January through December 2014* (January 21, 2015).

[20] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d

Public Record Exemption under Review

In 2010, the Legislature expanded the exemption pertaining to parental notification bypass proceedings to additional entities.[22] Specifically, s. 390.01116(2)(a), F.S., provides that any information that can be used to identify a minor petitioning a circuit court for a judicial waiver is confidential and exempt if held by the office of criminal conflict and civil regional counsel (office)[23] or the Justice Administrative Commission (commission).[24]

The 2010 public necessity statement provides that:

> The information contained in these records is of a sensitive, personal nature regarding a minor petitioner, the release of which could harm the reputation of the minor, as well as jeopardize her safety. Disclosure of this information could jeopardize the safety of the minor in instances in which child abuse or child sexual abuse against her is present by exposing her to further acts of abuse from an abuser who, without the public record exemption, could learn of the minor's pregnancy, her plans to terminate the pregnancy, and her petition to the court. The Legislature further finds that it is a public necessity to keep this identifying information in records held by the office of criminal conflict and civil regional counsel or the Justice Administrative Commission confidential and exempt in order to protect the privacy of the minor.[25]

In addition, the public necessity statement finds that without the public record exemption, the effective and efficient administration of the state's program, and the judicial bypass procedure in particular, would be in question. The public necessity statement provides that without the public record exemption, the disclosure of personal identifying information would violate the right of privacy of the minor.[26]

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2015, unless reenacted by the Legislature.[27]

During the 2014 interim, subcommittee staff discussed the public record exemption with the commission and the different offices of criminal conflict and civil regional counsel as part of the Open Government Sunset Review process. The commission and the offices were asked if they recommended that the Legislature repeal the public record exemption under review, reenact the public record exemption, or reenact it with changes. Of those participating in the discussion, each recommended reenacting the public record exemption.

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687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* Attorney General Opinion 85-62 (August 1, 1985).

[21] Section 390.01116, F.S. The public record exemption was passed in 2005 and reviewed and saved from repeal in 2010. *See* chapter 2010-41, L.O.F.

[22] Chapter 2010-41, L.O.F.

[23] If a minor requests counsel for a judicial bypass proceeding, a private court-appointed attorney is appointed if available. If no attorney is available, the office of criminal conflict and civil regional counsel will supply an attorney for the proceeding. Section 27.511(6)(a), F.S.

[24] The Justice Administrative Commission pays the invoices for the attorneys who volunteer for judicial bypass proceedings through the clerk of court's list of attorneys. *See* s. 27.40(3)(a), F.S.

[25] Chapter 2010-41, s. 2., L.O.F.

[26] *Id.*

[27] Section 390.01116(2)(b), F.S.

Effect of the Bill

The bill removes the repeal date, thereby reenacting the public record exemption for information identifying a minor petitioning a court to waive parental notice requirements before terminating a pregnancy if the information is held by the office or the commission.

B. SECTION DIRECTORY:

Section 1 amends s. 390.01116, F.S., relating to an exemption from public record requirements for information identifying a minor petitioning a court to waive parental notice requirements before terminating a pregnancy.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   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:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 390.01116, F.S., relating to an exemption from public records requirements for information identifying a minor petitioning a court to waive parental notice requirements before terminating a pregnancy; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Subsection (2) of section 390.01116, Florida Statutes, is amended to read:

390.01116 Public records exemptions; minors seeking waiver of notice requirements.—Any information that can be used to identify a minor petitioning a circuit court for a judicial waiver, as provided in s. 390.01114, of the notice requirements under the Parental Notice of Abortion Act is:

(2)~~(a)~~ Confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if held by the office of criminal conflict and civil regional counsel or the Justice Administrative Commission.

~~(b) Paragraph (a) is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2015, unless reviewed and saved from repeal~~

~~through reenactment by the Legislature.~~

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7051 PCB GVOPS 15-04 OGSR/Board of Funeral, Cemetery, & Consumer Services
SPONSOR(S): Government Operations Subcommittee, Santiago
TIED BILLS: **IDEN./SIM. BILLS:** SB 7008

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	12 Y, 0 N	Harrington	Williamson
1) State Affairs Committee		Harrington	Camechis

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Board of Funeral, Cemetery, and Consumer Services (board) within the Department of Financial Services is responsible for the administration and enforcement of the Florida Funeral, Cemetery, and Consumer Services Act. A person desiring to be licensed in funeral services must apply for a license with the board, and must pass an examination as well as meet other license specific requirements. The board has broad authority over the content and conduct of licensure examinations, and may reject any question from an examination that does not reliably measure the required competency.

Current law provides a public meeting exemption for those portions of a board meeting where questions or answers to examination questions are discussed. The closed meeting must be recorded and maintained by the board. The recording of the closed portion of a board meeting is exempt from public record requirements.

The bill reenacts the public record and public meeting exemptions, which will repeal on October 2, 2015, if this bill does not become law.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act[1] (Act) sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Open Government Sunset Review Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

If, and only if, in reenacting an exemption that will repeal and the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.[2] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created[3] then a public necessity statement and a two-thirds vote for passage are not required.

Board of Funeral, Cemetery, and Consumer Services

Funeral and cemetery services are regulated under chapter 497, F.S., which is the Florida Funeral, Cemetery, and Consumer Services Act (act).[4] The Board of Funeral, Cemetery, and Consumer Services (board) within the Department of Financial Services (department) is responsible for the administration and enforcement of the act. The department, with approval of the board, must provide, contract, or approve services related to examinations.[5]

The board oversees the licensure and regulation of various licenses related to funeral services. For example, the board oversees the licensure of funeral directors,[6] embalmers,[7] and combination licenses that permit a licensee to practice both funeral directing and embalming.[8] In order to be licensed, an applicant must pass an examination as well as meet the other requirements for the specific license type.[9] The board has broad authority over the content and conduct of licensure examinations,[10] and

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[1] Section 119.15, F.S.
[2] Section 24(c), Art. I of the State Constitution.
[3] An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.
[4] Section 497.001, F.S.
[5] Section 497.144(1), F.S.
[6] Section 497.372, F.S.
[7] Section 497.368, F.S.
[8] Section 497.376, F.S.
[9] For example, an applicant for an embalmer license must take courses in mortuary sciences and communicable diseases, complete a one-year internship, and pass an examination. Section 497.368, F.S.
[10] Section 497.103(1)(a)-(g), F.S.

may reject any question from an examination that does not reliably measure the required competency.[11]

Public Record and Public Meeting Exemptions under Review

In 2005, the Legislature created a public meeting exemption for the board for those portions of the board meeting at which licensure questions or answers are discussed.[12]

In 2010, the Legislature amended the public meeting exemption to require a recording to be made of the closed portion of the board meeting and to require the board to maintain the recording.[13] In addition, the Legislature created a public record exemption to make exempt[14] the recording of the closed portion of the board meeting.[15]

Pursuant to the Open Government Sunset Review Act, the public record and public meeting exemptions will repeal on October 2, 2015, unless reenacted by the Legislature.[16]

During the 2014 interim, subcommittee staff sent a questionnaire to the board as part of the Open Government Sunset Review process. As part of its questionnaire response, the board recommended reenactment of the public record and public meeting exemptions under review.[17]

Effect of the Bill

The bill removes the repeal date, thereby reenacting the public record and public meeting exemptions for the board.

B. SECTION DIRECTORY:

Section 1 amends s. 497.172, F.S., to save from repeal the public record and public meeting exemptions for the Board of Funeral, Cemetery, and Consumer Services.

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

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[11] Section 497.144(2), F.S.

[12] Chapter 2005-162, L.O.F.; codified as s. 497.172(1), F.S. The 2005 public necessity statement provides in pertinent part that "[w]ithout the exemption, board members might not propose new questions and answers and engage in full and free discussion concerning existing and proposed questions and answers. If questions and answers for licensure examinations are disclosed to the public, the usefulness of those licensure examinations in ensuring that applicants have studied and learned the entire body of knowledge necessary for the safe and competent practice of their intended profession or occupation under chapter 497, Florida Statutes, would be severely undermined or eliminated. Therefore, without this exemption, the effective and efficient administration of the licensure process would be jeopardized."

[13] Chapter 2010-76, L.O.F.; codified as s. 497.172(1)(a), F.S.

[14] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* Attorney General Opinion 85-62 (August 1, 1985).

[15] Chapter 2010-76, L.O.F.; codified as s. 497.172(1)(b), F.S. The 2010 public necessity statement provides in pertinent part that the "release of such recordings would compromise those discussions of the board which took place during a closed meeting and would negate the public meeting exemption. Further, current law already provides a public record exemption for licensure examination questions and answers. As such, release of the recording generated during those closed portions of meetings would compromise the current protections already afforded such questions and answers. Thus, the effective and efficient administration of the licensure examination process would be compromised without this exemption."

[16] Section 497.172(1)(c), F.S.

[17] The board's response is on file with the Government Operations Subcommittee.

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:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 497.172, F.S., relating to an exemption from public meeting requirements for portions of meetings of the Board of Funeral, Cemetery, and Consumer Services within the Department of Financial Services at which licensure examination questions or answers are discussed and relating to an exemption from public records requirements for the recording of the closed portion of a meeting of the board; removing the scheduled repeal of the exemptions; providing an effective date.

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

Section 1. Subsection (1) of section 497.172, Florida Statutes, is amended to read:

497.172 Public records exemptions; public meetings exemptions.—

(1) EXAMINATION DEVELOPMENT MEETINGS.—

(a) Those portions of meetings of the board at which licensure examination questions or answers under this chapter are discussed are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. The closed meeting must be recorded, and no portion of the closed meeting may be off the record. The recording shall be maintained by the board.

(b) The recording of a closed portion of a meeting is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

~~(c) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2015, unless reviewed and saved from repeal through reenactment by the Legislature.~~

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7053 PCB GVOPS 15-05 OGSR/Office of Financial Regulation Examination Techniques and Procedures
SPONSOR(S): Government Operations Subcommittee, Santiago
TIED BILLS: **IDEN./SIM. BILLS:** SB 7010

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	12 Y, 0 N	Williamson	Williamson
1) State Affairs Committee		Williamson	Camechis

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Florida Securities and Investor Protection Act (act) governs the regulation of securities transactions in Florida. The Office of Financial Regulation (office) is designated as the regulator to enforce the act. The office may make investigations and examinations within or outside of Florida, as it deems necessary, to determine whether a person has violated or is about to violate any provision of the act or a rule or order under the act, or to aid in the enforcement of the act.

Current law provides a public record exemption for information that would reveal examination techniques or procedures used by the office pursuant to the act. The office may provide the confidential and exempt information to another governmental entity having oversight or regulatory or law enforcement authority.

The bill reenacts the public record exemption, which will repeal on October 2, 2015, if this bill does not become law.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act[1] (Act) sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

If, and only if, in reenacting an exemption that will repeal and the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.[2] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created[3] then a public necessity statement and a two-thirds vote for passage are not required.

Florida Securities and Investor Protection Act[4]

The Florida Securities and Investor Protection Act (act) governs the regulation of securities transactions in Florida. The Office of Financial Regulation (office) is designated as the regulator to enforce the act.

The office receives and acts upon applications to have securities registered. Applications must be duly signed by the applicant, sworn to by any person having knowledge of the facts, and filed with the office.[5] An application may be made by the issuer[6] of the securities or by any registered dealer desiring to sell the securities within Florida.[7] The office may require the applicant to submit certain information concerning the issuer in order to enable the office to ascertain whether the securities must be registered.[8]

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[1] Section 119.15, F.S.
[2] Section 24(c), Art. I of the State Constitution.
[3] An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.
[4] Codified as chapter 517, F.S.
[5] Section 517.081(2), F.S.
[6] Section 517.021(14), F.S., defines the term "issuer" to mean any person who proposes to issue, has issued, or must issue any security. Any person who acts as a promoter for and on behalf of a corporation, trust, or unincorporated association or partnership of any kind to be formed must be deemed an issuer.
[7] *Id.*
[8] *See* s. 517.081(3), F.S.

The office may make investigations and examinations within or outside of Florida, as it deems necessary:

- To determine whether a person has violated or is about to violate any provision of the act or a rule or order under the act; or
- To aid in the enforcement of the act.[9]

Public Record Exemption under Review

In 2010, the Legislature created a public record exemption, with retroactive application,[10] for information that would reveal examination techniques or procedures used by the office pursuant to the act.[11] The office may provide the confidential and exempt[12] information to another governmental entity having oversight or regulatory or law enforcement authority.[13]

The term "examination techniques and procedures" is defined to mean the methods, processes, and guidelines used to evaluate regulatory compliance and to collect and analyze data, records, and testimony for the purpose of documenting violations of the act and the rules promulgated thereunder.[14]

Section 2 of chapter 2010-65, L.O.F., which is the public necessity statement for the exemption, provides that:

> (2) Examinations are an essential component of securities regulation. The mere existence of an examination program fosters regulatory compliance and deters fraud and abuse by industry participants. Examinations often detect violations in their early states. This early detection allows corrective action to be taken before significant harm can be done to investors. Due to the importance of such examinations, state regulators devote extensive resources to devising effective examination techniques and procedures.

The public necessity statement further provides that allowing access to information revealing examination techniques and procedures "would undermine the examination process and facilitate evasion of the law."[15] In addition, the effective and efficient administration of the examination program would be significantly impaired without the public record exemption, as would the office's ability to uncover misconduct and evaluate policies and procedures through the examination process.[16] Finally, the public necessity statement provides that without the public record exemption, the office's ability to participate in joint examinations with other securities regulators would be impaired since the office would be unable to accept or use confidential examination techniques and procedures developed by other regulators.[17]

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[9] Section 517.201(1)(a), F.S.

[10] In 2001, the Florida Supreme Court ruled that a public record exemption does not apply retroactively unless the legislation clearly expresses such intent. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d 373 (Fla. 2001).

[11] Chapter 2010-65, L.O.F.; codified as s. 517.2016(2), F.S.

[12] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* Attorney General Opinion 85-62 (August 1, 1985).

[13] Section 517.2016(3), F.S.

[14] Section 517.2016(1), F.S.

[15] Subsection (3), s. 2, chapter 2010-65, L.O.F.

[16] Subsections (1) and (3), s. 2, chapter 2010-65, L.O.F.

[17] Subsection (4), s. 2, chapter 2010-65, L.O.F.

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2015, unless reenacted by the Legislature.[18]

During the 2014 interim, subcommittee staff reviewed information provided by the office as part of the Open Government Sunset Review process.[19] The office indicated that:

> Maintaining the confidentiality of examination techniques and procedures is essential for protecting the integrity of the examination programs that states use to regulate the securities industry. If these important investigative tools are made available to the public through open records requests or other means, some members of the securities industry will undoubtedly use them to thwart effective examinations, cover up illegal conduct, and circumvent the law.[20]

Effect of the Bill

The bill removes the repeal date, thereby reenacting the public record exemption for information that would reveal examination techniques or procedures used by the Office of Financial Regulation under the Florida Securities and Investor Protection Act. It also makes editorial changes.

B. SECTION DIRECTORY:

Section 1 amends s. 517.2016, F.S., to save from repeal the public record exemption for information that would reveal examination techniques or procedures used by the Office of Financial Regulation.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   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.

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[18] Section 517.2016(4), F.S.
[19] Information is on file with the Government Operations Subcommittee.
[20] Email from staff for OFR sent on August 29, 2014 (on file with the Government Operations Subcommittee).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 517.2016, F.S., relating to an exemption from public records requirements for information that would reveal examination techniques and procedures used by the Office of Financial Regulation of the Financial Services Commission under the Florida Securities and Investor Protection Act; making editorial changes; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 517.2016, Florida Statutes, is amended to read:

517.2016 Public records exemption; examination techniques and procedures.—

(1) For purposes of this section, the term "examination techniques or ~~and~~ procedures" means ~~are~~ the methods, processes, and guidelines used to evaluate regulatory compliance and to collect and analyze data, records, and testimony for the purpose of documenting violations of this chapter and the rules adopted ~~promulgated~~ thereunder.

(2) Information that would reveal examination techniques or procedures used by the office pursuant to this chapter is

confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to such information held by the office before, on, or after the effective date of this exemption.

(3) Confidential and exempt information that would reveal examination techniques or procedures may be provided by the office to another governmental entity having oversight or regulatory or law enforcement authority.

~~(4) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2015, unless reviewed and saved from repeal through reenactment by the Legislature.~~

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