Business & Professions Subcommittee

Wednesday, January 15, 2020
1:00 PM – 3:00 PM
Webster Hall (212 Knott)

Meeting Packet

Jose Oliva
Speaker

Heather Fitzenhagen
Chair

The Florida House of Representatives

Commerce Committee

Business & Professions Subcommittee

Jose Oliva
Speaker

Heather Fitzenhagen
Chair

AGENDA

Wednesday, January 15, 2020
Webster Hall (212 Knott)
1:00 PM – 3:00 PM

I. Call to Order & Roll Call

II. Welcoming Remarks

III. Consideration of the following bills(s):
HB 3 by *Grant, M.*
Preemption of Local Occupational Licensing

HB 343 by *Rep. Fetterhoff*
Recreational Vehicles

HB 401 by *Rep. Jacobs*
Shark Fins

HB 459 by *Rep. Overdorf*
Building Design

HB 469 by *Rep. Duggan*
Real Estate Conveyances

HB 511 by *Rep. Fine*
Insulation Products

HB 689 by *Rep. Rodriguez, A.*
Department of Business and Professional Regulation

IV. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4873 Fax: (850) 413-0419

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

(AMENDED 1/13/2020 5:02:55PM)

Amended(1)

Business & Professions Subcommittee

Start Date and Time:	Wednesday, January 15, 2020 01:00 pm
End Date and Time:	Wednesday, January 15, 2020 03:00 pm
Location:	Webster Hall (212 Knott)
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 3 Preemption of Local Occupational Licensing by Grant, M.
HB 343 Recreational Vehicles by Fetterhoff
HB 401 Shark Fins by Jacobs
HB 459 Building Design by Overdorf
HB 469 Real Estate Conveyances by Duggan
HB 511 Insulation Products by Fine
HB 689 Department of Business and Professional Regulation by Rodriguez, A.

Pursuant to rule 7.11, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Tuesday, January 14, 2020.

By request of Chair Fitzenhagen, all Business & Professions Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Tuesday, January 14, 2020.

NOTICE FINALIZED on 01/13/2020 5:02PM by Rigas.Amanda

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 3 Preemption of Local Occupational Licensing
SPONSOR(S): Grant, M.
TIED BILLS: **IDEN./SIM. BILLS:** SB 1336

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Wright	Anstead
2) State Affairs Committee			
3) Commerce Committee			

SUMMARY ANALYSIS

The Florida Constitution grants local governments broad home rule authority. Non-charter county governments may exercise those powers of self-government that are provided by general or special law. Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by vote of the electors. Likewise, municipalities have governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform functions, provide services, and exercise any power for municipal purposes, except as otherwise provided by law.

General law directs a number of state agencies and licensing boards to regulate many professions and occupations. General law can also authorize or preempt local regulation of professions and occupations, which is typically done specifically and individually by subject matter, business type, or occupation.

The bill expressly preempts the licensing of occupations to the state and supersedes any local government licensing of occupations. However, any licensing of occupations adopted prior to July 1, 2020, will continue to be effective until July 1, 2022, at which time it will expire. Any licensing of occupations authorized by general law is exempt from the preemption.

The bill specifically prohibits local governments from requiring a license for a person whose job scope does not substantially correspond to that of a contractor or journeyman type licensed by the Construction Industry Licensing Board, within the Department of Business and Professional Regulation, and specifically precludes local governments from requiring a license for: painting, flooring, cabinetry, interior remodeling, driveway or tennis court installation, decorative stone, tile, marble, granite, or terrazzo installation, plastering, stuccoing, caulking, canvas awning installation, and ornamental iron installation.

The bill also expressly authorizes counties and municipalities to issue journeyman licenses in the plumping, pipe fitting, mechanical and HVAC trades, as well as, the electrical and alarm system trades, which is the current practice by counties and municipalities. Local journeyman licensing is exempt from the preemption in the bill.

The bill does not appear to have a fiscal impact on the state, but may have an indeterminate fiscal impact on local governments.

The bill has an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Local Government Authority

The Florida Constitution grants local governments broad home rule authority. Non-charter county governments may exercise those powers of self-government that are provided by general or special law.[1] Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by vote of the electors.[2]

Likewise, municipalities[3] have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform functions, provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[4]

A "special district" is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary. Special districts are created by general law,[5] special act,[6] local ordinance,[7] or by rule of the Governor and Cabinet.[8] A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district's charter. Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.[9]

A "dependent special district" is a special district where the membership of the governing body is identical to the governing body of a single county or municipality, all members of the governing body are appointed by the governing body of a single county or municipality, members of the district's governing body are removable at will by the governing body of a single county or municipality, or the district's budget is subject to the approval of the governing body of a single county or municipality.[10] An "independent special district" is any district that is not a dependent special district.[11]

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[1] Art. VIII, s. 1(f), Fla. Const.
[2] Art. VIII, s. 1(g), Fla. Const.
[3] A municipality is a local government entity created to perform functions and provide services for the particular benefit of the population within the municipality, in addition to those provided by the county. The term "municipality" may be used interchangeably with the terms "town," "city," and "village."
[4] Art. VIII, s. 2(b), Fla. Const. *See also* s. 166.021(1), F.S.
[5] Section 189.031(3), F.S.
[6] *Id.*
[7] S. 189.02(1), F.S.
[8] S. 190.005(1), F.S. *See*, generally, s. 189.012(6), F.S.
[9] *2018 – 2020 Local Gov't Formation Manual*, p. 62, https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3025&Session=2019&DocumentType=General%20Publications&FileName=2018-2020%20Local%20Government%20Formation%20Manual%20Final.pdf (last visited Dec 19, 2019).
[10] S. 189.012(2), F.S.
[11] S. 189.012(3), F.S.

Revenue Sources Authorized in the Florida Constitution[12]

The Florida Constitution limits the ability of local governments to raise revenue for their operations. The Florida Constitution provides:

> No tax shall be levied except in pursuance of law. No state ad valorem taxes[13] shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to the state except as provided by general law.[14]
>
> Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by this constitution.[15]

However, not all local government revenue sources are taxes requiring general law authorization. When a county or municipal revenue source is imposed by ordinance, the question is whether the charge is a valid assessment or fee. As long as the charge is not deemed a tax, the imposition of the assessment or fee by ordinance is within the constitutional and statutory home rule powers of county and municipal governments. If the charge is not a valid assessment or fee, it is deemed a revenue source requiring general law authorization.

Revenue Sources Based on Home Rule Authority

Pursuant to home rule authority, local governments may impose proprietary fees, regulatory fees, and special assessments to pay the cost of providing a facility or service or regulating an activity. A regulatory fee should not exceed the regulated activity's cost and is generally required to be applied solely to the regulated activity's cost for which the fee is imposed.[16]

Preemption

State preemption precludes a local government from exercising authority in a particular area, and requires consistency with the state constitution or state statute.[17] A local government enactment may be found inconsistent with state law if (1) the Legislature has preempted a particular subject area to the state or (2) the local regulation conflicts with a state statute.[18]

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.[19] Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.[20] When local ordinances have been enacted in the face of state preemption, the effect has been to find such ordinances null and void.[21]

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[12] The Florida Legislature, Office of Economic and Demographic Research, 2019 Local Government Financial Information Handbook, p. 1, http://edr.state.fl.us/Content/local-government/reports/lgfih19.pdf (Jan. 8, 2020).
[13] "Ad valorem tax" means a tax based upon the assessed value of property." Section 192.001(1), F.S.
[14] Art. VII, s. 1(a), Fla. Const.
[15] Art. VII, s. 9(a), Fla. Const.
[16] EDR, *supra* note 12, at 9.
[17] James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemption and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009), available at https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/ (last visited Jan 8, 2020).
[18] *Id.*
[19] *See City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309 (Fla. 2008).
[20] *Mulligan*, 934 So. 2d at 1243.
[21] *See, e.g., Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami,* 812 So.2d 504 (Fla. 3d DCA 2002).

Implied preemption is a legal doctrine created to address those situations in which the courts may have been concerned by the legislature's failure to expressly preempt areas which, for all intents and purposes, seemed dominated by the state. Findings of implied preemption are for a very narrow class of areas in which the state has legislated pervasively.[22]

Professions and Occupations

General law directs a number of state agencies and licensing boards to regulate certain professions and occupations. For example, the Department of Business and Professional Regulation (DBPR) currently regulates approximately 25 professions and occupations.[23]

General law determines whether local governments are able to regulate occupations and businesses, and to what degree.[24] If state law preempts regulation for an occupation, then, generally, local governments may not regulate that occupation.[25] For example, Florida law currently preempts local regulation with regard to the following:

- assessing local fees associated with providing proof of licensure as a contractor, , or providing, recording, or filing evidence of worker's compensation insurance coverage by a contractor;[26]
- assessing local fees and rules regarding low-voltage alarm system projects;[27]
- tobacco and nicotine products;[28]
- firearms, weapons, and ammunition;[29]
- employment benefits;[30]
- polystyrene products;[31]
- public lodging establishments and public food service establishments;[32] and
- disposable plastic bags.[33]

Conversely, Florida law also specifically grants local jurisdictions the right to regulate businesses, occupations and professions in certain circumstances.[34] For example, Florida law specifically authorizes regulations relating to:

- zoning and land use;
- the levy of "reasonable business, professional, and occupational regulatory fees, commensurate with the cost of the regulatory activity, including consumer protection, on such classes of businesses, professions, and occupations, the regulation of which has not been preempted by the state or a county pursuant to a county charter";[35]
- the levy of local business taxes;[36]
- building code inspection fees;[37]
- tattoo establishments;[38]
- massage practices;[39]

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[22] Wolf and Bolinder, *supra* note 17.
[23] S. 20.165, F.S.
[24] Art. VIII, s. 1(f), Fla. Const.; Art. VII, s. 9(a), Fla. Const.; Art. VIII, s. 2(b), Fla. Const.; s. 166.021(1), F.S.
[25] *Id.*; Wolf and Bolinger, *supra* note 17.
[26] S. 553.80(7)(d), F.S.
[27] S. 489.503(14), F.S.
[28] Ch. 569, F.S., and s. 386.209, F.S.
[29] S. 790.33(1), F.S.
[30] S. 218.077, F.S.
[31] S. 500.90, F.S.
[32] S. 509.032, F.S.
[33] S. 403.7033, F.S.
[34] *Supra* note 25.
[35] S. 166.221, F.S.
[36] Ch. 205, F.S.
[37] S. 166.222, F.S.
[38] S. 381.00791, F.S.
[39] S. 480.052, F.S.

- child care facilities;[40]
- taxis and other vehicles for hire;[41] and
- waste and sewage collection.[42]

Construction Professional Licenses

Chapter 489, F.S., relates to "contracting," with part I addressing the licensure and regulation of construction contracting, and part II addressing the licensure and regulation of electrical and alarm system contracting.

Construction contractors are either certified or registered by the Construction Industry Licensing Board (CILB) housed within DBPR. The CILB consists of 18 members who are appointed by the Governor and confirmed by the Senate. The CILB meets to approve or deny applications for licensure, review disciplinary cases, and conduct informal hearings relating to discipline.[43]

"Certified contractors" are individuals who pass the state competency examination and obtain a certificate of competency issued by DBPR. Certified contractors are able to obtain a certificate of competency for a specific license category and are permitted to practice in that category in any jurisdiction in the state.[44]

"Certified specialty contractors" are contractors whose scope of work is limited to a particular phase of construction, such as drywall or demolition. Certified specialty contractor licenses are created by the CILB through rulemaking. Certified specialty contractors are permitted to practice in any jurisdiction in the state.

"Registered contractors" are individuals that have taken and passed a local competency examination and can practice the specific category of contracting for which he or she is approved, only in the local jurisdiction for which the license is issued.[45]

[40] S. 402.306, F.S
[41] S. 125.01(1)(n), F.S.
[42] S. 125.01(1)(k), F.S.
[43] S. 489.107, F.S.
[44] S. 489.105, F.S.
[45] S. 489.103, F.S.

The CILB licenses the following types of contractors:[46]

• Air Conditioning- Classes A, B, and C • Building • General • Internal Pollutant Storage Tank Lining Applicator • Mechanical • Plumbing • Pollutant Storage Systems • Pool/Spa- Classes A, B, and C • Precision Tank Tester • Residential • Roofing • Sheet Metal • Solar • Underground Excavation	• Drywall • Demolition • Gas Line • Glass and Glazing • Industrial Facilities • Irrigation • Marine • Residential Pool/Spa Servicing • Solar Water Heating • Structure • Swimming Pool Decking • Swimming Pool Excavation • Swimming Pool Finishes • Swimming Pool Layout • Swimming Pool Piping • Swimming Pool Structural • Swimming Pool Trim • Tower

Current law provides that local jurisdictions may approve or deny applications for licensure as a registered contractor, review disciplinary cases, and conduct informal hearings relating to discipline of registered contractors licensed in their jurisdiction.[47] Local jurisdictions are not barred from issuing and requiring construction licenses that are outside the scope of practice for a certified contractor or certified specialty contractor, such as painting and fence erection licenses. Local governments may only collect licensing fees that cover the cost of regulation.[48]

Locally registered contractors that are required to hold a contracting license to practice their profession in accordance with state law must register with DBPR after obtaining a local license. However, persons holding a local construction license whose job scope does not substantially correspond to the job scope of a certified contractor or a certified specialty contractor are not required to register with DBPR.[49]

Electrical contractors, alarm system contractors, and electrical specialty contractors are certified or registered under the ECLB. Certified contractors can practice statewide and are licensed and regulated by ECLB. Registered contractors are licensed and regulated by a local jurisdiction and may only practice within that locality.[50]

Electrical contractors are contractors who have the ability to work on electrical wiring, fixtures, appliances, apparatus, raceways, and conduits which generate, transmit, transform, or utilize electrical energy in any form. The scope of an electrical contractor's license includes alarm system work.[51]

Alarm system contractors are contractors who are able to lay out, fabricate, install, maintain, alter, repair, monitor, inspect, replace, or service alarm systems. An "alarm system" is defined as "any

[46] S. 489.105(a)-(q), F.S.; Rr. 61G4-15.015-040, F.A.C.
[47] Ss. 489.117, 489.131 F.S.
[48] EDR, *supra* note 12, at 9.
[49] Ss. 489.105, & 489.117(4), F.S.
[50] *See generally* s. 489.505, F.S.
[51] Ss. 489.505(12), & 489.537(7), F.S.

electrical device, signaling device, or combination of electrical devices used to signal or detect a burglary, fire, robbery, or medical emergency."[52]

Electrical certified specialty contractors are contractors whose scope of work is limited to a particular phase of electrical contracting, such as electrical signs. The ECLB creates electrical certified specialty contractor licenses through rulemaking. Certified electrical specialty contractors can practice statewide. The ECLB has created the following certified specialty contractor licenses:

- Lighting maintenance specialty contractor;
- Sign specialty electrical contractor;
- Residential electrical contractor;
- Limited energy systems specialty contractor; and
- Utility line electrical contractor.[53]

Journeyman

A journeyman is a skilled worker in a building trade or craft. There is no state requirement for licensure as a journeyman, but the construction and electrical contractor practice acts account for the fact that counties and municipalities issue journeyman licenses. A person with a journeyman license must always work under the supervision of a licensed contractor, but the state does not regulate journeymen activities or issue journeymen licenses.[54]

However, ch. 489, F.S., allows tradesman to be licensed as a journeyman in one local jurisdiction and work in multiple jurisdictions without having to take another examination or pay an additional licensing fee to qualify to work in the other jurisdictions (county or municipality). Specifically, s. 489.1455(1) of part I, F.S., specifies:

- An individual who holds a valid, active journeyman license in the plumbing/pipe fitting, mechanical, or HVAC trades issued by any county or municipality in this state may work as a journeyman in the trade in which he or she is licensed in any county or municipality of this state without taking an additional examination or paying an additional license fee.

The statutory criteria for licensure reciprocity between local jurisdictions for journeymen include:[55]

- scoring at least 75 percent on an approved proctored examination for that construction trade;
- completing a registered apprenticeship program and demonstrating verifiable practical experience in the particular trade;
- completing coursework approved by the Florida Building Commission specific to the discipline; and
- not having a license suspended or revoked within the last 5 years.

Effect of the Bill

The bill defines the following terms:

- "Local government" means a county, municipality, special district, or political subdivision of the state.
- "Occupation" means a paid job, profession, work, line of work, trade, employment, position, post, career, field, vocation, or craft.
- "Licensing" means any training, education, test, certification, registration, procedure, or license that is required for a person to perform an occupation along with any associated fee.

The bill expressly preempts occupational licensing to the state. This preemption supersedes any local government licensing requirement of occupations unless:

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[52] S. 489.505(1)-(2), F.S.
[53] S. 489.505(19), & 489.511(4), F.S; Rule 61G6-7.001, F.A.C.
[54] Ss. 489.103, 489.1455, 489.503, & 489.5335, F.S.
[55] S. 489.1455, F.S. A similar reciprocity option applies to journeyman in the electrical trades. S. 489.5335, F.S.

- the licensing of occupations by local governments is authorized by general law; or
- the local licensing scheme for an occupation was imposed before July 1, 2020. However, any such local licensing scheme expires on July 1, 2022.

The bill prohibits local governments that license an occupation that qualifies for the exemption until July 1, 2022, from imposing additional licensing requirements on that occupation and from modifying such licensing.

The bill provides that any local licensing of an occupation not authorized under the provisions of the bill or otherwise authorized by general law does not apply and may not be enforced.

The bill provides that the preemption applies to licensing that is outside the scope of state contractor licensing provisions. Specifically, it provides that a county or municipality may not require a license for a person whose job scope does not substantially correspond to a contractor category licensed by the CILB. The bill specifically precludes counties and municipalities from requiring a license for certain job scopes, including, but not limited to, painting, flooring, cabinetry, interior remodeling, driveway or tennis court installation, decorative stone, tile, marble, granite, or terrazzo installation, plastering, stuccoing, caulking, canvas awning installation, and ornamental iron installation.

The bill also expressly authorizes counties and municipalities to issue journeyman licenses in the plumping, pipe fitting, mechanical and HVAC trades, as well as, the electrical and alarm system trades, which is the current practice by counties and municipalities. Therefore, local journeyman licensing is exempt from the preemption in the bill.

B. SECTION DIRECTORY:

Section 1 creates s. 163.21, F.S., relating to licensing of occupations preempted to the state.

Section 2 amends s. 489.117, F.S., relating to registration; specialty contractors.

Section 3 amends s. 489.1455, F.S., relating to journeyman; reciprocity; standards.

Section 4 amends s. 489.5335, F.S., relating to journeyman; reciprocity; standards.

Section 5 provides an effective date of July 1, 2020.

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:

The bill will have an indeterminate positive impact on the private sector. Workers may have to pay less in licensing and examination fees in some local jurisdictions. There may be an increase in the number of people in the workforce practicing their chosen professions.

D. FISCAL COMMENTS:

The fiscal impact of the bill on local governments is indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to preemption of local occupational licensing; creating s. 163.21, F.S.; providing definitions; preempting licensing of occupations to the state; providing exceptions; prohibiting local governments from imposing additional licensing requirements or modifying licensing unless specified conditions are met; specifying that certain local licensing that does not meet specified criteria does not apply and may not be enforced; amending s. 489.117, F.S.; specifying that certain specialty contractors are not required to register with the Construction Industry Licensing Board; prohibiting local governments from requiring certain specialty contractors to obtain a license under specified circumstances; specifying job scopes for which a local government may not require a license; amending ss. 489.1455 and 489.5335, F.S.; authorizing counties and municipalities to issue certain journeyman licenses; providing an effective date.

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

Section 1. Section 163.21, Florida Statutes, is created to read:

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

163.21 Licensing of occupations preempted to state.—

(1) DEFINITIONS.-As used in this section:

(a) "Licensing" means any training, education, test, certification, registration, procedure, or license that is required for a person to perform an occupation in addition to any associated fee.

(b) "Local government" means a county, municipality, special district, or political subdivision of the state.

(c) "Occupation" means a paid job, profession, work, line of work, trade, employment, position, post, career, field, vocation, or craft.

(2) PREEMPTION OF OCCUPATIONAL LICENSING TO THE STATE.-The licensing of occupations is expressly preempted to the state and this section supersedes any local government licensing requirement of occupations with the exception of the following:

(a) Any local government that imposed licenses on occupations before July 1, 2020. However, any such local government licensing of occupations expires on July 1, 2022.

(b) Any local government licensing of occupations authorized by general law.

(3) EXISTING LICENSING LIMIT.-A local government that licenses occupations and retains such licensing as set forth in paragraph (2)(a) may not impose additional licensing requirements on that occupation or modify such licensing.

(4) LOCAL LICENSING NOT AUTHORIZED.—Local licensing of an

occupation that is not authorized under this section or otherwise authorized by general law does not apply and may not be enforced.

Section 2. Paragraph (a) of subsection (4) of section 489.117, Florida Statutes, is amended to read:

489.117 Registration; specialty contractors.—

(4)(a) A person ~~holding a local license~~ whose job scope does not substantially correspond to either the job scope of one of the contractor categories defined in s. 489.105(3)(a)-(o), or the job scope of one of the certified specialty contractor categories established by board rule, is not required to register with the board ~~to perform contracting activities within the scope of such specialty license~~. A local government, as defined in s. 163.21(1), may not require a person to obtain a license for a job scope which does not substantially correspond to the job scope of one of the contractor categories defined in s. 489.105(3)(a)-(o) and (q) or authorized in s. 489.1455(1). For purposes of this section, job scopes for which a local government may not require a license include, but are not limited to, painting, flooring, cabinetry, interior remodeling, driveway or tennis court installation, decorative stone, tile, marble, granite, or terrazzo installation, plastering, stuccoing, caulking, canvas awning, and ornamental iron installation.

Section 3. Section 489.1455, Florida Statutes, is amended

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

to read:

489.1455 Journeyman; reciprocity; standards.—

(1) Counties and municipalities are authorized to issue journeyman licenses in the plumbing, pipe fitting, mechanical, or HVAC trades.

(2) ~~(1)~~ An individual who holds a valid, active journeyman license in the plumbing, pipe fitting ~~plumbing/pipe fitting~~, mechanical, or HVAC trades issued by any county or municipality in this state may work as a journeyman in the trade in which he or she is licensed in any county or municipality of this state without taking an additional examination or paying an additional license fee, if he or she:

(a) Has scored at least 70 percent, or after October 1, 1997, at least 75 percent, on a proctored journeyman Block and Associates examination or other proctored examination approved by the board for the trade in which he or she is licensed;

(b) Has completed an apprenticeship program registered with a registration agency defined in 29 C.F.R. s. 29.2 and demonstrates 4 years' verifiable practical experience in the trade for which he or she is licensed, or demonstrates 6 years' verifiable practical experience in the trade for which he or she is licensed;

(c) Has satisfactorily completed specialized and advanced module coursework approved by the Florida Building Commission, as part of the building code training program established in s.

553.841, specific to the discipline or, pursuant to authorization by the certifying authority, provides proof of completion of such coursework within 6 months after such certification; and

(d) Has not had a license suspended or revoked within the last 5 years.

(3) ~~(2)~~ A local government may charge a registration fee for reciprocity, not to exceed $25.

Section 4. Section 489.5335, Florida Statutes, is amended to read:

489.5335 Journeyman; reciprocity; standards.—

(1) Counties and municipalities are authorized to issue journeyman licenses in the electrical and alarm system trades.

(2) ~~(1)~~ An individual who holds a valid, active journeyman license in the electrical or alarm system trade issued by any county or municipality in this state may work as a journeyman in the trade in which he or she is licensed in any other county or municipality of this state without taking an additional examination or paying an additional license fee, if he or she:

(a) Has scored at least 70 percent, or after October 1, 1997, at least 75 percent, on a proctored journeyman Block and Associates examination or other proctored examination approved by the board for the ~~electrical~~ trade in which he or she is licensed;

(b) Has completed an apprenticeship program registered

with a registration agency defined in 29 C.F.R. s. 29.2 and demonstrates 4 years' verifiable practical experience in the ~~electrical~~ trade for which he or she is licensed, or demonstrates 6 years' verifiable practical experience in the ~~electrical~~ trade for which he or she is licensed;

(c) Has satisfactorily completed specialized and advanced module coursework approved by the Florida Building Commission, as part of the building code training program established in s. 553.841, specific to the discipline~~,~~ or, pursuant to authorization by the certifying authority, provides proof of completion of such curriculum or coursework within 6 months after such certification; and

(d) Has not had a license suspended or revoked within the last 5 years.

(3) ~~(2)~~ A local government may charge a registration fee for reciprocity, not to exceed $25.

Section 5. This act shall take effect July 1, 2020.

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

BUSINESS & PROFESSIONS SUBCOMMITTEE

HB 3 by Rep. Grant, M.
Preemption of Local Occupational Licensing

AMENDMENT SUMMARY
January 15, 2020

Amendment 1 by Rep. Grant, M. (Line 29):

The amendment clarifies the definition for "licensing."

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 3 (2020)

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: Business & Professions Subcommittee

Representative Grant, M. offered the following:

Amendment

Remove line 29 and insert:

certification, registration, or license that is

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 343 Recreational Vehicles
SPONSOR(S): Fetterhoff
TIED BILLS: **IDEN./SIM. BILLS:** SB 422

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Thompson	Anstead
2) State Affairs Committee			
3) Commerce Committee			

SUMMARY ANALYSIS

The Department of Agriculture and Consumer Services (DACS) Bureau of Compliance is the primary agency charged with the regulation of the liquefied petroleum (LP) gas industry, and ensuring that persons engaged in the LP gas industry are trained and compliant with acceptable safety codes and standards statewide.

Prior to 2018, in order to refill, repair, or replace propane gas and equipment on recreational vehicles (RVs) in Florida, a category IV LP gas dispenser and recreational vehicle servicers license (RV dealers/installers) was required.

Effective July 2018, the category IV LP gas dispenser and recreational vehicle servicer license, which included RV dealers/installers, was consolidated under the requirements of other similar LP gas license types (category I dealer, category II dispenser, and category V installer). Thus, in order to continue to operate, LP gas RV dealers/installers were required to obtain a license in one or more of the other categories, depending on their business.

The bill:

- Creates a separate LP gas-related license category for RV dealers/installers ("category VII liquefied petroleum gas dispenser and recreational vehicle servicer");
- Makes it unlawful to practice in this category without a license; and
- Requires applicants for licensure to:
  - Submit an examination fee; and
  - Pass a competency examination with a grade of 70 percent or above in each area tested.

The bill also allows DACS to contract with a trade association representing LP gas-related businesses for the training and examinations for category I, II, V, and VII applicants.

The bill is not expected to have a significant fiscal impact on state government.

The effective date of the bill is July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Liquefied Petroleum Gas

The Department of Agriculture and Consumer Services (DACS) Bureau of Compliance is the primary agency charged with regulating the liquefied petroleum (LP) gas industry, including licensing, inspection, training, and examination requirements, in accordance with ch. 527, F.S. These responsibilities enable DACS to ensure that those persons engaged in LP gas-related business activities in this state are trained and that compliance with acceptable safety codes and standards is achieved statewide.[1]

LP gas is defined in statute as any material composed predominantly of any of the following hydrocarbons, or mixtures of the same:

- Propane;
- Propylene;
- Butanes (normal butane or isobutane); and
- Butylenes.[2]

Propane, the most widely used LP gas, is an energy source for hotels, restaurants, schools, hospitals, nursing homes, universities, private homes, recreational vehicles, agricultural and industrial facilities, and is used as an alternative fuel for vehicles.[3]

Business Licenses

Current law provides licensing requirements for businesses that engage in certain LP gas-related activities, including sales, installations, service and repair work, manufacture of equipment, and other miscellaneous activities. DACS is required to license applicants that it determines to be competent, qualified, and trustworthy. Violations for willfully operating without a license is a third degree felony.

The license categories and associated fees are as follows:

License Categories	***License Fee Per Year***
Category I LP gas dealer	$400
Category II LP gas dispenser	$400
Category III LP gas cylinder exchange unit operator	$65

[1] Florida Department of Agriculture and Consumer Services, *Safe Dispensing of Propane, Propane Dispensing Unit Operator Training Manual*, https://www.fdacs.gov/content/download/78592/file/Safe-Dispensing-of-Propane-Manual.pdf (last visited Nov. 23, 2019).
[2] S. 527.01(1), F.S.
[3] Florida Department of Agriculture and Consumer Services, *supra* note 1, at 4.

License Categories	*License Fee Per Year*
Category IV dealer in appliances and equipment	$65
Category V LP gas installer	$200
Category VI miscellaneous operator	$200[4]

Licensees may elect to renew their license annually, biennially, or triennially, and are required to meet the same requirements and conditions, including fee amounts, for each licensed year. An expired license will become inoperative, and the fee for restoration of an expired license is equal to the original license fee, and must be paid before the licensee is allowed to resume operations.[5]

Training and Examinations

DACS is responsible for enforcing reasonable standards of competency, including, but not limited to, the training, licensure, testing, and qualifying of persons participating in the LP gas industry.[6] DACS is also authorized to adopt rules that are:[7]

- In the interest of public health, safety, and welfare and to promote the safe handling of LP gas, equipment, and systems; and
- Reasonably necessary to assure the competence of persons to safely engage in the business of LP gas.

According to the DACs website, training is required for all employees of an LP gas-related business, and refresher training must be conducted at three-year intervals.[8]

In addition, any person applying for a license to engage in category I dealer, category II dispenser, or category V installer activities must prove competency by passing a written examination administered by DACS or its agent.[9]

Qualifiers

Each category I dealer, category II dispenser, or category V installer licensee is required to employ a full-time employee who has received a qualifier certificate from DACS. Qualifiers are required to function in a supervisory capacity, and a separate qualifier must be present for every 10 employees.

An applicant for a qualifier certificate must:

- Be employed by a category I dealer, category II dispenser, or category V installer licensee;
- Submit to DACS a nonrefundable $20 examination fee; and
- Pass a competency examination with a grade of 70 percent or above in each area tested.

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[4] S. 527.02, F.S.
[5] S. 527.03, F.S.
[6] S. 527.055(1)(b), F.S.
[7] S. 527.06
[8] Florida Department of Agriculture and Consumer Services, *LP Gas Training*, https://www.fdacs.gov/Business-Services/LP-Gas-Inspection/LP-Gas-Training (last visited Nov. 23, 2019).
[9] S. 527.0201(1), F.S.

Qualifier registration expires three years after the date of issuance. Qualifiers must renew their qualification 30 calendar days before expiration, upon:

- Application to DACS;
- Payment of a $20 renewal fee; and
- Documentation of the completion of a minimum of 16 hours of approved continuing education courses, as defined by DACS rule, during the previous three-year period.

Persons failing to renew before the expiration date must reapply and take a qualifier competency examination in order to reestablish qualifier status.[10]

Master Qualifiers

In addition to the qualifier requirements, each category I dealer and category V installer licensee is required to have a manager, owner, or employee at each licensed location who has received a master qualifier certificate from DACS. The master qualifier must be a manager, owner or someone otherwise primarily responsible for overseeing the operations of the licensed location and must provide documentation to DACS.

An applicant for a master qualifier certificate must:

- Be employed by a category I dealer or category V installer licensee;
- Submit to DACS a nonrefundable $30 examination fee.
- Have been a registered qualifier for at least three years immediately preceding the application; and
- Pass a master qualifier competency examination with a grade of 70 percent or above in each area tested.[11]

Master qualifier registration expires three years after the date of issuance. Master qualifier registration renewals may be renewed by submitting to DACS:

- Proof of employment;
- Payment of a $30 certificate renewal fee;
- Documentation of the completion of a minimum of 16 hours of approved continuing education courses, as defined by department rule, during the previous three-year period.[12]

Insurance

Prior to a license being issued, LP gas license applicants (other than category IV dealers in appliances and equipment, and category III LP gas cylinder exchange unit operators) are required to provide DACS with proof of bodily injury and property damage liability insurance coverage of at least $1 million. However, the Commissioner of Agriculture is authorized to accept a $1 million bond in lieu of the coverage requirement.[13]

For a class III license, such coverage of at least $300,000 is required, and the Commissioner of Agriculture is authorized to accept a bond of at least $300,000 in lieu of the requirement.[14]

Recreational Vehicle Dealers or installers

Propane is widely used in recreational vehicles (RVs) to regulate temperature, cook meals, provide hot water, and refrigerate food. Typically, motorized RVs have a fixed propane tank and towable RVs have

[10] S. 527.0201(1)-(4), F.S.
[11] S. 527.0201(5), F.S.
[12] S. 527.0201(5)(c), F.S.
[13] S. 527.04(1), F.S.
[14] S. 527.04(2), F.S.

a removable propane tank.[15] In Florida, the refilling, repairing, or replacing of propane gas and equipment must be completed by a properly trained employee of a licensed LP gas-related business.[16] These individuals are referred to by DACS as RV dealers/installers.[17]

Prior to July 2018, RV dealers/installers were classified separately in Florida law as a "category IV LP gas dispenser and recreational vehicle servicer," and were defined as:

> "any person engaging in the business of operating a liquefied petroleum gas dispensing unit for the purpose of serving liquid product to the ultimate consumer for industrial, commercial, or domestic use, and selling or offering to sell, or leasing or offering to lease, apparatus, appliances, and equipment for the use of liquefied petroleum gas, and whose services include the installation, service, or repair of recreational vehicle liquefied petroleum gas appliances and equipment."

RVs were defined as:

> "a motor vehicle designed to provide temporary living quarters for recreational, camping, or travel use, which has its own propulsion or is mounted on or towed by another motor vehicle."

In order to engage in LP gas-related activities, category IV businesses were required to obtain licensure from DACS by meeting all applicable requirements within the chapter of law governing the LP gas industry, including training, examination, initial and renewal license fees, insurance coverage, and qualifiers.[18]

However, legislation passed during the 2018 Legislative Session that became effective July 2018, resulted in the category IV license type being deleted from statute.[19] According to DACS, the changes were sought to meet current business practices, to simplify the registration process and to streamline the regulatory structure. DACS collaborated with the Florida LP Gas Association and other industry leaders to modernize the LP gas statute.[20]

Current Situation

Since July 2018, depending on the type of work being performed, a RV dealer/installer is now required to obtain either a category I dealer, II dispenser, or V installer license, and meet all applicable licensing and examination requirements in order to operate lawfully in the state. Current law does not provide a separate LP gas license category specifically for RV dealers/installers.

According to DACS, RV dealers/installers are required to obtain a category V installer license, and if the RV dealer/installer also dispenses LP gas, a category II dispenser license must also be obtained. In lieu of multiple licenses, RV dealers/installers may obtain a category I dealer license that allows them to perform both service and dispensing functions.[21]

According to DACS, there are 50 licensed RV dealers/installers in the state.[22]

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[15] Winnebagolife, *An Easy Guide to Finding Propane for Your RV*, https://winnebagolife.com/2019/05/finding-propane-for-your-rv (last visited Nov. 23, 2019).
[16] *See* ch. 527, F.S.
[17] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2019 House Bill 343 (Oct. 21, 2019).
[18] *See* ch. 527, F.S. (2017).
[19] Ch. 2018-84, Laws of Fla.
[20] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 9 (Nov. 21, 2017).
[21] *Supra* note 18, p. 1 (Oct. 21, 2019).
[22] *Supra* note 18, p. 3 (Oct. 21, 2019).

Effect of Proposed Changes

The bill creates a separate business license category for RV dealers/installers, makes it unlawful for such businesses to practice without a license, and requires the businesses applying for licensure to:

- Submit to DACS a nonrefundable $20 examination fee; and
- Pass a competency examination with a grade of 70 percent or above in each area tested.

The bill also provides DACS with specific authority to "contract with a not-for-profit, industry-specific trade association to conduct the training and examinations required for this section." This would allow DACS to contract with a trade association representing LP gas businesses for the training and examinations required for category I, II, V, and the proposed category VII.

The bill creates the "category VII liquefied petroleum gas dispenser and recreational vehicle servicer" LP gas license and defines these entities as:

> "a person who operates a liquefied petroleum gas dispensing unit to serve liquid product to a consumer for industrial, commercial, or domestic use, and sells or offers to sell, or leases or offers to lease, apparatus, appliances, and equipment for the use of liquefied petroleum gas, and whose services include the installation, service, or repair of recreational vehicle liquefied petroleum gas appliances and equipment."

The bill also defines an RV as:

> "a motor vehicle that is designed to provide temporary living quarters for recreational, camping, or travel use and that has its own propulsion or is mounted on or towed by another motor vehicle."

B. SECTION DIRECTORY:

Section 1. Amending s. 527.01, F.S., defining the terms "category VII liquefied petroleum gas dispenser and recreational vehicle servicer" and "recreational vehicle."

Section 2. Amending s. 527.0201, F.S., requiring a category VII liquefied petroleum gas dispenser and recreational vehicle operator to pass a written examination administered by DACS or its agent; authorizing DACS to contract with a not-for-profit, industry-specific trade association for training and examinations.

Section 3. Amends s. 527.02, F.S., conforming a cross-reference making it unlawful for a category VII liquefied petroleum gas dispenser and recreational vehicle servicer to operate without a license.

Section 4. Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

According to DACS, there are 50 RV dealers/installers in the state. The bill does not create a fee for DACS to collect in order to administer the new license category. Currently, these businesses are paying either:

- $400 for a category I license; or
- up to $600 for a combined:

- category V LP gas installer license ($200), and
- category II LP gas dispenser license ($400).

As a result, administering the new license category will create an annual recurring negative fiscal impact of $30,000 to state revenues.[23]

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Businesses applying for the new category VII license may save between $200 and $600 every year.

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:

According to DACS, it would be required to adopt rules for new or revised registration forms related to the category VII license, and create a new licensing exam.[24] It appears that sufficient rulemaking authority exists in s. 527.06(1), F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 1 of the bill incorrectly renumbers the subsections in s. 527.01, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[23] *Supra* note 18, p. 3 (Oct. 21, 2019).
[24] *Id.*

A bill to be entitled

An act relating to recreational vehicles; amending s. 527.01, F.S.; defining the terms "category VII liquefied petroleum gas dispenser and recreational vehicle servicer" and "recreational vehicle"; amending s. 527.0201, F.S.; requiring a category VII liquefied petroleum gas dispenser and recreational vehicle operator to pass a written examination administered by the department or its agent; authorizing the department to contract with not-for-profit, industry-specific trade associations for such examinations; amending s. 527.02, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Section 527.01, Florida Statutes, is reordered and amended to read:

527.01 Definitions.—As used in this chapter:

(12)~~(1)~~ "Liquefied petroleum gas" means any material that ~~which~~ is composed predominantly of any of the following hydrocarbons, or mixtures of the same: propane, propylene, butanes (normal butane or isobutane), and butylenes.

(14)~~(2)~~ "Person" means any individual, firm, partnership, corporation, company, association, organization, or cooperative.

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

(8) ~~(3)~~ "Consumer" means the person last purchasing liquefied petroleum gas in its liquid or vapor state for industrial, commercial, or domestic use.

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

(16) ~~(5)~~ "Qualifier" means any person who has passed a competency examination administered by the department and is employed by a licensed category I, category II, or category V business.

(1) ~~(6)~~ "Category I liquefied petroleum gas dealer" means any person selling or offering to sell by delivery or at a stationary location any liquefied petroleum gas to the consumer for industrial, commercial, or domestic use; any person leasing or offering to lease, or exchanging or offering to exchange, any apparatus, appliances, and equipment for the use of liquefied petroleum gas; any person installing, servicing, altering, or modifying apparatus, piping, tubing, appliances, and equipment for the use of liquefied petroleum or natural gas; any person installing carburetion equipment; or any person requalifying cylinders.

(2) ~~(7)~~ "Category II liquefied petroleum gas dispenser" means any person engaging in the business of operating a liquefied petroleum gas dispensing unit for the purpose of serving liquid products to the consumer for industrial, commercial, or domestic use, and selling or offering to sell, or

leasing or offering to lease, apparatus, appliances, and equipment for the use of liquefied petroleum gas, including maintaining a cylinder storage rack at the licensed business location for the purpose of storing cylinders filled by the licensed business for sale or use at a later date.

(3) ~~(8)~~ "Category III liquefied petroleum gas cylinder exchange operator" means any person operating a storage facility used for the purpose of storing filled propane cylinders of not more than 43.5 pounds propane capacity or 104 pounds water capacity, while awaiting sale to the consumer, or a facility used for the storage of empty or filled containers that ~~which~~ have been offered for exchange.

(4) ~~(9)~~ "Category IV dealer in appliances and equipment" means any person selling or offering to sell, or leasing or offering to lease, apparatus, appliances, and equipment for the use of liquefied petroleum gas.

(5) ~~(10)~~ "Category V LP gas installer" means any person who is engaged in the liquefied petroleum gas business and whose services include the installation, servicing, altering, or modifying of apparatus, piping, tubing, tanks, and equipment for the use of liquefied petroleum or natural gas and selling or offering to sell, or leasing or offering to lease, apparatus, appliances, and equipment for the use of liquefied petroleum or natural gas.

(6) ~~(11)~~ "Category VI miscellaneous operator" means any

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

person who is engaged in operation as a manufacturer of LP gas appliances and equipment; a fabricator, repairer, and tester of vehicles and cargo tanks; a requalifier of LP gas cylinders; or a pipeline system operator.

(7) "Category VII liquefied petroleum gas dispenser and recreational vehicle servicer" means a person who operates a liquefied petroleum gas dispensing unit to serve liquid product to a consumer for industrial, commercial, or domestic use, and sells or offers to sell, or leases or offers to lease, apparatus, appliances, and equipment for the use of liquefied petroleum gas, and whose services include the installation, service, or repair of recreational vehicle liquefied petroleum gas appliances and equipment.

(13) ~~(12)~~ "Manufacturer of liquefied petroleum gas appliances and equipment" means any person in this state manufacturing and offering for sale or selling tanks, cylinders, or other containers and necessary appurtenances for use in the storage, transportation, or delivery of such gas to the consumer, or manufacturing and offering for sale or selling apparatus, appliances, and equipment for the use of liquefied petroleum gas to the consumer.

(19) ~~(13)~~ "Wholesaler" means any person~~, as defined by subsection (2),~~ selling or offering to sell any liquefied petroleum gas for industrial, commercial, or domestic use to any person except the consumer.

(17) "Recreational vehicle" means a motor vehicle that is designed to provide temporary living quarters for recreational, camping, or travel use and that has its own propulsion or is mounted on or towed by another motor vehicle.

(18) ~~(14)~~ "Requalifier of cylinders" means any person involved in the retesting, repair, qualifying, or requalifying of liquefied petroleum gas tanks or cylinders manufactured under specifications of the United States Department of Transportation.

(10) ~~(15)~~ "Fabricator, repairer, and tester of vehicles and cargo tanks" means any person involved in the hydrostatic testing, fabrication, repair, or requalifying of any motor vehicles or cargo tanks used for the transportation of liquefied petroleum gases, when such tanks are permanently attached to or forming a part of the motor vehicle.

(15) ~~(16)~~ "Pipeline system operator" means any person who owns or operates a liquefied petroleum gas pipeline system that is used to transmit liquefied petroleum gas from a common source to the customer and that serves 10 or more customers.

(11) ~~(17)~~ "License period" means the period 1 to 3 years from the issuance of the license.

Section 2. Subsection (1) of section 527.0201, Florida Statutes, is amended, and paragraph (c) is added to subsection (2) of that section, to read:

527.0201 Qualifiers; master qualifiers; examinations.—

(1) In addition to the requirements of s. 527.02, any person applying for a license to engage in category I, category II, ~~or~~ category V, or category VII activities must prove competency by passing a written examination administered by the department or its agent with a grade of 70 percent or above in each area tested. Each applicant for examination shall submit a $20 nonrefundable fee. The department shall by rule specify the general areas of competency to be covered by each examination and the relative weight to be assigned in grading each area tested.

(2) Application for examination for competency may be made by an individual or by an owner, a partner, or any person employed by the license applicant. Upon successful completion of the competency examination, the department shall register the examinee.

(c) The department may contract with a not-for-profit, industry-specific trade association to conduct the training and examinations required by this section.

Section 3. Subsection (1) of section 527.02, Florida Statutes, is amended to read:

527.02 License; penalty; fees.—

(1) It is unlawful for any person to engage in this state in the activities defined in s. 527.01(1)-(7) ~~s. 527.01(6)-(11)~~ without first obtaining from the department a license to engage in one or more of these businesses. The sale of liquefied

petroleum gas cylinders with a volume of 10 pounds water capacity or 4.2 pounds liquefied petroleum gas capacity or less is exempt from the requirements of this chapter. It is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, to intentionally or willfully engage in any of said activities without first obtaining appropriate licensure from the department.

Section 4. This act shall take effect July 1, 2020.

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

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BUSINESS & PROFESSIONS SUBCOMMITTEE

HB 343 by Rep. Fetterhoff
Recreational Vehicles

AMENDMENT SUMMARY
January 15, 2020

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

- Requires the Department of Agriculture and Consumer Services (DACS) to establish by rule the requirements for agents qualified to administer LP gas examinations;
- Requires DACS to establish by rule a specific test for the RV servicers;
- Requires DACS to ensure that test content is specific to RV servicer activities;
- Limits those who pass the specific test to only practice RV servicer activities; and
- Clarifies that "verifiable LP gas experience" or "professional certification," is required, instead of having "been a registered qualifier," in order to be eligible to apply for certification as a master qualifier.

Amendment No.

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: Business & Professions Subcommittee

Representative Fetterhoff offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (18) is added to section 527.01, Florida Statutes, to read:

527.01 Definitions.—As used in this chapter:

(18) "Recreational vehicle" means a motor vehicle that is designed to provide temporary living quarters for recreational, camping, or travel use and that has its own propulsion or is mounted on or towed by another motor vehicle.

Section 2. Subsections (1) and (5) of section 527.0201, Florida Statutes, are amended to read:

527.0201 Qualifiers; master qualifiers; examinations.—

(1) In addition to the requirements of s. 527.02, any person applying for a license to engage in category I, category II, or category V activities must prove competency by passing a written examination administered by the department or its agent with a grade of 70 percent or above in each area tested. Each applicant for examination shall submit a $20 nonrefundable fee.

(a) The department shall by rule specify the general areas of competency to be covered by each examination and the relative weight to be assigned in grading each area tested.

(b) The department shall by rule specify the requirements for agents qualified to administer written competency examinations required by this part.

(c) The department shall by rule establish a separate test for persons applying for a license to engage in category I activities solely related to the service or repair of recreational vehicles. The category I recreational vehicle dealer/installer test shall include and ensure competency in the following activities as they relate to recreational vehicles:

1. Operating a liquefied petroleum gas dispensing unit to serve liquid product to a consumer for industrial, commercial, or domestic use;

2. Selling or offering to sell, or leasing or offering to lease, apparatus, appliances, and equipment for the use of liquefied petroleum gas; and

3. Installing, servicing, or repairing recreational

vehicle liquefied petroleum gas appliances and equipment.

(d) Any qualifier or master qualifier who has passed the category I recreational vehicle dealer/installer test may engage in category I activities solely related to the service and repair of recreational vehicles.

(5) In addition to all other licensing requirements, each category I and category V licensee must, at the time of application for licensure, identify to the department one master qualifier who is a full-time employee at the licensed location. This person shall be a manager, owner, or otherwise primarily responsible for overseeing the operations of the licensed location and must provide documentation to the department as provided by rule. The master qualifier requirement shall be in addition to the requirements of subsection (1).

(a) In order to apply for certification as a master qualifier, each applicant must have ~~been a registered qualifier for~~ a minimum of 3 years of verifiable LP gas experience or hold a professional certification by an LP gas manufacturer as adopted by department rule immediately preceding submission of the application, must be employed by a licensed category I or category V licensee, or an applicant for such license, and must pass a master qualifier competency examination administered by the department or its agent. Master qualifier examinations shall be based on Florida's laws, rules, and adopted codes governing liquefied petroleum gas safety, general industry safety

standards, and administrative procedures. The applicant must successfully pass the examination with a grade of 70 percent or above. Each applicant for master qualifier registration must submit to the department a nonrefundable $30 examination fee before the examination.

(b) Upon successful completion of the master qualifier examination, the department shall issue the examinee a master qualifier registration. A master qualifier may transfer from one licenseholder to another upon becoming employed by the company and providing a written request to the department.

(c) A master qualifier registration expires 3 years after the date of issuance and may be renewed by submission to the department of documentation of completion of at least 16 hours of approved continuing education courses during the 3-year period; proof of employment; and a $30 certificate renewal fee. The department shall define by rule approved courses of continuing education.

Section 3. This act shall take effect July 1, 2020.

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

Remove lines 3-13 and insert:

527.01, F.S.; defining the term "recreational vehicle"; amending s. 527.0201, F.S.; requiring the department to specify requirements for agents qualified to administer written

competency examinations; requiring the department to establish by rule a separate test for applicants to engage in category I activities solely related to the service and repair of recreational vehicles; limiting qualifiers and master qualifiers who passed the recreational vehicle dealer/installer category I test to only practice in activities related to service and repair of recreational vehicles; requiring verifiable LP gas experience or professional certification by an LP gas manufacturer in order to apply for certification as a master qualifier; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 401 Shark Fins
SPONSOR(S): Jacobs and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 680

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 2 N	Mears	Moore
2) Business & Professions Subcommittee		Thompson	Anstead
3) State Affairs Committee			

SUMMARY ANALYSIS

Shark finning is the process of catching a shark, removing its fins, and discarding the rest of the shark. Approximately 100 million sharks per year are killed, or 11,417 sharks per hour, a rate that is considered overfishing, which could lead to extinction. This practice decimates shark populations around the world and changes the ocean's ecosystem.

Congress banned shark finning in U.S. waters in 2000 under the Shark Conservation Act, and shark finning has been banned in many countries worldwide. However, the trade of lawfully acquired shark fins is not prohibited. Shark fins command a high price and hold significant cultural value in some countries, yielding more value per pound than the shark's body.

In Florida, a fisherman may only catch one shark per day, and each vessel is limited to two sharks per day, even if more than two fishermen are on board. Fishermen may only catch sharks by hook and line gear. All sharks harvested in Florida waters must be brought ashore with the fin attached to the shark's body.

Florida law prohibits the possession of a shark fin separated from the shark unless such possession is authorized by the Fish and Wildlife Conservation Commission or the fin was obtained on land, was prepared by taxidermy, and is possessed for the purposes of display.

The bill prohibits the import, export, and sale of shark fins.

The bill may have an indeterminate fiscal impact on the state. *See* Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Shark Finning

Shark finning is the process of catching a shark, removing its fins, and discarding the rest of the shark.[1] Shark finners often throw the shark back into the ocean alive once they have removed the fins. Unable to swim properly, the shark either bleeds to death or suffocates.

Shark fins command a high price and hold significant cultural value in some countries. Considered a symbol of status in Chinese culture, shark fin soup is a popular dish at weddings and other special occasions. Shark fins yield more value per pound than the shark's body.[2]

The practice of shark finning decimates shark populations around the world. The UN estimates that 73 million sharks are killed for their fins every year.[3] Humans kill approximately 100 million sharks globally each year, or 11,417 sharks per hour, a rate that is considered overfishing, which could lead to extinction.[4] A shark's slow growth and low reproductive rates make sharks highly susceptible to extinction because they cannot replenish their populations as quickly as they are being destroyed.[5]

A dramatic shark population plunge poses a threat not only to sharks, but also to the entire ecosystem. When shark populations decrease, a ripple effect may spread throughout the rest of the ecosystem, creating an imbalance. For example, the loss of the smooth hammerheads caused their prey, rays, to increase. The larger ray population now can eat more scallops, clams, and other bivalves. This not only hurts the bivalve populations and, therefore, the biodiversity of the ecosystem, it also harms human fisheries.[6]

In response to concerns about growing shark harvests internationally, many countries have banned shark fishing in their waters. In addition, many other nations have adopted finning bans, including the Bahamas, Belize, Canada, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, the Maldives, Nicaragua, Palau, Panama, and Taiwan.[7]

The United States Congress banned shark finning in U.S. waters in 2000.[8] The Shark Conservation Act makes it unlawful for any person:

- To remove any of the fins of a shark (including the tail) at sea;
- To have custody, control, or possession of any such fin aboard a fishing vessel unless it is naturally attached to the corresponding carcass;
- To transfer any such fin from one vessel to another vessel at sea, or to receive any such fin in such transfer, without the fin naturally attached to the corresponding carcass; or

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[1] National Oceanic and Atmospheric Administration (NOAA), *2017 Shark Finning Report to Congress*, available at https://repository.library.noaa.gov/view/noaa/19769 (last visited Jan. 7, 2019) (herein "NOAA Report").
[2] Smithsonian National Museum of Natural History, *Sharking Finning: Sharks Turned Prey*, available at https://ocean.si.edu/ocean-news/shark-finning-sharks-turned-prey (last visited Jan. 7, 2019).
[3] BBC News, *Canada becomes the first G20 country to ban shark fin trade*, https://www.bbc.com/news/world-us-canada-48714320 (June 21, 2019).
[4] The Guardian, *Sharks at risk of extinction from overfishing, say scientists*, https://www.theguardian.com/environment/2013/mar/02/sharks-risk-extinction-overfishing-scientists (Mar. 2, 2013).
[5] *Id.*
[6] *Id.*
[7] NOAA Report at 3.
[8] NOAA, *Shark Conservation Act*, available at https://www.fisheries.noaa.gov/national/laws-and-policies/shark-conservation-act (last visited Jan. 7, 2019).

- To land any such fin that is not naturally attached to the corresponding carcass, or to land any shark carcass without such fins naturally attached.[9]

A person who violates these federal laws may be subject to a civil penalty of up to $100,000 for each violation, as determined by the U.S. Secretary of Commerce.[10]

Import, Export and Sale of Shark Fins

While the practice of shark finning is prohibited in the U.S., the trade of shark fins is legal. Between 2012 and 2016, the U.S. imported an average of 49 tons of shark fins and exported an average of 25 tons of shark fins per year.[11] A number of countries from which the U.S. imports shark fins do not have a shark finning ban in place, such as China, Indonesia, and Japan. In response, 12 states have banned the trade of shark fins: California, Delaware, Hawaii, Illinois, Maryland, Massachusetts, Nevada, New York, Oregon, Rhode Island, Texas, and Washington.[12]

Shark fins may still be legally bought and sold in Florida. Despite fishing restrictions, and the ban on finning in Florida, Florida remains a leader in the U.S. of the importation of shark fins. News reports indicate that:

> "Since 2015, Miami has led the nation in the number of shark fins imported from Hong Kong, likely caused by an increasing number of import bans in other states. According to a review by the nonprofit Oceana, the number of fins arriving at PortMiami from Hong Kong, the historic center of the fin trade, was dwindling between 2010 and 2014. But after California and New York banned imports in 2011 and 2013, fin shipments began rising."[13]

Fish and Wildlife Conservation Commission

The Florida Constitution authorizes the Fish and Wildlife Conservation Commission (FWC) to enact rules and regulations regarding the state's fish and wildlife resources.[14] Florida residents and visitors must have a freshwater fishing or saltwater fishing license from FWC if they attempt to take or assist in a take of fish or marine organisms,[15] unless they are under the age of 16, are over the age of 65, or meet another licensure exemption.[16]

Shark Fishing Regulations in Florida

In Florida, a fisherman may only catch one shark per day, and each vessel is limited to two sharks per day, even if more than two fishermen are on board.[17] Sharks may only be caught by hook and line gear[18] and may not be caught by using multiple hooks with live or dead natural bait or by snagging.[19]

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[9] 16 U.S.C. § 1857(1)(P), (2015).
[10] 16 U.S.C. § 1858 (1996).
[11] NOAA Report at 23-24.
[12] *See* CAL. FISH & GAME CODE § 2021; DEL. CODE ANN. tit. 7 § 928A; HAW. REV. STAT. § 188-40.7; 515 ILL. COMP. STAT. 5/5-30; MD. CODE ANN. NAT. RES. § 4-747; MASS. GEN. LAWS ANN. ch. 130, § 106; NEV. REV. STAT. § 597.2-3; N.Y. ENVTL. CONSERV. LAW § 13-0338; OR. REV. STAT. § 509.160; R.I. GEN. LAWS § 20-1-29; TEX. PARKS & WILD. CODE § 66.2161; WASH. REV. CODE § 77.15.770.
[13] Jenny Staletovich, The Miami Herald, Miami now nation's top importer of shar fins. Many states have banned the product, https://www.miamiherald.com/news/local/environment/article210157954.html (May 2, 2018).
[14] Art. IV, s. 9, FLA. CONST.
[15] Section 379.352, F.S.
[16] Section 379.353, F.S.
[17] Rule 68B-44.004(1)-(2), F.A.C.
[18] Rule 68B-44.006(1), F.A.C.
[19] Rule 68B-44.006(2), F.A.C.

Fishermen must land all sharks harvested in Florida waters[20] in a whole condition.[21] A marine organism is "landed" when the animal is harvested and physically brought ashore. Individuals may not possess a shark that has had the head removed; been divided, filleted, ground, skinned, or finned;[22] or had the caudal fin (tail) removed, while in or on the waters of the state, on any public or private fishing pier, or on a bridge or catwalk attached to a bridge from which fishing is allowed. Fishermen may eviscerate or gut the shark or slice the base of the caudal fin to bleed the carcass as long as the caudal fin remains attached before landing.[23]

Florida law imposes restrictions on harvesting sharks based on the species and size of the shark. The following sharks have no minimum size limit for harvest in Florida waters: Atlantic sharpnose shark; blacknose shark; blacktip shark; bonnethead; finetooth shark; and all species of dogfish and smoothounds within the Genus mustelus.[24] The following sharks must be at least 54 inches long to harvest in Florida waters: bull shark; nurse shark; spinner shark; blue shark; oceanic whitetip shark; porbeagle; shortfin mako shark; and thresher shark.[25] No person may harvest the following sharks in Florida waters: Atlantic angel shark; basking shark; bigeye sand tiger; bigeye sixgill shark; bigeye thresher; bignose shark; bluntnose sixgill shark; Caribbean reef shark; Caribbean sharpnose shark; dusky shark; Galapagos shark; great hammerhead; lemon shark; longfin mako; narrowtooth shark; night shark; sandbar shark; sand tiger; scalloped hammerhead; sharpnose sevengill shark; silky shark; smalltail shark; smooth hammerhead; spiny dogfish; tiger shark; whale shark; white shark.[26]

While fishermen may not harvest, possess, land, purchase, sell, or exchange these species of shark, including any part of these species, in state waters, the prohibition does not apply to sharks harvested lawfully in federal waters when the shark is transported directly through state waters with fishing gear appropriately stowed.[27]

Florida law prohibits the possession of a shark fin separated from the shark in Florida waters unless such possession is authorized by FWC or the fin was legally obtained on land, was prepared by taxidermy, and is possessed for the purposes of display.[28] An individual who violates this prohibition is subject to the following penalties:

Violations	Type of Criminal Infraction	Civil Penalty and	Violations	Type of Criminal Infraction
Jail Time	License Restrictions	Administrative Fines	Jail Time	License Restrictions
1st offense	2nd Degree Misdemeanor	Max. $500	1st offense	2nd Degree Misdemeanor
Max. 60 days	Suspension of license for six months	$4,500	Max. 60 days	Suspension of license for six months
2nd offense	2nd Degree Misdemeanor	Max. $500	2nd offense	2nd Degree Misdemeanor

[20] Florida's seaward boundary extends nine nautical miles in the Gulf of Mexico and three nautical miles in the Atlantic Ocean. Art. II, s. 1, FLA. CONST.
[21] Rule 68B-44.003(2), F.A.C.
[22] The term "finned" means one or more fins, including the caudal fin (tail), are no longer naturally attached to the body of the shark. Rule 68B-44.002(1), F.A.C.
[23] Rule 68B-44.003(2), F.A.C.
[24] Rule 68B-44.003(1), F.A.C.; FWC, *Sharks*, http://myfwc.com/fishing/saltwater/recreational/sharks/ (last visited Jan. 7, 2019).
[25] *Id.*
[26] Rule 68B-44.004(3), F.A.C.
[27] Rule 68B-44.003(4), F.A.C.
[28] Section 379.2426(2), F.S.

Effect of the Bill

The bill prohibits the import, export, and sale of shark fins. An individual who violates this prohibition is subject to the penalties outlined in the table above.

B. SECTION DIRECTORY:

Section 1. Amends s. 379.2426, F.S., relating to the possession, import, export, and sale of shark fins.

Section 2. Provides an effective date of October 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a negative fiscal impact on commercial harvesters and wholesale dealers because they would no longer be able to buy and sell shark fins.

D. FISCAL COMMENTS:

The bill may have an indeterminate:

- Positive fiscal impact on the state by creating a penalty for the import, export, and sale of shark fins; and
- Negative fiscal impact related to jail bed impacts.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not authorize or require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to shark fins; amending s. 379.2426, F.S.; prohibiting the import, export, and sale of shark fins; providing an effective date.

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

Section 1. Subsection (3) of section 379.2426, Florida Statutes, is renumbered as subsection (4), and a new subsection (3) is added to that section, to read:

379.2426 Possession, import, export, and sale of separated shark fins ~~on the water~~ prohibited; penalties.—

(3) Notwithstanding any other law, the import, export, and sale of shark fins is prohibited and nothing in this section authorizes such activities.

Section 2. This act shall take effect October 1, 2020.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 459 Building Design
SPONSOR(S): Overdorf
TIED BILLS: **IDEN./SIM. BILLS:** SB 954

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Brackett DB	Anstead La
2) Government Operations & Technology Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Property development in Florida is governed in part by both the Community Planning Act and the Florida Building Code. The Community Planning Act governs how local governments create and adopt local comprehensive plans, implement land development regulations, and issue development orders and permits. Some local governments have implemented regulations that require new single- and two- family dwellings in the community to have specific building design elements such as exterior paint color, exterior building material, architectural style of windows and doors, and location of windows and doors.

The Florida Building Commission (Commission), located within the Department of Business and Professional Regulation, implements and adopts the Florida Building Code. The Building Code is the statewide building code for all construction in the state. Every local government must enforce the Building Code and issue building permits. Local governments may adopt amendments to the Building Code provided they follow the requirements in current law. Local amendments to the Building Code expire when the newest edition of the Building Code takes effect.

The bill:

- Prohibits local governments from adopting zoning and development regulations that require specific building design elements for single- and two- family dwellings, unless certain conditions are met.
- Provides that local governments may adopt zoning and development regulations requiring certain building design elements for single- and two- family dwellings when:
  - The dwelling is a historic property or a contributing property to a historic district; or
  - The regulations are adopted in order to implement the National Flood Insurance Program.
- Defines the term "building design elements" to mean exterior color, type or style of exterior cladding, style or material of roof structures or porches, exterior nonstructural architectural ornamentation, location or architectural styling of windows or doors, and number, type, and layout of rooms.
- Provides that the term "building design elements" does not include setback including the height, bulk, orientation, location on a zoning lot, or the use of buffering or screening to minimize potential adverse physical or visual impacts or protect the privacy of neighbors.

The bill also allows a substantially affected person to petition the Commission to review a local government regulation to determine if the regulation is actually an unauthorized amendment to the Building Code. If the Commission determines the regulation is an amendment to the Building Code and the local government did not adopt the regulation in accordance with the requirements to adopt a local amendment to the Building Code, the local regulation is void and unenforceable.

The bill has an indeterminate fiscal impact on state and local governments.

The bill provides for an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Community Planning Act

Adopted in 1985, the Local Government Comprehensive Planning and Land Development Regulation Act, also known as Florida's Growth Management Act, was significantly revised in 2011, becoming the Community Planning Act.[1] The Community Planning Act governs how local governments create and adopt their local comprehensive plans.

It is the intent of Act is that local governments manage growth through comprehensive land use plans that preserve, promote, protect, and improve the public health, safety, comfort, good order, appearance, convenience, law enforcement and fire prevention, and general welfare.[2]

Local comprehensive plans must include principles, guidelines, standards, and strategies for the orderly and balanced future land development of the area and reflect community commitments to implement the plan. Plans also are required to identify procedures for monitoring, evaluating, and appraising implementation of the plan.[3] Plans may include optional elements,[4] but must include the following nine elements:[5]

- Capital improvements;
- Future land use plan;
- Intergovernmental coordination;
- Conservation;
- Transportation;
- Sanitary sewer, solid waste, drainage, potable water, and aquifer recharge;
- Recreation and open space;
- Housing; and
- Coastal management (for coastal local governments).

The comprehensive plan is implemented via land development regulations. Land development regulations are ordinances that regulate any aspect of development including any local government zoning, rezoning, subdivision, building construction, sign regulations, or any regulation that controls the development of land.[6]

Each county and municipality must adopt and enforce land development regulations that are consistent with and implement their adopted comprehensive plan.[7] All local government land development regulations must be consistent with the local government's comprehensive plan.[8]

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[1] Ch. 11-139, Laws of Fla.
[2] S. 163.3161(4), F.S.
[3] S. 163.3177(1), F.S.
[4] *Id.*
[5] Ss. 163.3177(3) & (6), F.S.
[6] Ss. 163.3164(26) & 163.3202(1), F.S.
[7] S. 163.3202(1), F.S.
[8] S. 163.3194(1)(b), F.S.

Some local governments in Florida have adopted land development regulations that place restrictions on the design of new single- and two- family buildings such as the:

- External paint color;[9]
- Architectural style of:[10]
  - Windows;
  - Doors, including garage doors;
  - Front porches; and
  - Roofs.
- Exterior building material;[11] and
- Location of windows and garage doors.[12]

Some local governments may be adopting ordinances related to building design elements because the local government is adopting the principles of "new urbanism." New urbanism is a land development policy that attempts to solve issues created by urban sprawl, such as traffic jams, ugliness, and lifeless downtowns, by establishing compact, mixed-use, and pedestrian friendly communities. The principles of new urbanism can be achieved through creating mixed-use areas with residential areas located within walking distance of commercial areas located in a town center, creating parks and civic spaces located near the town center, and building narrow streets with sidewalks and trees to promote walking.[13]

New urbanism also includes creating communities and neighborhoods that have a certain style of architecture and design and, thus, are more pleasant to live in and walk through. Local governments can accomplish this by requiring buildings, including single- and two- family buildings, within their jurisdictions too have specific building design elements.[14]

Opponents of the adoption of the building design element ordinances argue that these types of building design elements increase housing costs and prevent homeowners from choosing their own preferences or styles.[15] Local governments argue that the building design element ordinances ensure that poorly designed buildings do not lower the value of surrounding properties. Prohibiting such ordinances, they say, will prevent them from developing a plan for their own community.[16]

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[9] Osceola County Land Development Code, § Ch. 3, Article 3.2.2.; Code of the City of Orlando, § Ch. 58, Part 3, Section 58.517; Orange County Code, § Chapter 38, Article VIII, Division 8.

[10] Osceola County Land Development Code, § Ch. 3, Article 3.2.2.; Code of the City of Orlando, § Ch. 58, Part 3, Section 58.517; City of Winter Park Code of Ordinances, § Ch. 58, Art. 3, Section 58-67; Orange County Code, § Chapter 38, Article VIII, Division 8.

[11] Orange County Code, § Chapter 38, Article VIII, Division 8; City of Winter Park Code of Ordinances, § Ch. 58, Art. 3, Section 58-67

[12] Code of the City of Orlando, § Ch. 58, Part 3, Section 58.517.

[13] Doris S. Goldstein, *New Urbanism: Recreating Florida by Rewriting the Rules*, Florida Bar Journal, April 2006, at 63; Michigan Land Institute, 10 Principles of New Urbanism, http://www.mlui.org/mlui/news-views/articles-from-1995-to-2012.html?archive_id=678#.Xhd62ehKiUk (last visited Jan. 9, 2020); Congress for the New Urbanism, *What is New Urbanism?*, https://www.cnu.org/resources/what-new-urbanism (last visited Jan. 9, 2020).

[14] *Id.*

[15] Michael Bezruki, *Governor Signs Arkansas Housing Affordability Bill Into Law*, National Home Association of Home Builders, March 15, 2019, http://nahbnow.com/2019/03/governor-signs-arkansas-housing-affordability-bill-into-law/ (last visited Jan. 7, 2020); Doug Thompson, *Restrictions on home building barred in Arkansas*, Northwest Arkansas Democrat Gazette, March 17, 2019, https://www.nwaonline.com/news/2019/mar/17/restrictions-on-home-building-barred-in/ (last visited Jan. 7, 2020).

[16] Daniel Herriges, *Building Design Requirements Are Sometimes Bad for Cities. But Abolishing Them All Is Worse*, Strong Towns, April 11, 2019 https://www.strongtowns.org/journal/2019/4/11/design-standards-are-an-important-tool-for-cities-dont-do-away-with-them (last visited Jan. 7, 2020); Elaina Sauber, Housing design bill worries Franklin officials, Tennessean, April 18, 2017 https://www.tennessean.com/story/news/local/williamson/2017/04/18/housing-design-bill-worries-franklin-officials/100561994/ (last visited Jan. 8, 2020).

States That Prohibit Local Government Regulations For Building Design Elements

North Carolina and Arkansas prohibit local governments from adopting regulations that require specific building design elements for single- and two- family dwellings unless certain conditions exist.[17] Tennessee and Georgia considered bills to enact laws similar to North Carolina and Arkansas; however, the bills did not pass.[18]

Passed in 2015, North Carolina's law prohibits cities and counties from adopting regulations that require "building design elements" for single- and two- family dwellings. The North Carolina law also prohibits such regulations from being applied to any zoning district, special use district, conditional use district, or conditional district unless voluntarily consented to by the owners of the all the properties subject to the proposed regulation.[19]

The North Carolina law defines "building design elements" to include the:[20]

- Exterior building color;
- Type or style of exterior cladding[21] material;
- Style or materials of roof structures or porches;
- Exterior nonstructural architectural ornamentation;
- Location or architectural styling of windows and doors, including garage doors;
- Number and types of rooms; and
- Interior layout of rooms.

The phrase does not include:[22]

- A single- and two- family dwelling's:
  - Height;
  - Bulk;
  - Orientation; and
  - Location of a structure on a zoning lot.
- The use of buffering or screening to minimize visual impacts or impact of light and noise; and
- Regulations governing permitted uses of land.

The North Carolina law allows cities and counties to adopt and enforce regulations that require "building design elements" for single- and two- family dwellings if:[23]

- The dwelling is located in an area designated as a local historic district;
- The dwelling is located in area designated as a historic district on the National Register of Historic Places;[24]

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[17] N.C. Gen. Stat. § 160A-381; Ark. Code Ann. § 14-17-212 & 14-56-204.

[18] Georgia General Assembly, 2019-2020 Regular Session - HB 302, http://www.legis.ga.gov/Legislation/en-US/display/20192020/HB/302 (last visited Jan. 8, 2020); Tennessee General Assembly, 2017-2018 Session – HB 476 http://wapp.capitol.tn.gov/apps/Billinfo/default.aspx?BillNumber=HB0476&ga=110 (last visited Jan. 8, 2020).

[19] N.C. Gen. Stat. § 160A-381; R. Erika Churchill, Staff Attorney for the North Carolina General Assembly, Analysis of S.L. 2015-86, https://dashboard.ncleg.net/api/Services/BillSummary/2015/S25-SMST-147(sl) (last visited Jan. 3, 2020); General Assembly of North Carolina, Session Law 2015-86 Senate Bill 25, June 9, 2015 https://www.ncleg.gov/Sessions/2015/Bills/Senate/PDF/S25v3.pdf (last visited Jan. 3, 2020).

[20] N.C. Gen. Stat. § 160A-381.

[21] The Florida Building Code and the North Carolina Building Code both define "cladding" as the material that covers the exterior surface of a building, and is directly affected by wind load. S. 202 of the Florida Building Code (Residential), Seventh Edition; S. 202 of the 2018 North Carolina Building Code (Residential).

[22] *Id.*

[23] *Id.*

[24] The National Register of Historic Places is the federal government's official list of historic places in the United States. The National Historic Preservation Act of 1966 authorized the register, which is administered by the National Park Service. National Park Service, *What is the National Register of Historic Places*, https://www.nps.gov/subjects/nationalregister/what-is-the-national-register.htm (last visited Jan. 5, 2020).

- The dwelling is individually designated as a local, state, or national historic landmark;
- The regulations are directly and substantially related to the requirements of North Carolina's Building Code;
- The regulations are applied to manufactured housing in a manner consistent with state and federal law; and
- The regulations are adopted as a condition for participation in the National Flood Insurance Program.[25]

The prohibition of local regulations that relate to building design elements does not affect the validity or enforceability of private covenants or other contractual agreements relating to building design elements between property owners.[26]

In 2019, Arkansas passed a similar law that also prohibited cities and counties from adopting regulations that require "building design elements" for single-family dwellings. The law defines "building design elements" the same as North Carolina except Arkansas also includes minimum square footage in its definition.[27]

In addition to the exceptions provided in the North Carolina law, Arkansas also allows cities and counties to adopt and enforce building design elements regulations if:

- The dwelling is in a central business district, which can be created by a city to revitalize its urban center;
- The dwelling existed and was subject to the local regulation prior to the prohibition being enacted; or
- The regulations are directly related to an immediate public health or safety hazard and the regulation is derived from the local government's police power.[28]

Arkansas also provides that the prohibition of local regulations that relate to building design elements does not affect the validity or enforceability of covenants or contracts between a property owner and a city or county.[29]

The Florida Building Code

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida's minimum standards were met. Local governments could choose from four separate model codes. The state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.[30]

In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. A study commission was appointed to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Building Code), and that

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[25] The National Flood Insurance Program is administered by FEMA. The goal of the program is to reduce the impact of flooding on private and public structures by providing affordable insurance to property owners, and encouraging communities to adopt and enforce floodplain management regulations. FEMA, *The National Flood Insurance Program*, https://www.fema.gov/national-flood-insurance-program (last visited Jan. 6, 2020).

[26] *Id.*

[27] Ark. Code Ann. § 14-17-212 & 14-56-204; H.R. 170, 92nd Leg. Reg. Sess. (AR 2019).

[28] *Id.*

[29] *Id.*

[30] The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs,* p. 4, *available at* http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Nov. 11, 2019).

first edition replaced all local codes on March 1, 2002.[31] The Building Code is updated triannually. The current edition of the Building Code is the sixth edition, which is referred to as the 2017 Florida Building Code.[32]

Part IV of ch. 553, F.S., is known as the "Florida Building Codes Act" (Act), provides a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code that must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.[33] The Building Code is adopted, updated, and interpreted by the Florida Building Commission, and is enforced by local governments.[34]

The main purpose of the Building Code is to regulate new construction or proposed modifications to existing structures in order to give the occupants the highest level of safety and the least amount of defects.[35]

The Florida Building Commission

The Florida Building Commission (Commission) implements the Building Code. The Commission reviews several International Codes published by the International Code Council, the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every three years.[36]

The Commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 27-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code.[37] The Commission is responsible for the development, maintenance, and interpretation of the Building Code. Members are appointed by the Governor and confirmed by the Senate.[38]

The Commission has 11 Technical Advisory Committees (TAC) ranging from the building structural TAC to the swimming pool TAC.[39] TACs are made up of commission members and other parties who advise the commission on declaratory statements, proposed amendments, and any other areas of interest of the commission.[40]

Local Enforcement of the Florida Building Code

The Legislature has provided local governments with the power to inspect all buildings, structures, and facilities within their jurisdiction to protect the public's health, safety, and welfare.[41]

Every local government must enforce the Building Code and issue building permits.[42] It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government enforcing agency or from such persons as may, by

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[31] *Id.*
[32] S. 553.73(7), F.S.; Florida Building Commission Homepage https://floridabuilding.org/c/default.aspx (last visited Nov. 11, 2019).
[33] *See* s. 553.72(1), F.S.
[34] Ss. 553.72, & 553.73, F.S.
[35] Florida Building Commission, *Advanced Florida Building Code Principals*, http://www.floridabuilding.org/Upload/Courses_trp/421-2-MATERIAL-Adv%20FL%20Bldg%20Code%20-%20Course%20PDF%20version%207.0.pdf (last visited Jan. 9, 2020).
[36] S. 553.73, F.S.
[37] S. 553.74, F.S.
[38] Ss. 553.73, & 553.74, F.S.
[39] DBPR, *Florida Building Code Online*, https://www.floridabuilding.org/c/c_commission.aspx (last visited Dec. 27, 2019).
[40] S. 553.73(3), F.S.; Rule 61G20-2.001, F.A.C.
[41] S. 553.72, F.S.
[42] Ss. 125.01(1)(bb), 125.56(1), & 553.80(1), F.S.

resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.[43]

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.[44] A building official is a local government employee or a person contracted by a local government who supervises Building Code activities, including plan review, enforcement, and inspection to ensure work complies with the Building Code.[45]

Amendments to the Building Code

The Commission and local governments may adopt technical and administrative amendments to the Building Code. A technical amendment to the Building Code is an alteration to the prescriptive requirements or reference standards for construction. An administrative amendment is an addition or alteration of the code enforcement requirements of the Building Code.[46]

Local governments may adopt amendments to the Building Code that are more stringent than the Building Code that are limited to the local government's jurisdiction. Amendments by local governments expire upon the adoption of the newest edition of the Building Code, and, thus, the local government would need to go through the amendment process every three years in order to maintain a local amendment to the Building Code.[47]

Current law allows local governments to adopt technical amendments to the Building Code every six months if:[48]

- The local government's governing body holds a public hearing to discuss the amendment, which has been advertised in a newspaper of general circulation at least 10 days before the meeting;
- Following the hearing, the governing body determines that an amendment is needed to address a local need that is not addressed by the Building Code;
- The amendment is no more stringent than necessary to address the local need;
- The local amendment is not discriminatory against materials, products, or construction techniques of demonstrated capabilities;
- The local amendment does not introduce a new subject that is not addressed by the Building Code;
- The local amendment includes a fiscal impact statement, which documents the costs and benefits of the amendment including the impact to local government, property and building owners, industry, and the cost of compliance; and
- The local government sends the amendment to the Commission.

A technical amendment adopted by a local government takes effect 30 days after the Commission receives the amendment and publishes the amendment on its website.[49]

The Commission may review local amendments and issue nonbinding recommendations to local governments about whether the local government complied with the requirements to adopt an amendment. If the Commission decides to review a local amendment it must send the amendment to the applicable TAC for review.[50]

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[43] *See* Ss. 125.56(4)(a) & 553.79(1), F.S.
[44] S. 202 of the Building Code (Building), Sixth Edition.
[45] S. 468.603(2), F.S.
[46] S. 553.73, F.S.; Rule 61G20-2.002, F.A.C.
[47] S. 553.73(4), F.S.
[48] *Id.*
[49] 553.73(4), F.S.; Rule-61G20-2.003, F.A.C.
[50] *Id.*

The TAC must make a recommendation to the Commission about whether the local amendment complies with the requirements of current law. The Commission must provide the nonbinding recommendation to the local government within 30 days of adopting the recommendation.[51]

Each county and municipality that adopts technical amendments to the Building Code must establish a countywide compliance review board by interlocal agreement. The compliance review board reviews any amendment adopted by a local government in its county that is challenged by a substantially affected party in order to determine if the amendment has been adopted in accordance with the requirements of current law.[52]

A local government or the substantially affected party may appeal the compliance review board's decision to the Commission within 14 days of the board's decision. The Commission must refer the appeal to the Division of Administrative Hearings for a hearing by an administrative law judge. The administrative law judge must hold a hearing within 30 days of being assigned the appeal, and must enter a recommended order within 30 days of the conclusion of the hearing.[53]

The Commission must enter a final order within 30 days after the administrative law judge issues a recommended order. In proceedings before a compliance review board or the Commission, the local government has the burden to prove an amendment has been adopted in accordance with the requirements of current law.[54]

Interpretations of the Building Code

The Commission may issue declaratory statements regarding interpretations of the Florida Building Code, review local building officials' interpretation of the Building Code, and give binding interpretations of the Building Code.[55]

A substantially affected person, state agency, or a local government may petition the Commission in writing for a declaratory statement relating to interpretations of the Building Code, or the enforcement or administration of the Building Code by local governments. The Commission must issue a declaratory statement or deny a petition within 90 days of receiving the petition. Declaratory statements are binding upon all jurisdictions and are subject to judicial review by a district court of appeal.[56]

A substantially affected person may also petition the Commission to review a local building official's interpretation of the Building Code. A substantially affected person includes an owner or builder subject to a decision of the local building official or an association of owners or builders having members who are subject to a decision of the local building official.[57]

A substantially affected person may petition the Commission to review a local building official's interpretation of the Building Code if:[58]

- The substantially affected person has appealed the building official's interpretation to the local board of appeals, if such board exists;
- The substantially affected person files a written petition to the Commission on a form adopted by the Commission which contains:
    - The name and address of the local government and the local building official;
    - The name, address, and phone number of the substantially affected person, and explanation of how they are substantially affected by the building official's interpretation;

[51] *Id.*
[52] S. 553.73(4), F.S.
[53] *Id.*
[54] *Id.*
[55] S. 553.775, F.S.
[56] Ss. 553.775(3), 120.565, &120.68, F.S.
[57] S. 553.775(3), F.S.
[58] *Id.*

    - A statement of the provisions of the Building Code that are being interpreted, the building official's interpretation of those sections, and the substantially affected person's interpretation of those sections; and
    - The local building official's response.
- The substantially affected person has given the petition to the local building official and at least five days for the building official to respond.

Upon receiving a written petition to review a local building official's interpretation of the Building Code, the Commission must provide copies to a panel, and publish the petition and the local building official's response on the Commission's website and allow for comments to be posted by interested parties. The panel must have seven members made up of five building officials, an architect, and an engineer. The Commission must coordinate with the Building Officials Association of Florida[59] to designate the panel.[60]

The panel must conduct proceedings necessary to issue a determination, and consider the written petition, the local building official's response, and any comments posted on the Commission's website. The panel must issue a determination within 21 days of the petition being filed with the Commission. The determination is binding upon all parties and all jurisdictions in Florida.[61]

A party may appeal the panel's determination by filing an appeal with the Commission within 30 days of the panel's determination. The Commission must conduct a hearing in accordance with the Administrative Procedure Act. The burden of proof in the hearing is on the party appealing the panel's determination. The Commission's ruling is subject to judicial review by a district court of appeal.[62]

Effect of the Bill

Community Planning Act — Effect of the Bill

The bill prohibits local governments from adopting zoning and development regulations that relate to building design elements for single- or two- family dwellings.

The bill defines the term "building design elements" to mean:
- Exterior building color;
- Type or style of exterior cladding material;
- Style or material of roof structures or porches;
- Exterior nonstructural architectural ornamentation;
- Location or architectural styling of windows or doors, including garage doors;
- Number and type of rooms; and
- Interior layout of rooms.

The term does not include:
- A single- and two- family dwelling's:
    - Height;
    - Bulk;
    - Orientation;
    - Location on a zoning lot; or

[59] The Building Officials Association of Florida is the largest community of building officials, building inspectors, plans examiners, and building code compliance professionals in the state. Its goal is to ensure the health, safety, and welfare of the public through safe building practices by equipping building professions through education, advocacy, leadership, and code development. Building Officials Association of Florida, *About BOAF*, https://boaf.net/page/About (last visited Jan. 8, 2020).
[60] *Id.*
[61] *Id.*
[62] Ss. 553.775(3), & 120.68, F.S.

- The use of buffering or screening to minimize potential adverse physical or visual impacts or protect the privacy of neighbors.

The bill allows local governments to adopt and enforce regulations that require "building design elements" for single- and two- family dwellings if:

- The dwelling is listed in the National Register of Historic Places;
- The dwelling is a contributing property to a historic district in the National Register of Historic Places;
- The dwelling is listed as a historic property or a contributing property to a historic district by a local preservation ordinance;
- The regulations are adopted in order to implement the National Flood Insurance Program.

The bill also provides that the prohibition of zoning and development regulations that relate to building design elements does not affect the validity or enforceability of private covenants or other contractual agreements relating to building design elements between property owners.

Florida Building Commission — Effect of the Bill

The bill provides that any substantially affected party may petition the Commission to review any local government regulation including, but not limited to, a law, ordinance, policy, amendment, or land use or zoning provision that the party believes is a technical amendment to the Building Code.

If the Commission determines the local government regulation is a technical amendment to the Building Code, then the regulation is not effective or enforceable unless or until the local government adopts the technical amendment in accordance with the requirements of current law.

B. SECTION DIRECTORY:

Section 1. Amending s. 163.3202, F.S., prohibiting local governments from enacting certain regulations for certain residential buildings.

Section 2. Amending s. 553.73, F.S., allowing the Florida Building Commission to review local government regulations in certain situations.

Section 3. Amending s. 125.01, F.S., amending cross-references.

Section 4. Amending s. 125.56, F.S., amending cross-references.

Section 5. Providing an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   Indeterminate. Local governments may have additional expenditures because of an increase in legal challenges to zoning and other regulations.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. However, prohibiting certain building design elements ordinances and other regulations may lead to a decrease in the cost of construction.

D. FISCAL COMMENTS:

According to DBPR, the Commission may see an increase in workload. However, this additional workload can likely be handled with existing resources and should not lead to any substantial costs to the Commission or DBPR.[63]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   None.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides that zoning and development regulations may not relate to "building design elements." However, zoning and development regulations are not defined in the Community Planning Act. It is recommended that zoning and development regulations be changed to land development regulations, which is defined in the Community Planning Act, and includes zoning regulations.

Prohibiting local governments from requiring certain types of cladding or roofing material may weaken single- or two- family dwellings that are at a higher risk for hurricane damage. Local governments that are more at risk for hurricane damage may want to adopt regulations requiring a certain type of exterior cladding or roof material that is stronger than other types allowed by the Building Code. However, this bill will prohibit that. The sponsor may want to clarify that any properly adopted local amendment to the Building Code that may be related to cladding or roofing is not included in the bill's prohibitions.

The bill does not establish a process for the Commission to review a local government regulation to determine if it is an improper technical amendment to the Building Code. For example, current law establishes a process for a substantially affected person to petition the Commission to review a local building's official interpretation of the Building Code including:

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[63] Florida Department of Business and Professional Regulation, Agency Analysis of 2020 House Bill 459, p. 5 (Nov. 6, 2019).

- Establishing timelines;
- Requiring notice and the opportunity to respond; and
- An appeal process.

The sponsor may want to establish these types of guidelines to ensure that the Commission responds to a substantially affected person's petition timely.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to building design; amending s. 163.3202, F.S.; providing that certain regulations relating to building design elements may not be applied to certain structures; providing exceptions; defining the term "building design elements"; providing applicability; amending s. 553.73, F.S.; providing that an affected party may submit certain local government regulations to the Florida Building Commission for review; providing for enforcement of such regulation; making technical changes; amending ss. 125.01 and 125.56, F.S.; conforming cross-references to changes made by the act; making technical changes; providing an effective date.

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

Section 1. Subsection (5) of section 163.3202, Florida Statutes, is renumbered as subsection (6), and a new subsection (5) is added to that section to read:

163.3202 Land development regulations.—

(5)(a) Zoning and development regulations relating to building design elements may not be applied to a structure that is subject to local government regulations for one- or two-family dwellings unless:

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

1. The structure is listed in the National Register of Historic Places, as defined in s. 267.021; or is a contributing property to a National Register Historic District; or is designated as a historic property or a contributing property to a historic district, under the terms of a local preservation ordinance.

2. The regulations are adopted in order to implement the National Flood Insurance Program.

(b) For purposes of this subsection, the term "building design elements" means the external building color; type or style of exterior cladding material; style or material of roof structures or porches; exterior nonstructural architectural ornamentation; location or architectural styling of windows or doors, including garage doors; number and type of rooms; and interior layout of rooms. The term does not include the height, bulk, orientation, or location of a structure on a zoning lot; or the use of buffering or screening to minimize potential adverse physical or visual impacts or protect the privacy of neighbors.

(c) This subsection does not affect the validity or enforceability of private covenants or other contractual agreements relating to building design elements between property owners.

Section 2. Subsection (4) of section 553.73, Florida Statutes, is amended to read:

553.73 Florida Building Code.—

(4)(a) All entities authorized to enforce the Florida Building Code under ~~pursuant to~~ s. 553.80 shall comply with applicable standards for issuance of mandatory certificates of occupancy, minimum types of inspections, and procedures for plans review and inspections as established by the commission by rule. Local governments may adopt amendments to the administrative provisions of the Florida Building Code, subject to the limitations in ~~of~~ this subsection ~~paragraph~~. Local amendments must ~~shall~~ be more stringent than the minimum standards described in this subsection ~~herein~~ and must ~~shall~~ be transmitted to the commission within 30 days after enactment. The local government shall make such amendments available to the general public in a usable format. The State Fire Marshal is responsible for establishing the standards and procedures required in this subsection ~~paragraph~~ for governmental entities with respect to applying the Florida Fire Prevention Code and the Life Safety Code.

(b) Local governments may, subject to the limitations in ~~of~~ this subsection ~~section~~ and not more than once every 6 months, adopt amendments to the technical provisions of the Florida Building Code that ~~which~~ apply solely within the jurisdiction of such government and that ~~which~~ provide for more stringent requirements than those specified in the Florida Building Code~~, not more than once every 6 months~~. A local

government may adopt technical amendments that address local needs if:

1. The local governing body determines, following a public hearing which has been advertised in a newspaper of general circulation at least 10 days before the hearing, that there is a need to strengthen the requirements of the Florida Building Code. The determination must be based upon a review of local conditions by the local governing body, which review demonstrates by evidence or data that the geographical jurisdiction governed by the local governing body exhibits a local need to strengthen the Florida Building Code beyond the needs or regional variation addressed by the Florida Building Code, that the local need is addressed by the proposed local amendment, and that the amendment is no more stringent than necessary to address the local need.

2. Such additional requirements are not discriminatory against materials, products, or construction techniques of demonstrated capabilities.

3. Such additional requirements do ~~may~~ not introduce a new subject not addressed in the Florida Building Code.

(c)~~4.~~ The enforcing agency shall make readily available, in a usable format, all amendments adopted under ~~pursuant to~~ this subsection ~~section~~.

(d)~~5.~~ Any amendment to the Florida Building Code shall be transmitted within 30 days after adoption by the ~~adopting~~ local

government to the commission. The commission shall maintain copies of all such amendments in a format that is usable and obtainable by the public. Local technical amendments are ~~shall~~ not ~~become~~ effective until 30 days after the amendment has been received and published by the commission.

(e)~~6.~~ An ~~Any~~ amendment to the Florida Building Code adopted by a local government under ~~pursuant to~~ this subsection is ~~paragraph shall be~~ effective only until the adoption ~~by the commission~~ of the new edition of the Florida Building Code by the commission every third year. At such time, the commission shall review such amendment for consistency with the criteria in paragraph (9)(a) and adopt such amendment as part of the Florida Building Code or rescind the amendment. The commission shall immediately notify the respective local government of the rescission of any amendment. After receiving such notice, the respective local government may readopt the rescinded amendment under ~~pursuant to~~ the provisions of this subsection ~~paragraph~~.

(f)~~7.~~ Each county and municipality desiring to make local technical amendments to the Florida Building Code shall ~~by interlocal agreement~~ establish by interlocal agreement a countywide compliance review board to review any amendment to the Florida Building Code that is~~,~~ adopted by a local government within the county under ~~pursuant to~~ this subsection and ~~paragraph,~~ that is challenged by a ~~any~~ substantially affected party for purposes of determining the amendment's compliance

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

with this subsection ~~paragraph~~. If challenged, the local technical amendments are ~~shall~~ not ~~become~~ effective until the time for filing an appeal under paragraph (g) ~~pursuant to subparagraph 8.~~ has expired or, if there is an appeal, until the commission issues its final order determining if the adopted amendment is in compliance with this subsection.

(g)~~8.~~ If the compliance review board determines such amendment is not in compliance with this subsection ~~paragraph~~, the compliance review board shall notify such local government of the noncompliance and that the amendment is invalid and unenforceable until the local government corrects the amendment to bring it into compliance. The local government may appeal the decision of the compliance review board to the commission. If the compliance review board determines that such amendment is ~~to be~~ in compliance with this subsection ~~paragraph~~, any substantially affected party may appeal such determination to the commission. Any such appeal must ~~shall~~ be filed with the commission within 14 days after ~~of~~ the board's written determination. The commission shall promptly refer the appeal to the Division of Administrative Hearings by electronic means through the division's website for the assignment of an administrative law judge. The administrative law judge shall conduct the required hearing within 30 days after being assigned to the appeal, and shall enter a recommended order within 30 days after ~~of~~ the conclusion of such hearing. The commission

shall enter a final order within 30 days after an order is rendered ~~thereafter~~. ~~The provisions of~~ Chapter 120 and the uniform rules of procedure shall apply to such proceedings. The local government adopting the amendment that is subject to challenge has the burden of proving that the amendment complies with this subsection ~~paragraph~~ in proceedings before the compliance review board and the commission, as applicable. Actions of the commission are subject to judicial review under ~~pursuant to~~ s. 120.68. The compliance review board shall determine whether its decisions apply to a respective local jurisdiction or apply countywide.

(h) ~~9.~~ An amendment adopted under this subsection ~~paragraph~~ shall include a fiscal impact statement that ~~which~~ documents the costs and benefits of the proposed amendment. Criteria for the fiscal impact statement shall include the impact to local government relative to enforcement and~~,~~ the impact to property and building owners and~~, as well as to~~ industry~~,~~ relative to the cost of compliance. The fiscal impact statement may not be used as a basis for challenging the amendment for compliance.

(i) ~~10.~~ In addition to paragraphs (f) and (g) ~~subparagraphs 7. and 9.~~, the commission may review any amendments adopted under ~~pursuant to~~ this subsection and make nonbinding recommendations related to compliance of such amendments with this subsection.

(j) ~~(c)~~ Any amendment adopted by a local enforcing agency

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

under ~~pursuant to~~ this subsection may ~~shall~~ not apply to state or school district owned buildings, manufactured buildings or factory-built school buildings approved by the commission, or prototype buildings approved under ~~pursuant to~~ s. 553.77(3). The respective responsible entities shall consider the physical performance parameters substantiating such amendments when designing, specifying, and constructing such exempt buildings.

(k) ~~(d)~~ A technical amendment to the Florida Building Code related to water conservation practices or design criteria adopted by a local government under ~~pursuant to~~ this subsection is not ~~rendered~~ void when the code is updated if the technical amendment is necessary to protect or provide for more efficient use of water resources as provided in s. 373.621. However, any such technical amendment carried forward into the next edition of the code under ~~pursuant to~~ this subsection ~~paragraph~~ is subject to review or modification as provided in this part.

(l) Any substantially affected party may submit to the commission for review any local government regulation, including, but not limited to, a law, ordinance, policy, amendment, or land use or zoning provision, that such party believes is a technical amendment to the Florida Building Code. If the commission determines that the local government regulation is a technical amendment to the Florida Building Code, the regulation is not effective or enforceable until it is adopted in accordance with this subsection.

Section 3. Paragraph (bb) of subsection (1) of section 125.01, Florida Statutes, is amended to read:

125.01 Powers and duties.—

(1) The legislative and governing body of a county shall have the power to carry on county government. To the extent not inconsistent with general or special law, this power includes, but is not restricted to, the power to:

(bb) Enforce the Florida Building Code~~,~~ as provided in s. 553.80~~,~~ and adopt and enforce local technical amendments to the Florida Building Code as provided in s. 553.73(4)~~, pursuant to s. 553.73(4)(b) and (c)~~.

Section 4. Subsection (1) of section 125.56, Florida Statutes, is amended to read:

125.56 Enforcement and amendment of the Florida Building Code and the Florida Fire Prevention Code; inspection fees; inspectors; etc.—

(1) The board of county commissioners of each of the several counties of the state may enforce the Florida Building Code and the Florida Fire Prevention Code~~,~~ as provided in ss. 553.80, 633.206, and 633.208~~,~~ and, at its discretion, adopt local technical amendments to the Florida Building Code as provided in s. 553.73(4)~~, pursuant to s. 553.73(4)(b) and (c)~~ and local technical amendments to the Florida Fire Prevention Code as provided in~~, pursuant to~~ s. 633.202~~,~~ to provide for the safe construction, erection, alteration, repair, securing, and

demolition of any building within its territory outside the corporate limits of any municipality. Upon a determination to consider amending the Florida Building Code or the Florida Fire Prevention Code by a majority of the members of the board of county commissioners of such county, the board shall call a public hearing and comply with the public notice requirements of s. 125.66(2). The board shall hear all interested parties at the public hearing and may then amend the building code or the fire code consistent with the terms and purposes of this act. Upon adoption, an amendment to the code shall be in full force and effect throughout the unincorporated area of such county until otherwise notified by the Florida Building Commission under ~~pursuant to~~ s. 553.73 or the State Fire Marshal under ~~pursuant to~~ s. 633.202. This subsection does not ~~Nothing herein contained shall be construed to~~ prevent the board of county commissioners from repealing such amendment to the building code or the fire code at any regular meeting of such board.

Section 5. This act shall take effect July 1, 2020.

BUSINESS & PROFESSIONS SUBCOMMITTEE

HB 459 by Rep. Overdorf
Building Design

AMENDMENT SUMMARY
January 15, 2020

Amendment 1 by Rep. Overdorf (Strike-all amendment):
The strike-all amendment differs from the original bill in the following ways:

- Clarifies the exception that allows local governments to apply building design element regulations to single- and two-family residences when the regulations are adopted in accordance with and in compliance with the process for adopting local amendments to the Florida Building Code.
- Removes the provision that grants the Florida Building Commission **the ability to void** a local government regulation if the Commission determines the regulation is an amendment to the Building Code.
- Provides that a substantially affected person may submit a request to the Florida Building Commission for a **non-binding advisory opinion** on whether a local regulation is an amendment to the Building Code, and establishes a process for such.
- Defines "substantially affected person."

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: Business & Professions Subcommittee

Representative Overdorf offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (5) of section 163.3202, Florida Statutes, is renumbered as subsection (6), and a new subsection (5) is added to that section to read:

163.3202 Land development regulations.—

(5)(a) Land development regulations relating to building design elements may not be applied to a single- or two-family dwelling unless:

1. The dwelling is listed in the National Register of Historic Places, as defined in s. 267.021; or is a contributing property to a National Register Historic District; or is

designated as a historic property or a contributing property to a historic district, under the terms of a local preservation ordinance.

2. The regulations are adopted in order to implement the National Flood Insurance Program.

3. The regulations are adopted pursuant to and in compliance with the provisions of chapter 553.

(b) For purposes of this subsection, the term "building design elements" means the external building color; type or style of exterior cladding material; style or material of roof structures or porches; exterior nonstructural architectural ornamentation; location or architectural styling of windows or doors, including garage doors; number and type of rooms; and interior layout of rooms. The term does not include the height, bulk, orientation, or location of a structure on a zoning lot; or the use of buffering or screening to minimize potential adverse physical or visual impacts or protect the privacy of neighbors.

(c) This subsection does not affect the validity or enforceability of private covenants or other contractual agreements relating to building design elements.

Section 2. Subsection (4) of section 553.73, Florida Statutes, is amended to read:

553.73 Florida Building Code.—

(4)(a) All entities authorized to enforce the Florida

Building Code under ~~pursuant to~~ s. 553.80 shall comply with applicable standards for issuance of mandatory certificates of occupancy, minimum types of inspections, and procedures for plans review and inspections as established by the commission by rule. Local governments may adopt amendments to the administrative provisions of the Florida Building Code, subject to the limitations in ~~of~~ this subsection ~~paragraph~~. Local amendments must ~~shall~~ be more stringent than the minimum standards described in this section ~~herein~~ and must ~~shall~~ be transmitted to the commission within 30 days after enactment. The local government shall make such amendments available to the general public in a usable format. The State Fire Marshal is responsible for establishing the standards and procedures required in this subsection ~~paragraph~~ for governmental entities with respect to applying the Florida Fire Prevention Code and the Life Safety Code.

(b) Local governments may, subject to the limitations in ~~of~~ this section and not more than once every 6 months, adopt amendments to the technical provisions of the Florida Building Code that ~~which~~ apply solely within the jurisdiction of such government and that ~~which~~ provide for more stringent requirements than those specified in the Florida Building Code~~, not more than once every 6 months~~. A local government may adopt technical amendments that address local needs if:

1. The local governing body determines, following a public

hearing which has been advertised in a newspaper of general circulation at least 10 days before the hearing, that there is a need to strengthen the requirements of the Florida Building Code. The determination must be based upon a review of local conditions by the local governing body, which review demonstrates by evidence or data that the geographical jurisdiction governed by the local governing body exhibits a local need to strengthen the Florida Building Code beyond the needs or regional variation addressed by the Florida Building Code, that the local need is addressed by the proposed local amendment, and that the amendment is no more stringent than necessary to address the local need.

2. Such additional requirements are not discriminatory against materials, products, or construction techniques of demonstrated capabilities.

3. Such additional requirements do ~~may~~ not introduce a new subject not addressed in the Florida Building Code.

(c) ~~4.~~ The enforcing agency shall make readily available, in a usable format, all amendments adopted under ~~pursuant to~~ this section.

(d) ~~5.~~ Any amendment to the Florida Building Code shall be transmitted within 30 days after adoption by the ~~adopting~~ local government to the commission. The commission shall maintain copies of all such amendments in a format that is usable and obtainable by the public. Local technical amendments are ~~shall~~

not ~~become~~ effective until 30 days after the amendment has been received and published by the commission.

(e)~~6.~~ An ~~Any~~ amendment to the Florida Building Code adopted by a local government under ~~pursuant to~~ this subsection is ~~paragraph shall be~~ effective only until the adoption ~~by the commission~~ of the new edition of the Florida Building Code by the commission every third year. At such time, the commission shall review such amendment for consistency with the criteria in paragraph (9)(a) and adopt such amendment as part of the Florida Building Code or rescind the amendment. The commission shall immediately notify the respective local government of the rescission of any amendment. After receiving such notice, the respective local government may readopt the rescinded amendment under ~~pursuant to~~ the provisions of this subsection ~~paragraph~~.

(f)~~7.~~ Each county and municipality desiring to make local technical amendments to the Florida Building Code shall ~~by interlocal agreement~~ establish by interlocal agreement a countywide compliance review board to review any amendment to the Florida Building Code that is~~,~~ adopted by a local government within the county under ~~pursuant to~~ this subsection and ~~paragraph,~~ that is challenged by a ~~any~~ substantially affected party for purposes of determining the amendment's compliance with this subsection ~~paragraph~~. If challenged, the local technical amendments are ~~shall~~ not ~~become~~ effective until the time for filing an appeal under paragraph (g) ~~pursuant to~~

~~subparagraph 8.~~ has expired or, if there is an appeal, until the commission issues its final order determining if the adopted amendment is in compliance with this subsection.

(g)~~8.~~ If the compliance review board determines such amendment is not in compliance with this subsection ~~paragraph~~, the compliance review board shall notify such local government of the noncompliance and that the amendment is invalid and unenforceable until the local government corrects the amendment to bring it into compliance. The local government may appeal the decision of the compliance review board to the commission. If the compliance review board determines that such amendment is ~~to be~~ in compliance with this subsection ~~paragraph~~, any substantially affected party may appeal such determination to the commission. Any such appeal must ~~shall~~ be filed with the commission within 14 days after ~~of~~ the board's written determination. The commission shall promptly refer the appeal to the Division of Administrative Hearings by electronic means through the division's website for the assignment of an administrative law judge. The administrative law judge shall conduct the required hearing within 30 days after being assigned to the appeal, and shall enter a recommended order within 30 days after ~~of~~ the conclusion of such hearing. The commission shall enter a final order within 30 days after an order is rendered ~~thereafter~~. ~~The provisions of~~ Chapter 120 and the uniform rules of procedure shall apply to such proceedings. The

local government adopting the amendment that is subject to challenge has the burden of proving that the amendment complies with this subsection ~~paragraph~~ in proceedings before the compliance review board and the commission, as applicable. Actions of the commission are subject to judicial review under ~~pursuant to~~ s. 120.68. The compliance review board shall determine whether its decisions apply to a respective local jurisdiction or apply countywide.

(h)~~9.~~ An amendment adopted under this subsection ~~paragraph~~ shall include a fiscal impact statement that ~~which~~ documents the costs and benefits of the proposed amendment. Criteria for the fiscal impact statement shall include the impact to local government relative to enforcement and~~,~~ the impact to property and building owners and~~, as well as to~~ industry~~,~~ relative to the cost of compliance. The fiscal impact statement may not be used as a basis for challenging the amendment for compliance.

(i)~~10.~~ In addition to paragraphs (f) and (g) ~~subparagraphs 7. and 9.~~, the commission may review any amendments adopted under ~~pursuant to~~ this subsection and make nonbinding recommendations related to compliance of such amendments with this subsection.

(j)~~(c)~~ Any amendment adopted by a local enforcing agency under ~~pursuant to~~ this subsection may ~~shall~~ not apply to state or school district owned buildings, manufactured buildings or factory-built school buildings approved by the commission, or

prototype buildings approved under ~~pursuant to~~ s. 553.77(3). The respective responsible entities shall consider the physical performance parameters substantiating such amendments when designing, specifying, and constructing such exempt buildings.

(k) ~~(d)~~ A technical amendment to the Florida Building Code related to water conservation practices or design criteria adopted by a local government under ~~pursuant to~~ this subsection is not ~~rendered~~ void when the code is updated if the technical amendment is necessary to protect or provide for more efficient use of water resources as provided in s. 373.621. However, any such technical amendment carried forward into the next edition of the code under ~~pursuant to~~ this subsection ~~paragraph~~ is subject to review or modification as provided in this part.

(l) If a local government adopts a regulation, law, ordinance, policy, amendment, or land use or zoning provision without using the process established in this subsection, and a substantially affected person considers such regulation, law, ordinance, policy, amendment, or land use or zoning provision to be a technical amendment to the Florida Building Code, then the substantially affected person may submit to the commission a petition for a nonbinding advisory opinion. As used in this paragraph, the term "local government" means a county, municipality, special district, or political subdivision of the state. If a substantially affected person submits the request in accordance with this paragraph, the commission shall issue a

nonbinding advisory opinion stating whether or not the commission interprets the regulation, law, ordinance, policy, amendment, or land use or zoning provision as a technical amendment to the Florida Building Code.

1. Requests to review a local government regulation, law, ordinance, policy, amendment, or land use or zoning provision may be initiated by any substantially affected person. A substantially affected person includes an owner or builder subject to the regulation, law, ordinance, policy, amendment, or land use or zoning provision, or an association of owners or builders having members who are subject to the regulation, law ordinance, policy, amendment, or land use or zoning provision.

In order to initiate review, a substantially affected person must file a petition with the commission. The commission shall adopt a form for the petition and directions for filing, which shall be published on the Building Code Information System. The form shall, at a minimum, require the following:

a. The name of the local government that enacted the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

b. The name and address of the local government's general counsel.

c. The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any; and an explanation of how

the petitioner's substantial interests are being affected by the regulation, law, ordinance, policy, amendment, land use or zoning provision.

d. A statement of why the regulation, law, ordinance, policy, amendment, land use or zoning provision is a technical amendment to the Florida Building Code, and which provisions of Florida Building Code, if any, are being amended by the regulation, law, ordinance, policy, amendment, land use or zoning provision.

2. The petitioner shall serve the petition on the local government's general counsel or administrator by certified mail, return receipt requested, and a copy on the commission, in accordance with the commission's published directions. The local government shall respond to the petition in accordance with the form by certified mail, return receipt requested, within 14 days after receipt, including Saturdays, Sundays, and legal holidays.

3. Upon receipt of a petition that meets the requirements of this paragraph, the commission shall publish the petition, including any response submitted by the local government, on the Building Code Information System in a manner that allows interested persons to address the issues by posting comments.

4. Prior to issuing an advisory opinion, the commission shall consider the petition, the response, and any comments posted on the Building Code Information System. The commission may also provide the petition, the response, and any comments

posted on the Building Code Information System to a technical advisory committee, and may consider any recommendation provided by a technical advisory committee. The commission shall issue an advisory opinion stating whether the regulation, law, ordinance, policy, amendment, land use or zoning provision is a technical amendment to the Florida Building Code within 30 days after the filing of the petition, including Saturdays, Sundays, and legal holidays. The commission shall publish its advisory opinion on the Building Code Information System and in the Florida Administrative Register. The commission's opinion is non-binding and is not a declaratory statement pursuant to s. 120.565.

Section 3. Paragraph (bb) of subsection (1) of section 125.01, Florida Statutes, is amended to read:

125.01 Powers and duties.—

(1) The legislative and governing body of a county shall have the power to carry on county government. To the extent not inconsistent with general or special law, this power includes, but is not restricted to, the power to:

(bb) Enforce the Florida Building Code~~,~~ as provided in s. 553.80~~,~~ and adopt and enforce local technical amendments to the Florida Building Code as provided in s. 553.73(4)~~, pursuant to s. 553.73(4)(b) and (c)~~.

Section 4. Subsection (1) of section 125.56, Florida Statutes, is amended to read:

125.56 Enforcement and amendment of the Florida Building

Code and the Florida Fire Prevention Code; inspection fees; inspectors; etc.—

(1) The board of county commissioners of each of the several counties of the state may enforce the Florida Building Code and the Florida Fire Prevention Code~~,~~ as provided in ss. 553.80, 633.206, and 633.208~~,~~ and, at its discretion, adopt local technical amendments to the Florida Building Code as provided in s. 553.73(4)~~, pursuant to s. 553.73(4)(b) and (c)~~ and local technical amendments to the Florida Fire Prevention Code as provided in~~, pursuant to~~ s. 633.202~~,~~ to provide for the safe construction, erection, alteration, repair, securing, and demolition of any building within its territory outside the corporate limits of any municipality. Upon a determination to consider amending the Florida Building Code or the Florida Fire Prevention Code by a majority of the members of the board of county commissioners of such county, the board shall call a public hearing and comply with the public notice requirements of s. 125.66(2). The board shall hear all interested parties at the public hearing and may then amend the building code or the fire code consistent with the terms and purposes of this act. Upon adoption, an amendment to the code shall be in full force and effect throughout the unincorporated area of such county until otherwise notified by the Florida Building Commission under ~~pursuant to~~ s. 553.73 or the State Fire Marshal under ~~pursuant to~~ s. 633.202. This subsection does not ~~Nothing herein contained~~

~~shall be construed to~~ prevent the board of county commissioners from repealing such amendment to the building code or the fire code at any regular meeting of such board.

Section 5. This act shall take effect July 1, 2020.

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

Remove everything before the enacting clause and insert:
An act relating to building design; amending s. 163.3202, F.S.; providing that certain regulations relating to building design elements may not be applied to certain structures; providing exceptions; defining the term "building design elements"; providing applicability; amending s. 553.73, F.S.; providing that an affected party may submit certain local government regulations to the Florida Building Commission for review; providing for the Commission to issue a nonbinding advisory opinion for such regulation; making technical changes; amending ss. 125.01 and 125.56, F.S.; conforming cross-references to changes made by the act; making technical changes; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 469 Real Estate Conveyances
SPONSOR(S): Duggan
TIED BILLS: **IDEN./SIM. BILLS:** SB 1224

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N	Rochester	Luczynski
2) Business & Professions Subcommittee		Wright	Anstead
3) Judiciary Committee			

SUMMARY ANALYSIS

A leasehold is an estate interest in real property held under a rental agreement by which the owner gives another the right to occupy or use land for a period of time.

A transfer or conveyance of real property, including a leasehold, for a term of more than one year must be:

- In writing; and
- Signed by the conveying party in the presence of two subscribing witnesses.

Subscribing witness requirements are designed to protect the grantor of the estate in land, therefore only the landlord's signature must be witnessed. If a dispute arises concerning the real estate transaction, the landlord or tenant may benefit from having a third party who was present at the signing. Currently, lease agreements must be witnessed if they are executed in Connecticut, Florida, Georgia, Louisiana, or South Carolina.

HB 469 removes the subscribing witness requirement for instruments conveying a leasehold interest in real property. Instruments conveying a freehold interest still require two subscribing signatures.

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

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

A leasehold is an estate interest in real property held under a rental agreement by which the owner gives another the right to occupy or use land for a period of time.[1]

A transfer or conveyance of real property, including a leasehold, for a term of more than one year[2] must be:

- In writing; and
- Signed by the conveying party in the presence of two subscribing witnesses.[3]

Subscribing witness requirements are designed to protect the grantor of the estate in land, therefore only the landlord's signature must be witnessed.[4] If a dispute arises concerning the real estate transaction, the landlord or tenant may benefit from having a third party who was present at the signing. Currently, lease agreements must be witnessed if they are executed in Connecticut, Florida, Georgia, Louisiana or South Carolina.[5]

A lease may be valid even if the landlord's signature was not witnessed by two subscribing witnesses. Where the parties' conduct demonstrates acceptance of the lease and adherence to its terms[6], that conduct may prevent a party from contending that the lease is invalid.[7] Conversely, a court may void a lease agreement lacking two subscribing witnesses if the tenant has not moved in or relied upon the lease and there is a genuine dispute as to whether a lease exists.[8]

Effect of Proposed Changes

HB 469 removes the subscribing witness requirement for instruments conveying a leasehold interest in real property. Instruments conveying a freehold[9] interest will still require two subscribing signatures.[10]

B. SECTION DIRECTORY:

Section 1: Amends s. 689.01, F.S., relating to how real estate conveyed.
Section 2: Provides an effective date of July 1, 2020.

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[1] A leasehold is an estate interest in real property held under a rental agreement by which the owner gives another the right to occupy or use land for a period of time. West's Encyclopedia of American Law, *Leasehold* (2008), https://legal-dictionary.thefreedictionary.com/leasehold (last visited Dec. 5, 2019). See s. 689.01, F.S.
[2] Landlords that are corporations may create a lease longer than one without the need for witnessed signatures if the conveying instrument is sealed with the corporate seal and signed in its name by its president, any vice president, or chief executive officer. Ss. 689.01 and 692.01, F.S.
[3] Any requirement that an instrument be signed in the presence of two subscribing witnesses may be satisfied by witnesses being present and electronically signing by means of audio-video communication technology. S. 689.01(2), F.S.
[4] S. 689.01, F.S.
[5] Teo Spengler, *Who Can Witness a Real Estate Signing*, San Francisco Chronicle (Feb. 11, 2019) https://homeguides.sfgate.com/can-witness-real-estate-deed-signing-52835.html (last visited Dec. 5, 2019).
[6] Demonstration of adherence to lease terms may include a landlord's delivery of keys or a tenant's rent payment. *Bodden v. Carbonell*, 354 So. 2d 927 (Fla. 2d DCA 1978).
[7] *Harbour Place Professional Park Co. v. Max's Pet Emporium, Inc.*, 2008 WL 8089978 (Fla. Cir. Ct.).
[8] *Id.*
[9] A freehold is a permanent and absolute tenure of land or property with freedom to dispose of it at will. West's Encyclopedia of American Law, *Freehold* (2008), https://www.thefreedictionary.com/freehold (last visited Dec. 5, 2019).
[10] Unless the conveying party is a corporation, then subscribing witnesses are not required. Ss. 689.01 and 692.01, F.S.

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:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to real estate conveyances; amending s. 689.01, F.S.; providing that subscribing witnesses are not required to validate certain instruments conveying a leasehold interest in real property; providing an effective date.

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

Section 1. Subsection (1) of section 689.01, Florida Statutes, is amended to read:

689.01 How real estate conveyed.—

(1) No estate or interest of freehold, or for a term of more than 1 year, or any uncertain interest of, in, or out of any messuages, lands, tenements, or hereditaments shall be created, made, granted, transferred, or released in any ~~other~~ manner other than by instrument in writing, signed in the presence of two subscribing witnesses by the party creating, making, granting, conveying, transferring, or releasing such estate, interest, or term of more than 1 year, or by the party's lawfully authorized agent, unless by will and testament, or other testamentary appointment, duly made according to law; and no estate or interest, either of freehold, or of term of more than 1 year, or any uncertain interest of, in, to, or out of any messuages, lands, tenements, or hereditaments, shall be assigned

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

or surrendered unless it be by instrument signed in the presence of two subscribing witnesses by the party so assigning or surrendering, or by the party's lawfully authorized agent, or by the act and operation of law; provided, however, that no subscribing witnesses shall be required for any such instrument pertaining to a leasehold estate in real property. No seal shall be necessary to give validity to any instrument executed in conformity with this section. Corporations may execute any and all conveyances in accordance with the provisions of this section or ss. 692.01 and 692.02.

Section 2. This act shall take effect July 1, 2020.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 511 Insulation Products
SPONSOR(S): Fine
TIED BILLS: **IDEN./SIM. BILLS:** SB 732

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Brackett	Anstead
2) Government Operations & Technology Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Federal laws regulate the manufacture, sale and advertising of residential insulation products. The Federal Trade Commission (FTC) has jurisdiction over the testing, manufacturing, sale, and advertising of residential insulation products. The FTC requires residential insulation products to be tested in accordance with the tests designed by ASTM International (ASTM). States are permitted to enact laws that are not inconsistent and do not frustrate the FTC's regulations.

The bill provides that any person who advertises, sells, offers, provides, markets, or distributes interior envelope insulation products without a valid ATSM report stating the product complies with the Florida Building Code and the corresponding ASTM standard, is subject to a Florida Deceptive and Unfair Trade Practices Act action brought by an enforcing authority. Such report must come from a Florida Building Commission approved testing laboratory, and must be provided to a building official upon request.

The bill does not have a fiscal impact on state and local governments.

The bill provides for an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Federal Trade Commission

The Federal Trade Commission Act grants the FTC the authority to:[1]

- Prevent unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce;
- Seek monetary redress and other relief for conduct injurious to consumers;
- Prescribe rules defining with specificity acts or practices that are unfair and deceptive, and establish requirements designed to prevent such acts or practices;
- Gather and compile information and conduct investigations relating to the organization, business, practices, and management of entities engaged in commerce; and
- Make reports and legislative recommendations to Congress and the public.

The FTC regulates home insulation products as part of its job to prevent unfair or deceptive acts or practices in or affecting commerce. The FTC started regulating home insulation products in 1979 to address the failure of the home insulation market to provide consumers with essential pre-purchase information about home insulation products, specifically an insulation product's R-value.[2] R-value measures resistance to heat flow. The higher the R-value, the greater the effectiveness of the insulation.[3]

Home insulation is insulation that is used in old or new homes, condominiums, cooperatives, apartments, modular homes, or mobile homes. It does not include pipe insulation[4] or any kind of duct insulation except for duct wrap.[5] The FTC defines "insulation" as any material mainly used to slow down heat flow. It may be mineral or organic, fibrous, cellular, or reflective.[6]

On May 13, 2019, the FTC published notice that effective May 13, 2020, home insulation will also include insulation developed and marketed for commercial use that is also marketed for and used in residential buildings.[7]

Any violation of the regulations for home insulation products is an unfair and deceptive act or practice or an unfair method of competition under the Federal Trade Commission Act, and can result in a heavy fine. A person may be fined up to $10,000 for each violation.[8]

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[1] *See* 15 U.S.C. § 41-58; Federal Trade Commission, *Federal Trade Commission Act*, https://www.ftc.gov/enforcement/statutes/federal-trade-commission-act (last visited Nov. 24, 2019).
[2] 84 Fed. Reg. 20788 (May 13, 2019).
[3] 16 C.F.R. 460.5 & 12.
[4] The FTC chose not to regulate pipe insulation because it is primarily used to prevent moisture condensation on low temperature lines and not for energy conservation. 64 Fed. Reg. 48027 (Sep. 1, 1999).
[5] The FTC chose not to regulate duct insulation except for duct wrap because only duct wrap is used extensively in residential properties. *Id.*
[6] 16 C.F.R. § 460.1-2.
[7] 84 Fed. *supra* note 3.
[8] 15 U.S.C. § 45(m).

All types of home insulation products must be tested by laboratories to determine their R-Value. The tests to determine the R-value of home insulation products must be done in accordance with the tests designed by ASTM International (ASTM).[9]

All manufacturers of home insulation products and laboratories that test home insulation products must keep records of each test for at least three years.[10]

Manufactures must also label every package of their home insulation products and provide fact sheets to retailers and installers. The labels must contain:

- The type of insulation product in the package.
- A chart that includes the product's information including the R-value, which must be rounded to the nearest tenth except for products with R-values of 10 or more which may be rounded to the nearest whole number.
- A statement saying that R means resistance to heat flow. The higher the R-value, the greater the insulating power, and in order to get the marked R-value the product must be installed correctly.[11]

The fact sheet must include:

- The name and address of the manufacturer;
- The type of insulation product in the package;
- A chart that includes the product's information including the R-value, which must be rounded to the nearest tenth except for products with R-values of 10 or more which may be rounded to the nearest whole number.
- A statement saying that, R means resistance to heat flow. The higher the R-value, the greater the insulating power, in order to get the marked R-value the product must be installed correctly, and the amount of insulation a person needs depends on the climate they live in along with the size and type of their house, the amount of insulation already in their house, and the fuel use of their family.[12]

Home insulation product retailers must make the fact sheets for their products available to their customers. Retailers must ensure that the fact sheets are in area that a customer will notice them. New home sellers must ensure their sales contracts include the information, including the R-value, of each type of insulation product that has been installed in a home.[13] Home installation installers have similar notice requirements.[14]

Manufacturers must ensure that any advertisement for their home insulation product, which includes a price for the product in the ad, includes the product's information, including R-value, and a statement saying, ""The higher the R-value, the greater the insulating power. Ask your seller for the fact sheet on R-values."[15] Manufacturers must also ensure that any advertisement for their home insulation products, which states or implies the product can cut energy costs or usage, is supported by a reasonable basis for the claim, and includes a statement saying, "Savings vary. Find out why in the seller's fact sheet on R-values. Higher R-values mean greater insulating power."[16]

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[9] 16 C.F.R. § 460.5. ASTM is an international testing organization that develops and publishes technical standards that are arrived at through consensus and used on a voluntary basis for a wide variety of products, materials, systems and services. ASTM International, *Detailed Overview*, https://www.astm.org/ABOUT/full_overview.html (last visited Nov. 25, 2019).

[10] 16 C.F.R. § 460.9.

[11] 16 C.F.R. § 460.11-13.

[12] *Id.*

[13] 16 C.F.R. § 460.14 & 16.

[14] 16 C.F.R. § 460.15 & 17.

[15] 16 C.F.R. § 460.18-19.

[16] *Id.*

The FTC does not require manufacturers, retailers, or installers to provide any information about a home insulation product to a local building official.

Any state and local laws and regulations that are inconsistent with, or frustrate the purposes of, the FTC's regulations are preempted. However, a State or local government may petition the Commission, for good cause, to permit the enforcement of any part of a State or local law or regulation that would be preempted by this section.[17]

The Florida Building Code

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida's minimum standards were met. Local governments could choose from four separate model codes. The state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.[18]

In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. The Governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Building Code), and that first edition replaced all local codes on March 1, 2002.[19] The current edition of the Building Code is the sixth edition, which is referred to as the 2017 Florida Building Code.[20]

Part IV of ch. 553, F.S., is known as the "Florida Building Codes Act" (Act). The purpose and intent of the Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.[21]

The Florida Building Commission (Commission) implements the Building Code. The Commission, which is housed within the Department of Business and Professional Regulation, is a 27-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code.[22] The Commission reviews several International Codes published by the International Code Council, the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every three years.[23]

Enforcement of the Florida Building Code

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare.[24]

Every local government must enforce the Building Code and issue building permits.[25] It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without

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[17] 16 C.F.R. § 460.23.
[18] The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs,* p. 4, *available at* http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Nov. 11, 2019).
[19] *Id.*
[20] Florida Building Commission Homepage https://floridabuilding.org/c/default.aspx (last visited Nov. 11, 2019).
[21] *See* s. 553.72(1), F.S.
[22] S. 553.74, F.S.
[23] S. 553.73, F.S.
[24] S. 553.72, F.S.
[25] Ss. 125.01(1)(bb), 125.56(1), & 553.80(1), F.S.

first obtaining a permit from the local government enforcing agency or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.[26]

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.[27] A building official is a local government employee or a person contracted by a local government who supervises Building Code activities, including plan review, enforcement, and inspection.[28] Any construction work that requires a building permit also requires plans and inspections by the local building official to ensure the work complies with the Building Code.[29]

Insulation Requirements for a Building's Thermal Envelope

The Building Code defines "building thermal envelope" as a building's basement, walls, exterior walls, floor, roof, and any other building elements that enclose an area that is directly or indirectly heated or cooled. The building thermal envelope also includes the boundary between a conditioned space and an unconditioned space.[30]

The Building Code requires certain types of insulation for a building's thermal envelope depending on where the insulation is located. The Building Code requires insulation to have a certain type of R-value depending on where the insulation is located. For example, the Building Code requires insulation for ceilings to have a different R-value then the insulation required for walls. R-value measures resistance to heat flow. The higher the R-value, the greater the effectiveness of the insulation.[31]

Product Evaluation and Approval

Current law requires the Commission to develop and implement an approval of products for statewide use. The Commission has created a product approval system for products and systems that makeup the building envelope and structural frame of a building.[32] The Commission does not approve products for the interior of a building, including interior insulation products.[33] The Commission approves the products in the following categories for statewide use:[34]

- Panel Walls;
- Exterior Doors;
- Roofing Products;
- Skylights;
- Windows;
- Shutters;
- Structural Components; and
- Impact Protective Systems.

To obtain state approval, a manufacturer must demonstrate a product complies with the applicable standards and provisions of the Building Code by submitting one of the following reports:

- A certification mark or listing of an approved certification agency;
- A test report from an approved testing laboratory;

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[26] *See* Ss. 125.56(4)(a) & 553.79(1), F.S.
[27] S. 202 of the Building Code (Building), Sixth Edition.
[28] S. 468.603(2), F.S.
[29] Ss. 107 & 110 of the Building Code (Building), Sixth Edition.
[30] S. 202 of the Building Code (Energy Conservation), Sixth Edition.
[31] Ss. 202 & 402 of the Building Code (Energy Conservation), Sixth Edition; Department of Energy, *Insulation*, https://www.energy.gov/energysaver/weatherize/insulation (last visited Nov. 25, 2019).
[32] S. 553.842(1), F.S.; R. 61G20-3.001, F.A.C.
[33] Email from Colton Madill, Deputy Legislative Affairs Director, Department of Business & Professional Regulation, HB 511 Question (Nov. 18, 2019).
[34] R. 61G20-3.001, F.A.C.

- A product evaluation report developed, signed and sealed by a Florida licensed engineer or architect; or
- A product evaluation report from one of the following evaluation entities:
    - The National Evaluation Service;
    - The International Association of Plumbing and Mechanical Officials Evaluation Service;
    - The International Code Council Evaluation Services;
    - Underwriters Laboratories, LLC;
    - The International Conference of Building Officials;
    - SBCCI Public Safety Testing and Evaluation Services, Inc.;
    - Intertek Testing Services NA, Inc.; or
    - The Miami-Dade County Building Code Compliance Office Product Control Division.[35]

Approved Testing Laboratories

The Commission must approve an entity as an approved testing laboratory if it receives accreditation indicating that it meets the Commission's approved standards for testing laboratories, and it receives a certification of independence.[36]

An entity may receive accreditation from one of the following bodies:[37]
- The American Association for Laboratory Accreditation;
- The National Voluntary Laboratory Accreditation Program;
- One of the approved evaluation entities; or
- Any other approved accreditation bodies that meet the Commission's approved standards.

The Commission must issue a certificate of independence to a testing laboratory if an officer who is responsible for operation of the laboratory attests that the laboratory:[38]
- Does not have, nor does it intend to acquire or will it acquire, a financial interest in any company manufacturing or distributing products tested or labeled by the laboratory.
- Is not owned, operated or controlled by any company manufacturing or distributing products it tests or labels.

Florida Deceptive and Unfair Trade Practices Act

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) declares that any unfair or deceptive acts or practices committed in the conduct of any trade or commerce is unlawful.[39] The purpose of FDUTPA is to:[40]
- Simplify, clarify, and modernize the law governing consumer protection, unfair methods of competition, and unconscionable, deceptive, and unfair trade practices.
- Protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.
- Make state consumer protection and enforcement consistent with established policies of federal law relating to consumer protection.

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[35] S. 553.842, F.S.; DBPR, Product Evaluation Entity List, https://www.floridabuilding.org/pr/pr_org_lst.aspx (last visited Nov. 11, 2019).
[36] The Commission's approved standards for test laboratories is the International Organization for Standardization/International Electrotechnical Commission Guide 17025: General Requirements for the Competence of Calibration and Testing Laboratories, any standards referenced by the Building Code, or any standards that meet or exceed the first edition of the Building Code, which is referred to as the 2001 edition of the Building Code. R. 61G20-3.008(3), F.A.C.; R. 61G20-3.015, F.A.C.; R. 61G20-3.009, F.A.C.
[37] S. 553.842(8)(b), F.S.; R. 61G20-3.008(3).
[38] R. 61G20-3.009, F.A.C.
[39] *See* Ch. 501, part II, F.S.
[40] S. 501.202, F.S.

Investigative and enforcement authority under FDUTPA is given to enforcing authorities. A state attorney is an enforcing authority if a violation occurs in or affects the judicial circuit under the office's jurisdiction. The Department of Legal Affairs within the Florida Office of the Attorney General (Department) is also an enforcing authority, and has investigate and enforcement authority if a violation occurs in or affects more than one judicial circuit or if the state attorney defers to the Department.[41]

These enforcing authorities may, within 4 years after the occurrence of a violation or within 2 years after the last payment in a transaction involved in a violation, bring an action:

- To obtain a declaratory judgment that an act or practice violates FDUTPA;
- To enjoin any person who has violated, is violating, or is otherwise likely to violate FDUTPA; or
- On behalf of one or more consumers or governmental entities for the actual damages caused by an act or practice in violation of FDUTPA.[42]

Enforcing authorities may collect a civil penalty of up to $10,000 per violation plus reasonable attorney's fees and costs for willful violations of FDUTPA and up to $15,000 plus reasonable attorney's fees and costs for willful violations of FDUTPA involving a senior citizen, a person who has a disability, a military service member, or the spouse or dependent child of a military service member.[43] The Department also has authority to issue a cease and desist order if it would be in the interest of the public.[44]

If an enforcing authority receives a complaint regarding a person who is subject to other supervision in the state, such enforcing authority must inform the supervising agency.[45]

Current law provides that an enforcing authority bring an action against any person who advertises, sells, offers, provides, distributes, or markets a product as hurricane, windstorm, or impact protection from wind-borne debris without approval by the Commission.[46]

FDUTPA also provides a private cause of action for anyone aggrieved by a violation of FDUTPA to:

- Obtain a declaratory judgement that an act or practice violates FDUTPA;
- Enjoin a person who has violated, is violating, or is otherwise likely to violate FDUPTA; and
- Recover actual damages plus reasonable attorney's fees and costs.[47]

Effect of the Bill

The bill provides that any person who advertises, sells, offers, provides, markets, or distributes interior envelope insulation products without a valid ATSM report stating the product complies with the Building Code and the corresponding ASTM standard, is subject to a FDUTPA action brought by an enforcing authority. Such report must come from a Commission approved testing laboratory, and the report must be provided to a building official upon request.

B. SECTION DIRECTORY:

Section 1. Creates s. 553.843, F.S., providing requirements for providing interior insulation products and providing a cause of action.

Section 2. Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

[41] Ss. 501.203(2), 501.206, & 501.207, F.S.
[42] Ss. 501.207(1) & (5), F.S.
[43] Ss. 501.2075, 501.2077, & 501.2105, F.S.
[44] S. 501.208(1), F.S.
[45] S. 501.209, F.S.
[46] S. 553.842(5), F.S.
[47] Ss. 501.2105 and 501.211, F.S.

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:

The bill may have a positive impact on the private sector by ensuring that local building officials know whether insulation products meet the applicable standards of the Building Code.

D. FISCAL COMMENTS:

Ensuring that local building officials know whether insulation products meet the applicable standards of the Building Code may result in a reduction in energy costs for consumers.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   None.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not appear to be inconsistent with or frustrate the FTC's regulations for home insulation products.

The bill provides that sellers of interior envelope insulation products must have a valid ATSM report stating the product complies with the Building Code and the report must provide the corresponding ASTM standard. However, the bill does not indicate what the corresponding ASTM standard is. The sponsor most likely meant that the corresponding ASTM standard is the ASTM testing standard that the FTC requires. It is recommended that the bill be amended to state that the product must comply with the ASTM standard required by the FTC.

The bill applies to all types of interior insulation products including commercial and residential. However, the FTC only regulates residential insulation products, and the FTC does not provide ASTM testing standards for commercial insulation products. The sponsor may want to limit the bill to residential insulation products.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to insulation products; creating s. 553.843, F.S.; specifying that a person who takes certain actions relating to interior building envelope insulation products without having a certain test report is subject to the Florida Deceptive and Unfair Trade Practices Act; requiring that such test report be provided, upon request, to a local building official; providing an effective date.

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

Section 1. Section 553.843, Florida Statutes, is created to read:

553.843 Interior building envelope insulation products.—Any person who advertises, sells, offers, provides, distributes, or markets a product as interior building envelope insulation without a valid ASTM test report, which also complies with the corresponding ASTM standard for the product, from a commission-approved testing laboratory indicating that the product complies with the Florida Building Code is subject to the Florida Deceptive and Unfair Trade Practices Act under part II of chapter 501, brought by the enforcing authority as defined in s. 501.203. The test report for interior building envelope insulation indicating that the product complies with the code

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

must be provided, upon request, to the local building official.

Section 2. This act shall take effect July 1, 2020.

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

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BUSINESS & PROFESSIONS SUBCOMMITTEE

HB 511 by Rep. Fine
Insulation Products

AMENDMENT SUMMARY
January 15, 2020

Amendment 1 by Rep. Fine (Strike-all amendment):
The strike-all amendment differs from the original bill in the following ways:

- Limits the bill's application to residential dwellings except for pipe insulation and duct insulation.
- Defines "residential dwellings" to include, one-, two-, and three- family residences, townhomes, residential condominiums and cooperatives, apartments, residential manufactured buildings, residential modular buildings, residential factory buildings, and mobile homes.
- Limits the applicability of the bill's requirements to manufacturers of interior insulation products.
- Provides that a product evaluation report may not be used to comply with the bill's requirements in lieu of the test report.
- Clarifies that the test reports must indicate that the products meet the ASTM standards required by the FTC.

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: Business & Professions Subcommittee

Representative Fine offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 553.843, Florida Statutes, is created to read:

553.843 Interior building envelope insulation products.—

(1) For purposes of this section the term "residential dwelling" includes one-family, two-family, three-family residences, townhomes, residential condominiums, residential cooperatives, apartments, residential manufactured buildings, residential modular buildings, residential factory buildings, and mobile homes.

(2) Any person who manufacturers a product that is advertised, sold, offered, provided, distributed, or marketed as interior building envelope insulation for residential dwellings, not including pipe insulation or duct insulation, without a valid test report from a commission-approved testing laboratory indicating that the product complies with the Florida Building Code and the ASTM International standard for the product as provided by Federal Trade Commission regulations in 16 C.F.R. ss. 460.1, et. seq., is subject to the Florida Deceptive and Unfair Trade Practices Act under part II of chapter 501, if brought by the enforcing authority as defined in s. 501.203. The test report for interior building envelope insulation products for residential dwellings must be provided, upon request, to a local building official. A product evaluation report may not be used in lieu of the test report. For purposes of this section, "manufacture" has the same meaning as provided in 553.36(12).

Section 2. This act shall take effect July 1, 2020.

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

Remove everything before the enacting clause and insert:

An act relating to insulation products; creating s. 553.843, F.S.; providing a definition for "residential dwelling"; specifying that a person who takes certain actions relating to interior building envelope insulation products for residential dwellings without

having a certain test report is subject to the Florida Deceptive and Unfair Trade Practices Act; providing that a product evaluation report may not be used in lieu of test; requiring that such test report be provided, upon request, to a local building official; providing a definition for "manufacture"; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 689 Department of Business and Professional Regulation
SPONSOR(S): Rodriguez, A.
TIED BILLS: **IDEN./SIM. BILLS:** SB 912

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Wright	Anstead
2) Government Operations & Technology Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The Department of Business and Professional Regulation (DBPR), is responsible for licensing and regulating tobacco and alcohol sales, pugilistic events, condominium associations, and public food and lodging establishments in Florida.

Related to tobacco taxing and reporting regulations, the bill:
- requires that business records related to cigarette and tobacco products must be filed with DBPR, through their electronic system, and
- updates reporting requirements related to the sale of tobacco products.

Related to alcohol regulations, the bill:
- changes the mechanism for how alcoholic beverage license applicants submit fingerprints to DBPR,
- requires that an applicant for any alcoholic beverage license provide proof of the applicant's right of occupancy for the entire premises for which the applicant is seeking to license,
- requires alcoholic beverage licensees to maintain a current electronic mail address with DBPR,
- requires reports on alcohol sales be submitted through DBPR's electronic system,
- requires notices related to a vendor payment delinquency to be made through electronic mail, and
- changes auditing timeframes for special restaurant licensees.

Related to pugilistic events regulations, the bill gives full authority to the Florida State Boxing Commission to determine glove weights and requirements, including not requiring any gloves for pugilistic matches.

Related to condominium association regulations, the bill:
- requires that a proposed annual budget be provided to members of the association and adopted by the board of directors no later than 30 days before the beginning of the fiscal year,
- provides that a person may not serve on a board if he or she is delinquent in the payment of an assessment due to the condominium association,
- removes the requirement that the Ombudsman keep his or her principal office in Leon County, and
- allows DBPR to adopt rules on the submission of complaints against condominium associations.

Related to public lodging establishments and public food service establishments licensing procedures, the bill:
- removes the requirement for a staggered license renewal schedule, and instead allows DBPR to adopt rules regarding license issuance and renewals, and
- removes partial initial fee payments, and instead requires that all fees be paid at the time of application.

The bill has no fiscal impact on local governments and has an indeterminate fiscal impact on state government.

The bill has an effective date of July 1, 2020.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Department of Business and Professional Regulation

The Florida Department of Business and Professional Regulation (DBPR) regulates and licenses businesses and professionals in Florida through the following divisions:

- The Division of Administration,
- The Division of Alcoholic Beverages and Tobacco,
- The Division of Certified Public Accounting,
- The Division of Drugs, Devices, and Cosmetics,
- The Division of Florida Condominiums, Timeshares, and Mobile Homes,
- The Division of Hotels and Restaurants,
- The Division of Pari-mutuel Wagering,
- The Division of Professions,
- The Division of Real Estate,
- The Division of Regulation,
- The Division of Technology, and
- The Division of Service Operations.[1]

The Division of Regulation is the enforcement authority for the Florida State Boxing Commission, Labor Organizations and Business Agents, Farm Labor Program, Child Labor Program, and any professional boards and programs housed within the Division of Professions.[2] To ensure compliance with applicable laws and rules by those professions and related businesses, The Division of Regulation investigates complaints, utilizes compliance mechanisms, and performs inspections.[3]

The Division of Florida Condominiums, Timeshares, and Mobile Homes (FCTMH) provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure.[4] FCTMH has limited regulatory authority over the following business entities and individuals:[5]

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks and related associations;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and
- Homeowners' Associations (jurisdiction is limited to arbitration of election and recall disputes).

The Division of Hotels and Restaurants (H&R) licenses, inspects and regulates public lodging and food service establishments in Florida. The division also licenses and regulates elevators, escalators and other vertical conveyance devices.[6]

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[1] s. 20.165, F.S.

[2] Except the Board of Architecture and Interior Design, and the Florida Board of Professional Engineers. Florida Department of Business and Professional Regulation, *Division of Regulation*, http://www.myfloridalicense.com/dbpr/reg/index.html (last visited Dec. 19, 2019).

[3] Florida Department of Business and Professional Regulation, *Division of Regulation*, http://www.myfloridalicense.com/DBPR/division-of-regulation/ (last visited Jan. 8, 2020).

[4] Department of Business and Professional Regulation, *Division of Florida Condominiums, Timeshares, and Mobile Homes*, http://www.myfloridalicense.com/DBPR/condos-timeshares-mobile-homes/, (last visited Jan. 8, 2020).

[5] *Id.*

[6] Florida Department of Business and Professional Regulation, Division of Hotels and Restaurants, http://www.myfloridalicense.com/DBPR/hotels-restaurants/ (last visited Jan. 8, 2020).

The Division of Alcoholic Beverages and Tobacco (ABT) regulates the manufacture, distribution, sale, and service of alcoholic beverages and tobacco products in Florida, including:

- receipt and processing of license applications;
- collection and auditing of taxes, surcharges, and fees paid by licensees; and
- enforcement of the laws and regulations governing the sale of alcoholic beverages and tobacco products.[7]

Tobacco

Background

ABT is responsible for the regulation of tobacco products under ch. 210, which sets out tax requirements only for cigarettes and tobacco products, and ch. 569, F.S., which sets out requirements for tobacco sales. [8]

"Cigarettes" are defined in s. 210.01(1), F.S., relating to state taxes on cigarettes, as "any roll for smoking, except one of which the tobacco is fully naturally fermented, without regard to the kind of tobacco or other substances used in the inner roll or the nature or composition of the material in which the roll is wrapped, which is made wholly or in part of tobacco irrespective of size or shape and whether such tobacco is flavored, adulterated or mixed with any other ingredient." This definition does not include cigars.

"Tobacco products" are defined in s. 210.25(11), F.S., relating to state taxes on tobacco products other than cigarettes or cigars, as "loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing."

Cigars, nicotine products, and nicotine dispensing devices are not included in these definitions, and therefore they are not taxed as a cigarette or tobacco product in Florida.[9]

A person, firm, association, or corporation must obtain a permit from ABT to function as any of the following in Florida:

- retail tobacco products dealer,[10]
- cigarette manufacturer,[11]
- cigarette wholesale dealer,[12]
- cigarette distributing agent,[13]
- cigarette importer,[14]
- cigarette exporter,[15] or
- cigar wholesale dealer,[16] or
- tobacco wholesale dealer/distributor.[17]

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[7] Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, http://www.myfloridalicense.com/DBPR/alcoholic-beverages-and-tobacco/ (last visited Jan. 8, 2020).
[8] S. 561.02, F.S.
[9] Ss. 210.01(1), 210.25(12), F.S. "Nicotine dispensing device" means any product that employs an electronic, chemical, or mechanical means to produce vapor from a nicotine product. "Nicotine products" do not include tobacco products, certain smoking cessation products, and products with incidental nicotine. S. 877.112(1)(a),(b), F.S.
[10] S. 569.003, F.S.
[11] Ss. 210.01(21) and 210.15, F.S.
[12] Ss. 210.01(6) and 210.15(1), F.S.
[13] Ss. 210.01(14) and 210.15(1), F.S.
[14] Ss. 210.01(20) and 210.15(1), F.S.
[15] Ss. 210.01(17) and 210.15(1), F.S.
[16] S. 210.65(2), F.S.
[1717] Ss. 210.25(5) and 210.40, F.S.

ABT collects monthly business records related to cigarettes, which are used to accurately collect and distribute cigarette taxes. Such records must be submitted to ABT by any manufacturer, importer, distributing agent, wholesale dealer, retail dealer, common carrier, or any other person handling, transporting, or possessing cigarettes for sale or distribution in Florida. ABT prescribes the manner in which these records are submitted.[18]

ABT also collects monthly returns showing the taxable price of each tobacco product, not including cigarettes or cigars, that is manufactured or brought or caused to be brought into Florida for sale. Such returns must be submitted by every place of business that sells or manufactures such tobacco products in Florida. ABT prescribes the form and content for submitting such returns to ABT. Each return must be accompanied by a remittance for the full tax liability shown.[19]

Effect of the Bill

The bill requires business records related to cigarette and tobacco products to be filed through ABT's electronic data submission system.

The bill changes the requirements related to business records for tobacco products that must be submitted to ABT. Instead of submitting a return showing the taxable price of each tobacco product, tobacco product businesses must submit a full and complete report on tobacco product sales and manufacturing.

Alcoholic Beverages

Requirements for Licensees and License Applicants

ABT is responsible for enforcing the Beverage Law and supervising the conduct, management, and operation of the manufacturing, packaging, distribution, and sale of all alcoholic beverages in Florida.[20]

Any person, before engaging in the business of manufacturing, bottling, distributing, selling, or in any way dealing in alcoholic beverages, must file a sworn application in the format prescribed by ABT. The applicant must be a legal or business entity, person, or persons and must include all persons, officers, shareholders, and directors of such legal or business entity that have a direct or indirect interest in the business seeking to be licensed under this part. The format and content of the application is determined by ABT.[21]

Before any application is approved, ABT may require such applicant to file a set of fingerprints with ABT on regular United States Department of Justice (USDOJ) forms, and for any person or persons interested directly or indirectly with the applicant in the business for which the license is being sought.[22]

All applications for alcoholic beverage licenses for consumption on the premises shall be accompanied by a certificate from H&R, the Department of Agriculture and Consumer Services, the Department of Health, the Agency for Health Care Administration, or the county health department stating that the place of business wherein the business is to be conducted meets all of the sanitary requirements of the state.[23]

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[18] S. 210.09(2), F.S. Some tax forms are electronically filed with ABT, and some require manual transmission. Department of Business and Professional Regulation, *Alcoholic Beverages and Tobacco- Forms & Publications, Licensing Related Forms, Tax-Related Forms*, http://www.myfloridalicense.com/DBPR/alcoholic-beverages-and-tobacco/forms-and-publications/#1516309637983-6566a2a4-a2f1 (last visited Jan. 10, 2020).
[19] S. 210.55(1), F.S.
[20] S. 561.02, F.S.
[21] S. 561.17(1), F.S.
[22] *Id.*
[23] *Id.*

Generally, for premises and manufacturing licenses, ABT requires that applicants must submit sketches of the area and have some dominion and control over the area, but there is not a specific requirement that applicants have a right of occupancy for the entire premises for which a license is sought.[24]

There is also not a statutory requirement that licensees or applicants provide and maintain an electronic mail address for communications with ABT.

Each manufacturer, distributor, broker, sales agent, importer, and exporter must keep a complete and accurate record and make reports showing the amount of:[25]

- beverages manufactured or sold within the state and to whom sold;
- beverages imported from beyond the limits of the state and to whom sold; and
- beverages exported beyond the limits of the state, to whom sold, the place where sold, and the address of the person to whom sold.

Each manufacturer, distributor, broker, sales agent, and importer must send this full and complete report to ABT by the 10th day of each month for the previous calendar month. The report must be made out in triplicate: two copies must be sent to ABT, and the third copy must be retained for the licensee's record. Reports must be made on forms prepared and furnished by ABT.[26]

Credit for the Sale of Liquor

Vendors have up to 10 days after the calendar week when a sale of liquor was made to make a timely payment to a distributor for such liquor. When a vendor does not make a timely payment, the distributor who made such sale must, within 3 days, notify ABT of such in writing.[27]

ABT must then give notice to such vendor that it has received a notice of payment delinquency from a distributor. The vendor has 5 days after receipt of such notice to show cause and demand a hearing. The demand must be delivered to ABT either in person or by due course of mail within those 5 days.[28]

If no such demand for hearing is made, ABT must declare in writing to such vendor and to all manufacturers and distributors in Florida that all further sales to such vendor are prohibited until ABT certifies in writing that such vendor has fully paid for all liquors previously purchased.[29]

Permit Carriers

"Permit carrier" is defined as "a licensee authorized to make deliveries as provided in s. 561.57, F.S."[30]

In 2015, the Legislature passed a law amending s. 561.57, F.S., which allowed a licensed vendor to transport alcoholic beverages from a distributor's place of business to the vendor's licensed premises or off-premises storage permitted by ABT without a vehicle permit. It also removed the requirement for such vendors to possess an invoice or sales ticket during the transportation of alcoholic beverages.[31]

When this law was passed, the definition for "permit carrier," which was the name of the permit that was removed, was erroneously left in statute and is now obsolete.[32]

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[24] Ss. 561.01(11), 565.03(2)(c), F.S.; Email from Conner Mann, Office of Legislative Affairs, DBPR, RE: House Inquiry, (Dec. 19, 2019).
[25] S. 561.55(1), F.S.
[26] S. 561.55(2), F.S.
[27] S. 561.42(3), F.S.
[28] S. 561.42(4), F.S.
[29] *Id.*
[30] S. 561.01(20), F.S.
[31] Ch. 2015-52, Laws of Fla.
[32] *Id.*; S. 561.01, F.S.

Auditing for Special Licenses

Section 561.20(1), F.S., limits, by county, the number of alcoholic beverage licenses that may be issued for the sale of distilled spirits, to one license per 7,500 residents within the county. These limited alcoholic beverage licenses are known as "quota" licenses. The quota license is the only alcoholic beverage license that is limited in number; all other types of alcoholic beverage licenses are available without limitation, if certain conditions are met.

A "special license" is an exception to the quota licensing scheme, which allows certain entities to serve liquor without a quota license. One such special license is a "special restaurant license," which applies to a food service establishment that has 2,500 square feet, is equipped to serve 150 persons at one time, and derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages. Such a food service establishment must be audited by ABT for compliance with the food and nonalcoholic beverage sales percentage requirements during the first 60-day operating period, and each 12-month operating period thereafter.

Failure by a sales licensee to satisfy the requirements as to the percentages of food and nonalcoholic beverage sales results in revocation of the special license. A licensee whose license is revoked is ineligible to have an interest in a subsequent application for a license for 120 days after the revocation.[33]

Effect of the Bill

The bill changes the mechanism through which applicants submit fingerprints to ABT. Instead of using USDOJ forms, applicants will need to either file fingerprints electronically through an approved electronic fingerprinting vendor, or use a form prescribed by the Florida Department of Law Enforcement.

The bill requires that an applicant for any alcoholic beverage license provide proof of the applicant's right of occupancy for the entire premises that the applicant is seeking a license.

The bill requires any person licensed or permitted by ABT to provide an electronic mail address to ABT to function as the primary contact for all communication from ABT to the licensee or permittee. Such licensees and permittees are responsible for maintaining accurate contact information with ABT.

The bill removes the requirement that reports on alcoholic beverages sold by a manufacturer, distributor, broker, sales agent, and importer must be made out in triplicate. Instead, the reports will be submitted to ABT through ABT's electronic data submission system.

The bill requires ABT to send a notice of payment delinquency to a vendor via electronic mail, not by written notice. The bill also allows a vendor to send a demand for a hearing to ABT via electronic mail.

The bill removes the obsolete definition for "permit carrier."

The bill changes ABT auditing timeframes for special restaurant licensees. The bill gives ABT more time to complete the initial audit. The first audit must be performed within the first 120 days of operation, instead of within the first 60 days.

Also, instead of a mandatory yearly audit, the timing for subsequent audits will be determined by the following percentages of the licensee's gross food and beverage revenue from the sale of food an non-alcoholic beverages, as established by the licensee's most recent audit:

- level 1 licensees, with 51 to 60 percent, will be audited every year;
- level 2 licensees, with 61 to 75 percent, will be audited every 2 years;

[33] S. 561.20(2)(a)4., F.S.

- level 3 licensees, with 76 to 90 percent, will be audited every 3 years; and
- level 4 licensees, with 91 to 100 percent, will be audited every 4 years.

Pugilistic Exhibitions

Background

Chapter 548, F.S., governs the Florida State Boxing Commission (FSBC). The function of the FSBC is to license and regulate pugilistic events and matches, including professional boxing, kickboxing, and mixed martial arts. The FSBC ensures that all matches are conducted in accordance with provisions of state laws and rules. The FSBC designates employees to attend the matches, appoints match officials, and ensures the matches are held in a safe and fair manner.[34] Members of the FSBC are appointed by the Governor, and there are five members.[35]

A match participant, manager, trainer, second, timekeeper, referee, judge, announcer, physician,[36] matchmaker, or promoter must be licensed by FSBC before directly or indirectly acting in such capacity in connection with any match. In order to obtain a license, an applicant must:[37]

- complete an application in a form prescribed by the FSBC,
- be at least 18 years of age, and
- pay an application fee.

The FSBC generally establishes by rule any necessary protective devices that participants must wear, and the appropriate weight of gloves to be used in each boxing match. However, by statute, all participants in boxing matches must wear gloves weighing not less than 8 ounces each, and participants in mixed martial arts matches must wear gloves weighing between 4 to 8 ounces each.[38]

The FSBC requires that any glove intended to be used by a boxing or kickboxing participant in a match to be whole, clean, in sanitary condition, and have the thumb attached.[39] When both participants in a match weigh 154 pounds or less, both participants must use 8 ounce gloves, and when one or more of the participants in a match weighs more than 154 pounds, both participants must use 10 ounce gloves.[40]

For mixed martial arts participants, the FSBC requires gloves to be whole, clean, and in sanitary condition.[41] Gloves must weigh no less than 4 ounces and no more than 8 ounces, but both participants must wear the same weight gloves and use the same manufacturer of gloves as provided by the promoter, unless both participants agree to use different manufacturers of gloves.[42]

There is a debate as to whether bare knuckle boxing is safer or more dangerous than competitions with gloves. Data on the topic is limited. Gloves were initially introduced to boxing matches in the 18th century as a way to protect the participants' hands, not heads.[43] Experts opposed to bare knuckle matches argue that gloves help in blocks and other defensive moves, and therefore provide head protection, and that bare knuckle matches generally involve more body shots, which can result in

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[34] S. 548.003, F.S.
[35] S. 548.003(1), F.S.
[36] A physician must be licensed pursuant to chapter 458 or chapter 459, must maintain a license in good standing, and must demonstrate satisfactory medical training or experience in boxing. S. 548.017, F.S.
[37] S. 548.021, F.S.
[38] S. 548.043(3), F.S.
[39] R. 61K1-3.030(2)(d), F.A.C.
[40] R. 61K1-3.030(2)(a), (b), F.A.C.
[41] R. 61K1-3.031(2)(b), F.A.C.
[42] R. 61K1-3.031(2)(a), F.A.C.
[43] Bob Moen, *Bare-knuckle boxing from a bygone era looks for a comeback*, AP News, https://apnews.com/a0926f603f6b4d83a958cc1d0fa9296e (last visited Jan. 11, 2020); Nick Wong, *Why Bare-Knuckle Fighting May Be Safer Than Boxing*, Complex Media, Inc., https://www.complex.com/sports/2015/11/bare-knuckle-boxing (last visited Jan. 11, 2020).

serious internal injuries.[44] However, experts in favor of bare knuckle matches argue that the force behind a bare knuckle punch is generally less than a gloved punch, which can be safer for head strikes, and that a bare knuckle match generally involves less total strikes due to hand injuries resulting from no glove protection, which can lead to less injuries overall.[45]

In 2011, the Yavapai Nation in Arizona oversaw a bare knuckle boxing match on an Indian reservation, that is generally believed to be the first sanctioned bare knuckle boxing match in the United States since 1889.[46] In 2018, Wyoming became the first state to allow bare knuckle boxing matches, and held a championship event.[47] On June 22, 2019, in Tampa, Florida, the FSBC sanctioned The Bare Knuckle Fighting Championship, where the participants wore gloves that exposed the knuckles.[48] Currently, Wyoming, Mississippi, Florida, Kansas, and several Tribal Nations allow sanctioned bare knuckle boxing events.[49]

Effect of the Bill

The bill changes the name of the "Florida State Boxing Commission" to the "Florida Athletic Commission."

The bill gives full authority to the FSBC to determine glove requirements and weights for any pugilistic match, without a minimum or maximum weight set by statute. It also gives the FSBC the option of not requiring any gloves for pugilistic matches.

Condominiums

FCTMH, a division within DBPR, provides education, complaint resolution, mediation and arbitration, and developer disclosures for condominium associations.[50]

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., (the Condominium Act) comprised of units which may be owned by one or more persons along with an undivided right of access to common elements.[51] A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.[52] All unit owners are members of the condominium association, an entity responsible for the operation and maintenance of the common elements owned by the unit owners. The condominium association is overseen by an elected board of directors, which enacts bylaws which govern the administration of the association.

Annual Budget

Every condominium association must have an annual financial budget that sets forth the proposed expenditure of funds for the maintenance, management, and operation of the condominium. The annual

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[44] *Id.*
[45] *Id.*
[46] Michael Woods, *Reviving a bygone, bare-knuckle era*, ESPN (Aug. 5, 2011), https://www.espn.com/boxing/story/_/id/6835788/bringing-back-bygone-bare-knuckle-era-boxing (last visited Jan. 9, 2020).
[47] Josh Peter, Bare-knuckle boxing legally held in United States for first time, USA Today (Jun. 3, 2018), https://www.usatoday.com/story/sports/boxing/2018/06/02/bare-knuckle-boxing-official-return/666535002/ (last visited Jan. 9, 2020).
[48] Florida Department of Business and Professional Regulation, *Match Results*, http://www.myfloridalicense.com/dbpr/pro/sbc/documents/BKFC6MatchResults.pdf (last visited Jan. 9, 2020); Combat Sports Law, *Let's Talk Florida and Bare Knuckle Boxing*, https://combatsportslaw.com/2019/05/21/lets-talk-florida-and-bare-knuckle-boxing/ (last visited Jan. 9, 2020).
[49] Combat Sports Law, Documenting Bare Knuckle Boxing Legality, https://combatsportslaw.com/2019/06/23/documenting-bare-knuckle-boxing-legality/ (last visited Jan. 9, 2020).
[50] Department of Business and Professional Regulation, *Division of Florida Condominiums, Timeshares, and Mobile Homes*, http://www.myfloridalicense.com/DBPR/condos-timeshares-mobile-homes/, (last visited Jan. 8, 2020).
[51] S. 718.103(11), F.S.
[52] S. 718.104(2), F.S.

budget must include operating expenses for the coming year and reserve accounts for capital expenditures and deferred maintenance.[53]

In order to adopt a proposed annual budget, an association must hold a meeting to adopt the proposed budget. The association must provide notice of the meeting and a copy of the proposed budget to the members of the association at least 14 days before the meeting.[54] The proposed budget must be detailed, and, at a minimum, include the condominium's estimated expenses, the estimated expenses of each unit owner, and a statement that the proposed budget is a good faith estimate and represents an approximation of the future expenses.[55]

Board Directors

The condominium association is overseen by an elected board of directors. The board is responsible for managing the affairs of the association, has a fiduciary relationship with the unit owners, and has the responsibility to act with the highest degree of good faith and to place the interests of the unit owners above the personal interests of the directors.[56]

There are two ways that a person may become a board member:

- A person may be elected to the board by the members of the association,[57] or
- A person is appointed to the board by the developer if the developer is still entitled to representation, or by the board of directors if a vacancy on the board occurs between meetings.[58]

A condominium association's bylaws will establish the eligibility requirements to serve on the association's board of directors.[59] However, current law also establishes minimum requirements in order to serve on an association's board of directors.[60] In order to serve as a board director a person may not:[61]

- Be a co-owner of a unit with another director unless they own more than one unit or the condominium association is made up of less than ten units;
- Be **delinquent** in the payment of *any* **monetary obligation** to the condominium association;
- Have been previously suspended or removed from a condominium association's board of directors by FCTMH; or
- Have been convicted of a felony, under certain circumstances.[62]

The term "monetary obligation" is not defined in the Condominium Act, but, according to legal experts, a monetary obligation is considered to be any type of money owed to the association including fines, fees, and assessments.[63]

The Condominium Act also does not define the term "delinquent." According to DBPR, this can result in confusion for purposes of determining if a person is eligible to serve as a board director, because many

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[53] S. 718.112(2)(f), F.S.
[54] S. 718.112(2)(e), F.S.
[55] Ss. 718.112(2)(f), & 718.504(21), F.S.
[56] Ss. 718.103(4), 718.111, 718.112, F.S.
[57] S. 718.112(2)(d)4., F.S.
[58] Ss. 617.0809, & 718.112(2)(d)9., F.S.
[59] S. 718.112(2)(a), F.S.
[60] S. 718.112(2)(d), F.S.
[61] Ss. 718.112(2)(d), F.S.
[62] S. 718.111(1)(d), F.S.
[63] *See* Ch. 718, F.S.; David G. Muller, *Can delinquent owner run for a board*, Naples Daily News, Aug. 17, 2019, https://www.naplesnews.com/story/money/real-estate/2019/08/17/can-delinquent-owner-run-board/1985170001/ (last visited Jan. 9, 2020); Joe Adams, *Term Limits Continue to Cause Confusion*, Florida Condo & HOA Law Blog, Dec. 17, 2018, https://www.floridacondohoalawblog.com/2018/12/17/term-limits-continue-to-cause-confusion/ (last visited Jan. 9, 2020).

associations have grace periods before late fees and interest applies to unpaid monetary obligations. However, it is unclear if these grace periods apply related to board service eligibility.[64]

Condominium Ombudsman

Within FCTMH is housed the Office of the Condominium Ombudsman (Ombudsman). The Ombudsman is an attorney appointed by the Governor and a neutral resource for unit owners and condominium associations. The Ombudsman is authorized to prepare and issue reports and recommendations to the Governor, FCTMH, and the Legislature on any matter or subject within the jurisdiction of FCTMH. In addition, the Ombudsman may make recommendations to FCTMH for changes in rules and procedures for the filing, investigation, and resolution of complaints.[65]

The Ombudsman also acts as a liaison between FCTMH, unit owners, and condominium associations, and is responsible for developing policies and procedures to help affected parties understand their rights and responsibilities.[66]

The Ombudsman is required to keep his or her principal office in Leon County.[67]

Condominium Complaints Received by FCTMH

FCTMH is charged with ensuring that condominium associations comply with the requirements of the Condominium Act and handling complaints alleging violations of the Condominium Act. FCTMH has complete jurisdiction to investigate complaints and enforce compliance with the Condominium Act for associations that are controlled by a developer, a bulk buyer, or a bulk assignee.[68] Once a developer has turned control of the condominium to the association, FCTMH only has jurisdiction to investigate complaints related to financial issues, elections, and unit owner access to official records.[69]

Within 30 days of receiving a complaint, FCTMH must acknowledge the complaint in writing, and notify the complainant whether the complaint is in its jurisdiction and whether additional information is needed. If the complaint is within FCTMH's jurisdiction, FCTMH must investigate the complaint and take action within 90 days of receiving the complaint or receiving additional information requested by FCTMH.[70]

Current law creates rules and requirements for filing complaints with DBPR against licensed professionals regulated by DBPR. Complaints filed against licensed professionals must be in writing, signed by the complainant, and legally sufficient. A complaint is legally sufficient if it contains ultimate facts that show a violation of the licensed professional's practice act.[71] However, no such rules or requirements exists for filing complaints against condominiums with FCTMH.

FCTMH provides a complaint form for condominium complaints, including a checklist of documents to provide with the complaint, on its website. According to FCTMH, submitting a complaint on the FCTMH's complaint form "may expedite the processing of your complaint."[72]

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[64] *See* Ch. 718, F.S.; Email from Gabe Peters, , Director of Legislative Affairs, Department of Business & Professional Regulation, Condo Language Clarification (Jan. 10, 2020).
[65] Ss. 718.5011 & 718.5012, F.S.
[66] *Id.*
[67] S. 718.5014, F.S.
[68] A bulk assignee is a person who buys more than seven units in a single condominium and receives assignment of any of the developer's rights. A bulk buyer is a person who buys more than seven units in a single condominium but does not receive any of the developer's rights. S. 718.703, F.S.
[69] Ss. 718.117, & 718.501, F.S.
[70] S. 718.501(1)(m), F.S.
[71] S. 455.225(1), F.S.
[72] Florida Department of Business & Professional Regulation, *How to File a Complaint*, http://www.myfloridalicense.com/DBPR/condos-timeshares-mobile-homes/complaints/#1572463379489-2bc8adc0-ec6a (last visited Jan. 10, 2020); Florida Department of Business & Professional Regulation, *Instructions for Filing a Condominium/Cooperative Complaint*, http://www.myfloridalicense.com/dbpr/lsc/documents/cccomplaint.pdf (last visited Jan. 10, 2020).

According to DBPR, establishing rules and requirements for filing complaints against condominium associations would allow FCTMH to be more efficient in resolving complaints filed against condominium associations.[73]

Effect of the Bill

The bill provides that in addition to the current law requirements for adopting a proposed annual budget, a proposed annual budget must be provided to members of the association and adopted by the board of directors no later than 30 days before the beginning of the fiscal year, instead of only being provided to members 14 days before the meeting.

The bill provides that a person may not serve on a board if he or she is delinquent in the payment of an **assessment** due to the condominium association, instead of any **monetary obligation**. Current law defines "assessment" as an owner's share of funds that are required for the payment of common expenses.[74]

The bill also provides that a person is delinquent if a payment is not made by the due date identified in the association's declaration, articles of incorporation, or bylaws. If no due date is specifically identified in the condominium's declaration, articles of incorporation, or bylaws the due date is the first day of the monthly or quarterly assessment period.

The bill removes the requirement that the Ombudsman must keep his or her principal office in Leon County.

The bill provides that FCTMH may adopt rules regarding the submission of a complaint against a condominium association.

Hotels and Restaurants

Background

H&R licenses, inspects, and regulates public lodging establishments and public food service establishments in Florida.[75]

"Public lodging establishment" includes:[76]

- "Transient public lodging establishments," which 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;" and
- "Nontransient public lodging establishments," which means "any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 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 for periods of at least 30 days or 1 calendar month."

"Public food service establishments" means "any building, vehicle, place, or structure, or any room or division thereof, where food is prepared, served, or sold for immediate consumption on or in the vicinity

[73] Email from Gabe Peters, Director of Legislative Affairs, Department of Business & Professional Regulation, Condo Clarification (Jan. 10, 2020).
[74] S. 718.103(1), F.S.
[75] S. 509.032, F.S.
[76] S. 509.013(4), F.S.

of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption," with certain exceptions.[77]

Each public lodging establishment and public food service establishment must obtain a license from H&R. Licenses are renewed annually, and H&R must adopt a rule establishing a staggered schedule for license renewals.[78]

H&R adopts, by rule, a schedule of fees to be paid by each public lodging establishment and public food service establishment for the issuance or renewal of a license. Such fees are based on the number of rental units in the public lodging establishment, and based on seating capacity and services offered for public food service establishments.[79] License fees generally range from $91 for a temporary food vendor to $370 for a hotel with 501 or more rental units.[80]

The fee schedules require such establishments applying for an initial license to pay the full license fee if the application is made during the annual renewal period or more than 6 months before the next such renewal period, and one-half of the fee if the application is made 6 months or less before the next renewal period.[81] For example: if an applicant is applying for a hotel license with between 26 and 50 rental units, the initial license fee is $215, but if such applicant is applying for the license less than 6 months before the beginning of the next renewal period, the initial license fee is $112.50. Such applicant will need to pay the full annual fee when the next renewal period begins.[82]

Effect of the Bill

For public lodging establishments and public food service establishments, the bill:

- removes the requirement for a staggered license renewal schedule, and instead allows H&R to adopt rules regarding license issuance and renewals,
- clarifies rulemaking authority, and
- removes the partial initial fee payment based on when an application is submitted, and instead requires that all fees be paid at the time of application.

B. SECTION DIRECTORY:

Section 1 Amends s. 210.09, F.S., revising reporting requirements for cigarette sales.
Section 2 Amends s. 210.55, F.S., revising reporting requirements for tobacco products sales.
Section 3 Amends s. 509.241, F.S., revising fee schedules for public lodging establishments and public food service establishments.
Section 4 Amends s. 509.251, F.S., revising fee schedules for public lodging establishments and public food service establishments.
Section 5 Amends s. 548.003, F.S., renaming the Florida State Boxing Commission as the Florida Athletic Commission.
Section 6 Amends s. 548.043, F.S., providing glove requirements for pugilistic events.
Section 7 Amends s. 561.01, F.S., deleting the definition for "permit carrier."
Section 8 Amends s. 561.17, F.S., revising filing requirements for fingerprints for alcohol license applicants, and requiring alcohol licensees to maintain current electronic mail addresses.

[77] S. 509.013(5), F.S.
[78] S. 509.241(1), F.S.
[79] S. 509.251(1), (2), F.S.
[80] Department of Business and Professional Regulation, *Hotel and Restaurants – Hotel-Motel Guide*, http://www.myfloridalicense.com/DBPR/hotels-restaurants/licensing/hotels-and-restaurants-hotel-motel-guide/ (last visited Jan. 11, 2020); Department of Business and Professional Regulation, *Hotel and Restaurants – Food Service Fees*, http://www.myfloridalicense.com/DBPR/hotels-restaurants/licensing/hotels-and-restaurants-hotel-motel-guide/ (last visited Jan. 11, 2020).
[81] *Id.*
[82] Department of Business and Professional Regulation, *Hotel and Restaurants – Hotel-Motel Guide*, http://www.myfloridalicense.com/DBPR/hotels-restaurants/licensing/hotels-and-restaurants-hotel-motel-guide/ (last visited Jan. 11, 2020).

Section 9 Amends s. 561.20, F.S., revising audit requirements for special restaurant licenses.
Section 10 Amends s. 561.42, F.S., allowing certain notices to be given by electronic mail.
Section 11 Amends s. 561.55, F.S., revising requirements for reports related to alcohol licenses.
Section 12 Amends s. 718.112, F.S., providing eligibility requirements for members of a condominium board of directors.
Section 13 Amends s. 718.501, F.S., allowing FCTMH to adopt rules prescribing the form of condominium complaints.
Section 14 Amends s. 718.5014, F.S., revising primary office location requirements for the office of the condominium ombudsman.
Section 15 Amends s. 455.219, F.S., conforming a provision
Section 16 Amends s. 548.002, F.S., conforming a provision.
Section 17 Amends s. 548.05, F.S., conforming a provision.
Section 18 Amends s. 548.071, F.S., conforming a provision.
Section 19 Amends s. 548.077, F.S., conforming a provision.
Section 20 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The fiscal impact is indeterminate.

2. Expenditures:

   The fiscal impact is indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may make it easier for licensees to maintain their licenses due to clarified regulatory schemes and regularized auditing and fee schedules.

D. FISCAL COMMENTS:

The fiscal impact is indeterminate.

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:

DBPR will need to update rules related to regulations on tobacco, alcohol, condominium associations, pugilistic events, and public lodging and food service establishments. DBPR has adequate rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Department of Business and Professional Regulation; amending s. 210.09, F.S.; requiring that certain reports relating to the transportation or possession of cigarettes be filed with the Division of Alcoholic Beverages and Tobacco through the division's electronic data submission system; amending s. 210.55, F.S.; requiring that certain entities file reports, rather than returns, relating to tobacco products with the division; providing requirements for such reports; amending s. 509.241, F.S.; revising rulemaking requirements relating to public lodging and food service licenses; amending s. 509.251, F.S.; deleting provisions relating to fee schedule requirements; specifying that all fees are payable in full upon submission of an application for a public lodging establishment license or a public food service license; amending s. 548.003, F.S.; renaming the Florida State Boxing Commission as the Florida Athletic Commission; amending s. 548.043, F.S.; revising rulemaking requirements for the commission relating to gloves; amending s. 561.01, F.S.; deleting the definition of the term "permit carrier"; amending s. 561.17, F.S.; revising a requirement related to the filing of fingerprints with

the division; requiring that applications be accompanied by certain information relating to right of occupancy; providing requirements relating to contact information for licensees and permittees; amending s. 561.20, F.S.; conforming cross-references; revising requirements for issuing special licenses to certain food service establishments; amending s. 561.42, F.S.; requiring the division, and authorizing vendors, to use electronic mail to give certain notice; amending s. 561.55, F.S.; revising requirements for reports relating to alcoholic beverages; amending s. 718.112, F.S.; providing the circumstances under which a person is delinquent in the payment of an assessment in the context of eligibility for membership on certain condominium boards; requiring that an annual budget be proposed to unit owners and adopted by the board before a specified time; amending s. 718.501, F.S.; authorizing the Division of Florida Condominiums, Timeshares, and Mobile Homes to adopt rules regarding the submission of complaints against a condominium association; amending s. 718.5014, F.S.; revising the location requirements for the principal office of the condominium ombudsman; amending ss. 455.219, 548.002, 548.05, 548.071, and 548.077, F.S.; conforming

provisions to changes made by the act; providing an effective date.

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

Section 1. Subsection (2) of section 210.09, Florida Statutes, is amended to read:

210.09 Records to be kept; reports to be made; examination.—

(2) The division is authorized to prescribe and promulgate by rules and regulations, which shall have the force and effect of the law, such records to be kept and reports to be made to the division by any manufacturer, importer, distributing agent, wholesale dealer, retail dealer, common carrier, or any other person handling, transporting or possessing cigarettes for sale or distribution within the state as may be necessary to collect and properly distribute the taxes imposed by s. 210.02. All reports shall be made on or before the 10th day of the month following the month for which the report is made, unless the division by rule or regulation shall prescribe that reports be made more often. <u>All reports shall be filed with the division through the division's electronic data submission system.</u>

Section 2. Subsection (1) of section 210.55, Florida Statutes, is amended to read:

210.55 Distributors; monthly returns.—

(1) On or before the 10th of each month, every taxpayer with a place of business in this state shall file a full and complete report ~~return~~ with the division showing the tobacco products ~~taxable price of each tobacco product~~ brought or caused to be brought into this state for sale, or made, manufactured, or fabricated in this state for sale in this state, during the preceding month. Every taxpayer outside this state shall file a full and complete report with the division through the division's electronic data submission system ~~return~~ showing the quantity and taxable price of each tobacco product shipped or transported to retailers in this state, to be sold by those retailers, during the preceding month. Reports must ~~Returns shall~~ be made upon forms furnished and prescribed by the division and must ~~shall~~ contain any other information that the division requires. Each report must ~~return shall~~ be accompanied by a remittance for the full tax liability shown and be filed with the division through the division's electronic data submission system.

Section 3. Subsection (1) of section 509.241, Florida Statutes, is amended to read:

509.241 Licenses required; exceptions.—

(1) LICENSES; ANNUAL RENEWALS.—Each public lodging establishment and public food service establishment shall obtain a license from the division. Such license may not be transferred from one place or individual to another. It shall be a

misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for such an establishment to operate without a license. Local law enforcement shall provide immediate assistance in pursuing an illegally operating establishment. The division may refuse a license, or a renewal thereof, to any establishment that is not constructed and maintained in accordance with law and with the rules of the division. The division may refuse to issue a license, or a renewal thereof, to any establishment an operator of which, within the preceding 5 years, has been adjudicated guilty of, or has forfeited a bond when charged with, any crime reflecting on professional character, including soliciting for prostitution, pandering, letting premises for prostitution, keeping a disorderly place, or illegally dealing in controlled substances as defined in chapter 893, whether in this state or in any other jurisdiction within the United States, or has had a license denied, revoked, or suspended pursuant to s. 429.14. Licenses shall be renewed annually, and the division shall adopt rules ~~a rule~~ establishing procedures ~~a staggered schedule~~ for license issuance and renewals. If any license expires while administrative charges are pending against the license, the proceedings against the license shall continue to conclusion as if the license were still in effect.

Section 4. Subsections (1) and (2) of section 509.251, Florida Statutes, are amended to read:

509.251 License fees.—

(1) The division shall adopt, by rule, a schedule of fees to be paid by each public lodging establishment as a prerequisite to issuance or renewal of a license. Such fees shall be based on the number of rental units in the establishment. The aggregate fee per establishment charged any public lodging establishment may not exceed $1,000; however, the fees described in paragraphs (a) and (b) may not be included as part of the aggregate fee subject to this cap. Vacation rental units or timeshare projects within separate buildings or at separate locations but managed by one licensed agent may be combined in a single license application, and the division shall charge a license fee as if all units in the application are in a single licensed establishment. ~~The fee schedule shall require an establishment which applies for an initial license to pay the full license fee if application is made during the annual renewal period or more than 6 months before the next such renewal period and one-half of the fee if application is made 6 months or less before such period.~~ The fee schedule shall include fees collected for the purpose of funding the Hospitality Education Program, pursuant to s. 509.302. All fees~~,~~ ~~which~~ are payable in full for each application at the time ~~regardless of when~~ the application is submitted.

(a) Upon making initial application or an application for change of ownership, the applicant shall pay to the division a

fee as prescribed by rule, not to exceed $50, in addition to any other fees required by law, which shall cover all costs associated with initiating regulation of the establishment.

(b) A license renewal filed with the division after the expiration date shall be accompanied by a delinquent fee as prescribed by rule, not to exceed $50, in addition to the renewal fee and any other fees required by law.

(2) The division shall adopt, by rule, a schedule of fees to be paid by each public food service establishment as a prerequisite to issuance or renewal of a license. The fee schedule shall prescribe a basic fee and additional fees based on seating capacity and services offered. The aggregate fee per establishment charged any public food service establishment may not exceed $400; however, the fees described in paragraphs (a) and (b) may not be included as part of the aggregate fee subject to this cap. ~~The fee schedule shall require an establishment which applies for an initial license to pay the full license fee if application is made during the annual renewal period or more than 6 months before the next such renewal period and one-half of the fee if application is made 6 months or less before such period.~~ The fee schedule shall include fees collected for the purpose of funding the Hospitality Education Program, pursuant to s. 509.302. All fees~~, which~~ are payable in full for each application at the time ~~regardless of when~~ the application is submitted.

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

(b) A license renewal filed with the division after the expiration date shall be accompanied by a delinquent fee as prescribed by rule, not to exceed $50, in addition to the renewal fee and any other fees required by law.

Section 5. Section 548.003, Florida Statutes, is amended to read:

548.003 Florida Athletic ~~State Boxing~~ Commission.—

(1) The Florida Athletic ~~State Boxing~~ Commission is created and is assigned to the Department of Business and Professional Regulation for administrative and fiscal accountability purposes only. The ~~Florida State Boxing~~ commission shall consist of five members appointed by the Governor, subject to confirmation by the Senate. One member must be a physician licensed pursuant to chapter 458 or chapter 459, who must maintain an unencumbered license in good standing, and who must, at the time of her or his appointment, have practiced medicine for at least 5 years. Upon the expiration of the term of a commissioner, the Governor shall appoint a successor to serve for a 4-year term. A commissioner whose term has expired shall continue to serve on the commission until such time as a

replacement is appointed. If a vacancy on the commission occurs prior to the expiration of the term, it shall be filled for the unexpired portion of the term in the same manner as the original appointment.

(2) The ~~Florida State Boxing~~ commission, as created by subsection (1), shall administer the provisions of this chapter. The commission has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter and to implement each of the duties and responsibilities conferred upon the commission, including, but not limited to:

(a) Development of an ethical code of conduct for commissioners, commission staff, and commission officials.

(b) Facility and safety requirements relating to the ring, floor plan and apron seating, emergency medical equipment and services, and other equipment and services necessary for the conduct of a program of matches.

(c) Requirements regarding a participant's apparel, bandages, handwraps, gloves, mouthpiece, and appearance during a match.

(d) Requirements relating to a manager's participation, presence, and conduct during a match.

(e) Duties and responsibilities of all licensees under this chapter.

(f) Procedures for hearings and resolution of disputes.

(g) Qualifications for appointment of referees and judges.

(h) Qualifications for and appointment of chief inspectors and inspectors and duties and responsibilities of chief inspectors and inspectors with respect to oversight and coordination of activities for each program of matches regulated under this chapter.

(i) Designation and duties of a knockdown timekeeper.

(j) Setting fee and reimbursement schedules for referees and other officials appointed by the commission or the representative of the commission.

(k) Establishment of criteria for approval, disapproval, suspension of approval, and revocation of approval of amateur sanctioning organizations for amateur boxing, kickboxing, and mixed martial arts held in this state, including, but not limited to, the health and safety standards the organizations use before, during, and after the matches to ensure the health, safety, and well-being of the amateurs participating in the matches, including the qualifications and numbers of health care personnel required to be present, the qualifications required for referees, and other requirements relating to the health, safety, and well-being of the amateurs participating in the matches. The commission may adopt by rule, or incorporate by reference into rule, the health and safety standards of USA Boxing as the minimum health and safety standards for an amateur boxing sanctioning organization, the health and safety standards of the International Sport Kickboxing Association as the minimum

health and safety standards for an amateur kickboxing sanctioning organization, and the minimum health and safety standards for an amateur mixed martial arts sanctioning organization. The commission shall review its rules for necessary revision at least every 2 years and may adopt by rule, or incorporate by reference into rule, the then-existing current health and safety standards of USA Boxing and the International Sport Kickboxing Association. The commission may adopt emergency rules to administer this paragraph.

(3) The commission shall maintain an office in Tallahassee. At the first meeting of the commission after June 1 of each year, the commission shall select a chair and a vice chair from among its membership. Three members shall constitute a quorum and the concurrence of at least three members is necessary for official commission action.

(4) Three consecutive unexcused absences or absences constituting 50 percent or more of the commission's meetings within any 12-month period shall cause the commission membership of the member in question to become void, and the position shall be considered vacant. The commission shall, by rule, define unexcused absences.

(5) Each commission member shall be accountable to the Governor for the proper performance of duties as a member of the commission. The Governor shall cause to be investigated any complaint or unfavorable report received by the Governor or the

department concerning an action of the commission or any member and shall take appropriate action thereon. The Governor may remove from office any member for malfeasance, unethical conduct, misfeasance, neglect of duty, incompetence, permanent inability to perform official duties, or pleading guilty or nolo contendere to or being found guilty of a felony.

(6) Each member of the commission shall be compensated at the rate of $50 for each day she or he attends a commission meeting and shall be reimbursed for other expenses as provided in s. 112.061.

(7) The commission shall be authorized to join and participate in the activities of the Association of Boxing Commissions (ABC).

(8) The department shall provide all legal and investigative services necessary to implement this chapter. The department may adopt rules as provided in ss. 120.536(1) and 120.54 to carry out its duties under this chapter.

Section 6. Subsection (3) of section 548.043, Florida Statutes, is amended to read:

548.043 Weights and classes, limitations; gloves.—

(3) The commission shall establish by rule the need for gloves, if any, and the weight of any such gloves to be used in each pugilistic match ~~the appropriate weight of gloves to be used in each boxing match; however, all participants in boxing matches shall wear gloves weighing not less than 8 ounces each~~

~~and participants in mixed martial arts matches shall wear gloves weighing 4 to 8 ounces each~~. Participants shall wear such protective devices as the commission deems necessary.

Section 7. Subsection (20) of section 561.01, Florida Statutes, is amended to read:

561.01 Definitions.—As used in the Beverage Law:

~~(20) "Permit carrier" means a licensee authorized to make deliveries as provided in s. 561.57.~~

Section 8. Subsections (1) and (2) of section 561.17, Florida Statutes, are amended, and subsection (5) is added to that section, to read:

561.17 License and registration applications; approved person.—

(1) Any person, before engaging in the business of manufacturing, bottling, distributing, selling, or in any way dealing in alcoholic beverages, shall file, with the district licensing personnel of the district of the division in which the place of business for which a license is sought is located, a sworn application in the format prescribed by the division. The applicant must be a legal or business entity, person, or persons and must include all persons, officers, shareholders, and directors of such legal or business entity that have a direct or indirect interest in the business seeking to be licensed under this part. However, the applicant does not include any person that derives revenue from the license solely through a

contractual relationship with the licensee, the substance of which contractual relationship is not related to the control of the sale of alcoholic beverages. Before any application is approved, the division may require the applicant to file a set of fingerprints electronically through an approved electronic fingerprinting vendor or on ~~regular United States Department of Justice~~ forms prescribed by the Florida Department of Law Enforcement for herself or himself and for any person or persons interested directly or indirectly with the applicant in the business for which the license is being sought, when required by the division. If the applicant or any person who is interested with the applicant either directly or indirectly in the business or who has a security interest in the license being sought or has a right to a percentage payment from the proceeds of the business, either by lease or otherwise, is not qualified, the division shall deny the application. However, any company regularly traded on a national securities exchange and not over the counter; any insurer, as defined in the Florida Insurance Code; or any bank or savings and loan association chartered by this state, another state, or the United States which has an interest, directly or indirectly, in an alcoholic beverage license is not required to obtain the division's approval of its officers, directors, or stockholders or any change of such positions or interests. A shopping center with five or more stores, one or more of which has an alcoholic beverage license

and is required under a lease common to all shopping center tenants to pay no more than 10 percent of the gross proceeds of the business holding the license to the shopping center, is not considered as having an interest, directly or indirectly, in the license. A performing arts center, as defined in s. 561.01, which has an interest, directly or indirectly, in an alcoholic beverage license is not required to obtain division approval of its volunteer officers or directors or of any change in such positions or interests.

(2) All applications for any alcoholic beverage license must be accompanied by proof of the applicant's right of occupancy for the entire premises sought to be licensed. All applications for alcoholic beverage licenses for consumption on the premises shall be accompanied by a certificate of the Division of Hotels and Restaurants of the Department of Business and Professional Regulation, the Department of Agriculture and Consumer Services, the Department of Health, the Agency for Health Care Administration, or the county health department that the place of business wherein the business is to be conducted meets all of the sanitary requirements of the state.

(5) Any person or entity licensed or permitted by the division must provide an electronic mail address to the division to function as the primary contact for all communication by the division to the licensee or permittees. Licensees and permittees are responsible for maintaining accurate contact information on

file with the division.

Section 9. Paragraph (a) of subsection (2) of section 561.20, Florida Statutes, is amended to read:

561.20 Limitation upon number of licenses issued.—

(2)(a) The limitation of the number of licenses as provided in this section does not prohibit the issuance of a special license to:

1. Any bona fide hotel, motel, or motor court of not fewer than 80 guest rooms in any county having a population of less than 50,000 residents, and of not fewer than 100 guest rooms in any county having a population of 50,000 residents or greater; or any bona fide hotel or motel located in a historic structure, as defined in s. 561.01(20) ~~s. 561.01(21)~~, with fewer than 100 guest rooms which derives at least 51 percent of its gross revenue from the rental of hotel or motel rooms, which is licensed as a public lodging establishment by the Division of Hotels and Restaurants; provided, however, that a bona fide hotel or motel with no fewer than 10 and no more than 25 guest rooms which is a historic structure, as defined in s. 561.01(20) ~~s. 561.01(21)~~, in a municipality that on the effective date of this act has a population, according to the University of Florida's Bureau of Economic and Business Research Estimates of Population for 1998, of no fewer than 25,000 and no more than 35,000 residents and that is within a constitutionally chartered county may be issued a special license. This special license

shall allow the sale and consumption of alcoholic beverages only on the licensed premises of the hotel or motel. In addition, the hotel or motel must derive at least 60 percent of its gross revenue from the rental of hotel or motel rooms and the sale of food and nonalcoholic beverages; provided that this subparagraph shall supersede local laws requiring a greater number of hotel rooms;

2. Any condominium accommodation of which no fewer than 100 condominium units are wholly rentable to transients and which is licensed under chapter 509, except that the license shall be issued only to the person or corporation that operates the hotel or motel operation and not to the association of condominium owners;

3. Any condominium accommodation of which no fewer than 50 condominium units are wholly rentable to transients, which is licensed under chapter 509, and which is located in any county having home rule under s. 10 or s. 11, Art. VIII of the State Constitution of 1885, as amended, and incorporated by reference in s. 6(e), Art. VIII of the State Constitution, except that the license shall be issued only to the person or corporation that operates the hotel or motel operation and not to the association of condominium owners;

4. A food service establishment that has 2,500 square feet of service area, is equipped to serve meals to 150 persons at one time, and derives at least 51 percent of its gross food and

beverage revenue from the sale of food and nonalcoholic beverages during the first 120-day ~~60-day~~ operating period and the first ~~each~~ 12-month operating period thereafter. Subsequent audit timeframes must be based upon the audit percentage established by the most recent audit and conducted on a staggered scale as follows: level 1, 51 percent to 60 percent, every year; level 2, 61 percent to 75 percent, every 2 years; level 3, 76 percent to 90 percent, every 3 years; and level 4, 91 percent to 100 percent, every 4 years. A food service establishment granted a special license on or after January 1, 1958, pursuant to general or special law may not operate as a package store and may not sell intoxicating beverages under such license after the hours of serving or consumption of food have elapsed. Failure by a licensee to meet the required percentage of food and nonalcoholic beverage gross revenues during the covered operating period shall result in revocation of the license or denial of the pending license application. A licensee whose license is revoked or an applicant whose pending application is denied, or any person required to qualify on the special license application, is ineligible to have any interest in a subsequent application for such a license for a period of 120 days after the date of the final denial or revocation;

5. Any caterer, deriving at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages at each catered event, licensed by the Division of

Hotels and Restaurants under chapter 509. This subparagraph does not apply to a culinary education program, as defined in s. 381.0072(2), which is licensed as a public food service establishment by the Division of Hotels and Restaurants and provides catering services. Notwithstanding any law to the contrary, a licensee under this subparagraph shall sell or serve alcoholic beverages only for consumption on the premises of a catered event at which the licensee is also providing prepared food, and shall prominently display its license at any catered event at which the caterer is selling or serving alcoholic beverages. A licensee under this subparagraph shall purchase all alcoholic beverages it sells or serves at a catered event from a vendor licensed under s. 563.02(1), s. 564.02(1), or licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), as appropriate. A licensee under this subparagraph may not store any alcoholic beverages to be sold or served at a catered event. Any alcoholic beverages purchased by a licensee under this subparagraph for a catered event that are not used at that event must remain with the customer; provided that if the vendor accepts unopened alcoholic beverages, the licensee may return such alcoholic beverages to the vendor for a credit or reimbursement. Regardless of the county or counties in which the licensee operates, a licensee under this subparagraph shall pay the annual state license tax set forth in s. 565.02(1)(b). A licensee under this subparagraph must maintain

for a period of 3 years all records and receipts for each catered event, including all contracts, customers' names, event locations, event dates, food purchases and sales, alcoholic beverage purchases and sales, nonalcoholic beverage purchases and sales, and any other records required by the department by rule to demonstrate compliance with the requirements of this subparagraph. Notwithstanding any law to the contrary, any vendor licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), may, without any additional licensure under this subparagraph, serve or sell alcoholic beverages for consumption on the premises of a catered event at which prepared food is provided by a caterer licensed under chapter 509. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph shall not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. Nothing in this section shall permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. The Division of Alcoholic Beverages and Tobacco is hereby authorized to adopt rules to administer the license created in this subparagraph, to include rules governing licensure, recordkeeping, and enforcement. The first $300,000 in fees collected by the division each fiscal year pursuant to this

subparagraph shall be deposited in the Department of Children and Families' Operations and Maintenance Trust Fund to be used only for alcohol and drug abuse education, treatment, and prevention programs. The remainder of the fees collected shall be deposited into the Hotel and Restaurant Trust Fund created pursuant to s. 509.072; or

6. A culinary education program as defined in s. 381.0072(2) which is licensed as a public food service establishment by the Division of Hotels and Restaurants.

a. This special license shall allow the sale and consumption of alcoholic beverages on the licensed premises of the culinary education program. The culinary education program shall specify designated areas in the facility where the alcoholic beverages may be consumed at the time of application. Alcoholic beverages sold for consumption on the premises may be consumed only in areas designated pursuant to s. 561.01(11) and may not be removed from the designated area. Such license shall be applicable only in and for designated areas used by the culinary education program.

b. If the culinary education program provides catering services, this special license shall also allow the sale and consumption of alcoholic beverages on the premises of a catered event at which the licensee is also providing prepared food. A culinary education program that provides catering services is not required to derive at least 51 percent of its gross revenue

from the sale of food and nonalcoholic beverages. Notwithstanding any law to the contrary, a licensee that provides catering services under this sub-subparagraph shall prominently display its beverage license at any catered event at which the caterer is selling or serving alcoholic beverages. Regardless of the county or counties in which the licensee operates, a licensee under this sub-subparagraph shall pay the annual state license tax set forth in s. 565.02(1)(b). A licensee under this sub-subparagraph must maintain for a period of 3 years all records required by the department by rule to demonstrate compliance with the requirements of this sub-subparagraph.

c. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph does not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. Nothing in this subparagraph shall permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. Any culinary education program that holds a license to sell alcoholic beverages shall comply with the age requirements set forth in ss. 562.11(4), 562.111(2), and 562.13.

d. The Division of Alcoholic Beverages and Tobacco may adopt rules to administer the license created in this

subparagraph, to include rules governing licensure, recordkeeping, and enforcement.

e. A license issued pursuant to this subparagraph does not permit the licensee to sell alcoholic beverages by the package for off-premises consumption.

However, any license heretofore issued to any such hotel, motel, motor court, or restaurant or hereafter issued to any such hotel, motel, or motor court, including a condominium accommodation, under the general law shall not be moved to a new location, such license being valid only on the premises of such hotel, motel, motor court, or restaurant. Licenses issued to hotels, motels, motor courts, or restaurants under the general law and held by such hotels, motels, motor courts, or restaurants on May 24, 1947, shall be counted in the quota limitation contained in subsection (1). Any license issued for any hotel, motel, or motor court under this law shall be issued only to the owner of the hotel, motel, or motor court or, in the event the hotel, motel, or motor court is leased, to the lessee of the hotel, motel, or motor court; and the license shall remain in the name of the owner or lessee so long as the license is in existence. Any special license now in existence heretofore issued under this law cannot be renewed except in the name of the owner of the hotel, motel, motor court, or restaurant or, in the event the hotel, motel, motor court, or restaurant is

leased, in the name of the lessee of the hotel, motel, motor court, or restaurant in which the license is located and must remain in the name of the owner or lessee so long as the license is in existence. Any license issued under this section shall be marked "Special," and nothing herein provided shall limit, restrict, or prevent the issuance of a special license for any restaurant or motel which shall hereafter meet the requirements of the law existing immediately prior to the effective date of this act, if construction of such restaurant has commenced prior to the effective date of this act and is completed within 30 days thereafter, or if an application is on file for such special license at the time this act takes effect; and any such licenses issued under this proviso may be annually renewed as now provided by law. Nothing herein prevents an application for transfer of a license to a bona fide purchaser of any hotel, motel, motor court, or restaurant by the purchaser of such facility or the transfer of such license pursuant to law.

Section 10. Subsection (4) of section 561.42, Florida Statutes, is amended to read:

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

(4) Before the division shall so declare and prohibit such

sales to such vendor, ~~it shall,~~ within 2 days after receipt of such notice~~,~~ the division shall give ~~written~~ notice to such vendor by electronic mail of the receipt by the division of such notification of delinquency and such vendor shall be directed to forthwith make payment thereof or, upon failure to do so, to show cause before the division why further sales to such vendor shall not be prohibited. Good and sufficient cause to prevent such action by the division may be made by showing payment, failure of consideration, or any other defense which would be considered sufficient in a common-law action. The vendor shall have 5 days after service ~~receipt~~ of such notice via electronic mail within which to show such cause, and he or she may demand a hearing thereon, provided he or she does so in writing within said 5 days, such written demand to be delivered to the division either in person, by electronic mail, or by due course of mail within such 5 days. If no such demand for hearing is made, the division shall thereupon declare in writing to such vendor and to all manufacturers and distributors within the state that all further sales to such vendor are prohibited until such time as the division certifies in writing that such vendor has fully paid for all liquors previously purchased. In the event such prohibition of sales and declaration thereof to the vendor, manufacturers, and distributors is ordered by the division, the vendor may seek review of such decision by the Department of Business and Professional Regulation within 5 days. In the event

application for such review is filed within such time, such prohibition of sales shall not be made, published, or declared until final disposition of such review by the department.

Section 11. Subsection (2) of section 561.55, Florida Statutes, is amended to read:

561.55 Manufacturers', distributors', brokers', sales agents', importers', vendors', and exporters' records and reports.—

(2) Each manufacturer, distributor, broker, sales agent, and importer shall make a full and complete report by the 10th day of each month for the previous calendar month. The report must be ~~shall be made out in triplicate; two copies shall be sent to the division, and the third copy shall be retained for the manufacturer's, distributor's, broker's, sales agent's, or importer's record. Reports shall be~~ made on forms prepared ~~and furnished~~ by the division and filed with the division through the division's electronic data submission system.

Section 12. Paragraphs (d) and (f) of subsection (2) of section 718.112, Florida Statutes, are amended to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(d) *Unit owner meetings.*—

1. An annual meeting of the unit owners must be held at

the location provided in the association bylaws and, if the bylaws are silent as to the location, the meeting must be held within 45 miles of the condominium property. However, such distance requirement does not apply to an association governing a timeshare condominium.

2. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term must be filled by electing a new board member, and the election must be by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. For purposes of this paragraph, the term "candidate" means an eligible person who has timely submitted the written notice, as described in sub-subparagraph 4.a., of his or her intention to become a candidate. Except in a timeshare or nonresidential condominium, or if the staggered term of a board member does not expire until a later annual meeting, or if all members' terms would otherwise expire but there are no candidates, the terms of all board members expire at the annual meeting, and such members may stand for reelection unless prohibited by the bylaws. Board members may serve terms longer than 1 year if permitted by the bylaws or articles of incorporation. A board member may not serve more than 8 consecutive years unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election or unless there are not enough eligible candidates to fill the vacancies on the board at the

time of the vacancy. If the number of board members whose terms expire at the annual meeting equals or exceeds the number of candidates, the candidates become members of the board effective upon the adjournment of the annual meeting. Unless the bylaws provide otherwise, any remaining vacancies shall be filled by the affirmative vote of the majority of the directors making up the newly constituted board even if the directors constitute less than a quorum or there is only one director. In a residential condominium association of more than 10 units or in a residential condominium association that does not include timeshare units or timeshare interests, co-owners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. A unit owner in a residential condominium desiring to be a candidate for board membership must comply with sub-subparagraph 4.a. and must be eligible to be a candidate to serve on the board of directors at the time of the deadline for submitting a notice of intent to run in order to have his or her name listed as a proper candidate on the ballot or to serve on the board. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any assessment ~~monetary obligation~~ due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. A person is

delinquent if a payment is not made by the due date as specifically identified in the declaration of condominium, bylaws, or articles of incorporation. If a due date is not specifically identified in the declaration of condominium, bylaws, or articles of incorporation, the due date is the first day of the monthly or quarterly assessment period. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony. This subparagraph does not limit the term of a member of the board of a nonresidential or timeshare condominium.

3. The bylaws must provide the method of calling meetings of unit owners, including annual meetings. Written notice must include an agenda, must be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting, and must be posted in a conspicuous place on the condominium property at least 14 continuous days before the annual meeting. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location

on the condominium property where all notices of unit owner meetings must be posted. This requirement does not apply if there is no condominium property for posting notices. In lieu of, or in addition to, the physical posting of meeting notices, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice posted physically on the condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the condominium association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the condominium property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members, which

must include a hyperlink to the website where the notice is posted, to unit owners whose e-mail addresses are included in the association's official records. Unless a unit owner waives in writing the right to receive notice of the annual meeting, such notice must be hand delivered, mailed, or electronically transmitted to each unit owner. Notice for meetings and notice for all other purposes must be mailed to each unit owner at the address last furnished to the association by the unit owner, or hand delivered to each unit owner. However, if a unit is owned by more than one person, the association must provide notice to the address that the developer identifies for that purpose and thereafter as one or more of the owners of the unit advise the association in writing, or if no address is given or the owners of the unit do not agree, to the address provided on the deed of record. An officer of the association, or the manager or other person providing notice of the association meeting, must provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association affirming that the notice was mailed or hand delivered in accordance with this provision.

4. The members of the board of a residential condominium shall be elected by written ballot or voting machine. Proxies may not be used in electing the board in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this chapter. This

subparagraph does not apply to an association governing a timeshare condominium.

a. At least 60 days before a scheduled election, the association shall mail, deliver, or electronically transmit, by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each unit owner entitled to a vote, a first notice of the date of the election. A unit owner or other eligible person desiring to be a candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in subparagraph 3., the association shall mail, deliver, or electronically transmit a second notice of the election to all unit owners entitled to vote, together with a ballot that lists all candidates. Upon request of a candidate, an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, must be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery, or electronic transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish

voting procedures consistent with this sub-subparagraph, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of ballots cast. There is no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A unit owner may not authorize any other person to vote his or her ballot, and any ballots improperly cast are invalid. A unit owner who violates this provision may be fined by the association in accordance with s. 718.303. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain such assistance. The regular election must occur on the date of the annual meeting. Notwithstanding this sub-subparagraph, an election is not required unless more candidates file notices of intent to run or are nominated than board vacancies exist.

b. Within 90 days after being elected or appointed to the board of an association of a residential condominium, each newly elected or appointed director shall certify in writing to the secretary of the association that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the

association's members. In lieu of this written certification, within 90 days after being elected or appointed to the board, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved condominium education provider within 1 year before or 90 days after the date of election or appointment. The written certification or educational certificate is valid and does not have to be resubmitted as long as the director serves on the board without interruption. A director of an association of a residential condominium who fails to timely file the written certification or educational certificate is suspended from service on the board until he or she complies with this sub-subparagraph. The board may temporarily fill the vacancy during the period of suspension. The secretary shall cause the association to retain a director's written certification or educational certificate for inspection by the members for 5 years after a director's election or the duration of the director's uninterrupted tenure, whichever is longer. Failure to have such written certification or educational certificate on file does not affect the validity of any board action.

c. Any challenge to the election process must be commenced within 60 days after the election results are announced.

5. Any approval by unit owners called for by this chapter or the applicable declaration or bylaws, including, but not

limited to, the approval requirement in s. 718.111(8), must be made at a duly noticed meeting of unit owners and is subject to all requirements of this chapter or the applicable condominium documents relating to unit owner decisionmaking, except that unit owners may take action by written agreement, without meetings, on matters for which action by written agreement without meetings is expressly allowed by the applicable bylaws or declaration or any law that provides for such action.

6. Unit owners may waive notice of specific meetings if allowed by the applicable bylaws or declaration or any law. Notice of meetings of the board of administration, unit owner meetings, except unit owner meetings called to recall board members under paragraph (j), and committee meetings may be given by electronic transmission to unit owners who consent to receive notice by electronic transmission. A unit owner who consents to receiving notices by electronic transmission is solely responsible for removing or bypassing filters that block receipt of mass emails sent to members on behalf of the association in the course of giving electronic notices.

7. Unit owners have the right to participate in meetings of unit owners with reference to all designated agenda items. However, the association may adopt reasonable rules governing the frequency, duration, and manner of unit owner participation.

8. A unit owner may tape record or videotape a meeting of the unit owners subject to reasonable rules adopted by the

division.

9. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to sub-subparagraph 4.a. unless the association governs 10 units or fewer and has opted out of the statutory election process, in which case the bylaws of the association control. Unless otherwise provided in the bylaws, a board member appointed or elected under this section shall fill the vacancy for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by paragraph (j) and rules adopted by the division.

10. This chapter does not limit the use of general or limited proxies, require the use of general or limited proxies, or require the use of a written ballot or voting machine for any agenda item or election at any meeting of a timeshare condominium association or nonresidential condominium association.

Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an association of 10 or fewer units may, by affirmative vote of a majority of the total voting interests, provide for different

voting and election procedures in its bylaws, which may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

(f) *Annual budget.*—

1. The proposed annual budget of estimated revenues and expenses must be detailed and must show the amounts budgeted by accounts and expense classifications, including, at a minimum, any applicable expenses listed in s. 718.504(21). <u>The annual budget must be proposed to unit owners and adopted by the board of directors no later than 30 days before the beginning of the fiscal year.</u> A multicondominium association shall adopt a separate budget of common expenses for each condominium the association operates and shall adopt a separate budget of common expenses for the association. In addition, if the association maintains limited common elements with the cost to be shared only by those entitled to use the limited common elements as provided for in s. 718.113(1), the budget or a schedule attached to it must show the amount budgeted for this maintenance. If, after turnover of control of the association to the unit owners, any of the expenses listed in s. 718.504(21) are not applicable, they need not be listed.

2.a. In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and

deferred maintenance. These accounts must include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000. The amount to be reserved must be computed using a formula based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. This subsection does not apply to an adopted budget in which the members of an association have determined, by a majority vote at a duly called meeting of the association, to provide no reserves or less reserves than required by this subsection.

b. Before turnover of control of an association by a developer to unit owners other than a developer pursuant to s. 718.301, the developer may vote the voting interests allocated to its units to waive the reserves or reduce the funding of reserves through the period expiring at the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer

rights in favor of the grantee of such unit is recorded, whichever occurs first, after which time reserves may be waived or reduced only upon the vote of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association. If a meeting of the unit owners has been called to determine whether to waive or reduce the funding of reserves and no such result is achieved or a quorum is not attained, the reserves included in the budget shall go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves.

3. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and may be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote at a duly called meeting of the association. Before turnover of control of an association by a developer to unit owners other than the developer pursuant to s. 718.301, the developer-controlled association may not vote to use reserves for purposes other than those for which they were intended without the approval of a majority of all nondeveloper voting interests, voting in person or by limited proxy at a duly called meeting of the association.

4. The only voting interests that are eligible to vote on questions that involve waiving or reducing the funding of reserves, or using existing reserve funds for purposes other than purposes for which the reserves were intended, are the

voting interests of the units subject to assessment to fund the reserves in question. Proxy questions relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than purposes for which the reserves were intended must contain the following statement in capitalized, bold letters in a font size larger than any other used on the face of the proxy ballot: WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

Section 13. Paragraph (m) of subsection (1) of section 718.501, Florida Statutes, is amended to read:

718.501 Authority, responsibility, and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.—

(1) The division may enforce and ensure compliance with the provisions of this chapter and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units. In performing its duties, the division has complete jurisdiction to investigate complaints and enforce compliance with respect to associations that are still under developer control or the control of a bulk assignee or bulk buyer pursuant to part VII of this chapter and complaints against developers, bulk assignees, or bulk buyers involving improper turnover or failure to turnover, pursuant to s. 718.301. However, after turnover has

occurred, the division has jurisdiction to investigate complaints related only to financial issues, elections, and unit owner access to association records pursuant to s. 718.111(12).

(m) If a complaint is made, the division must conduct its inquiry with due regard for the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division shall conduct its investigation and, within 90 days after receipt of the original complaint or of timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this chapter or a rule has occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing pursuant to ss. 120.569 and 120.57. The division may adopt rules regarding the submission of a complaint

against an association.

Section 14. Section 718.5014, Florida Statutes, is amended to read:

718.5014 Ombudsman location.—The ombudsman shall maintain his or her principal office at a ~~in Leon County on the premises of the division or, if suitable space cannot be provided there, at another~~ place convenient to the offices of the division which will enable the ombudsman to expeditiously carry out the duties and functions of his or her office. The ombudsman may establish branch offices elsewhere in the state upon the concurrence of the Governor.

Section 15. Subsection (1) of section 455.219, Florida Statutes, is amended to read:

455.219 Fees; receipts; disposition; periodic management reports.—

(1) Each board within the department shall determine by rule the amount of license fees for its profession, based upon department-prepared long-range estimates of the revenue required to implement all provisions of law relating to the regulation of professions by the department and any board; however, when the department has determined, based on the long-range estimates of such revenue, that a profession's trust fund moneys are in excess of the amount required to cover the necessary functions of the board, or the department when there is no board, the department may adopt rules to implement a waiver of license

renewal fees for that profession for a period not to exceed 2 years, as determined by the department. Each board, or the department when there is no board, shall ensure license fees are adequate to cover all anticipated costs and to maintain a reasonable cash balance, as determined by rule of the department, with advice of the applicable board. If sufficient action is not taken by a board within 1 year of notification by the department that license fees are projected to be inadequate, the department shall set license fees on behalf of the applicable board to cover anticipated costs and to maintain the required cash balance. The department shall include recommended fee cap increases in its annual report to the Legislature. Further, it is legislative intent that no regulated profession operate with a negative cash balance. The department may provide by rule for the advancement of sufficient funds to any profession or the Florida Athletic ~~State Boxing~~ Commission operating with a negative cash balance. Such advancement may be for a period not to exceed 2 consecutive years and shall require interest to be paid by the regulated profession. Interest shall be calculated at the current rate earned on Professional Regulation Trust Fund investments. Interest earned shall be allocated to the various funds in accordance with the allocation of investment earnings during the period of the advance.

Section 16. Subsection (4) of section 548.002, Florida Statutes, is amended to read:

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

(4) "Commission" means the Florida Athletic ~~State Boxing~~ Commission.

Section 17. Subsections (3) and (4) of section 548.05, Florida Statutes, are amended to read:

548.05 Control of contracts.—

(3) The commission may require that each contract contain language authorizing the ~~Florida State Boxing~~ commission to withhold any or all of any manager's share of a purse in the event of a contractual dispute as to entitlement to any portion of a purse. The commission may establish rules governing the manner of resolution of such dispute. In addition, if the commission deems it appropriate, the commission is hereby authorized to implead interested parties over any disputed funds into the appropriate circuit court for resolution of the dispute prior to release of all or any part of the funds.

(4) Each contract subject to this section shall contain the following clause: "This agreement is subject to the provisions of chapter 548, Florida Statutes, and to the rules of the Florida Athletic ~~State Boxing~~ Commission and to any future amendments of either."

Section 18. Subsection (12) of section 548.071, Florida Statutes, is amended to read:

548.071 Suspension or revocation of license or permit by commission.—The commission may suspend or revoke a license or

permit if the commission finds that the licensee or permittee:

(12) Has been disciplined by the ~~Florida State Boxing~~ commission or similar agency or body of any jurisdiction.

Section 19. Section 548.077, Florida Statutes, is amended to read:

548.077 Florida Athletic ~~State Boxing~~ Commission; collection and disposition of moneys.—All fees, fines, forfeitures, and other moneys collected under the provisions of this chapter shall be paid by the commission to the Chief Financial Officer who, after the expenses of the commission are paid, shall deposit them in the Professional Regulation Trust Fund to be used for the administration and operation of the commission and to enforce the laws and rules under its jurisdiction. In the event the unexpended balance of such moneys collected under the provisions of this chapter exceeds $250,000, any excess of that amount shall be deposited in the General Revenue Fund.

Section 20. This act shall take effect July 1, 2020.

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BUSINESS & PROFESSIONS SUBCOMMITTEE

HB 689 by Rep. Rodriguez, A.
Department of Business and Professional Regulation

AMENDMENT SUMMARY
January 15, 2020

Amendment 1 by Rep. Rodriguez, A. (Line 700):

The amendment clarifies:

- that the definition for "delinquent," as used in determining eligibility to be a candidate to serve on a condominium board, is limited to condominium assessment payments; and that the default definition for "delinquent" includes all condominium assessments.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 689 (2020)

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: Business & Professions Subcommittee

Representative Rodriguez, A. offered the following:

Amendment

Remove lines 700-706 and insert:

membership and may not be listed on the ballot. For purposes of this paragraph, a person is delinquent if a payment is not made by the due date as specifically identified in the declaration of condominium, bylaws, or articles of incorporation. If a due date is not specifically identified in the declaration of condominium, bylaws, or articles of incorporation, the due date is the first day of the assessment period. A person who