Business & Professions Subcommittee

Tuesday, February 4, 2020
12:00 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

Tuesday, February 4, 2020
Webster Hall (212 Knott)
12:00 PM – 3:00 PM

I. Call to Order & Roll Call

II. Welcoming Remarks

III. Consideration of the following bills(s):

CS/HB 279 by *Oversight, Transparency & Public Management Subcommittee, Rep. Smith, D.*
Local Government Public Construction Works

HB 363 by *Rep. Killebrew*
Lease Contracts for the Sale of Dogs and Cats

PCS for HB 537 by *Rep. Donalds*
Home-Based Businesses

HB 795 by *Rep. Joseph*
Pregnant Employees

PCS for HB 867 by *Rep. Stevenson*
Public Accountancy

HB 1153 by *Rep. DiCeglie*
Beverage Law

HB 1161 by *Rep. Plakon*
Local Licensing

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

HB 1169 by *Rep. McClure*
Specialty Contracting Services

HB 1353 by *Rep. Polsky, Rep. Plakon*
Private Security Services

IV. Adjournment

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Business & Professions Subcommittee

Start Date and Time:	Tuesday, February 04, 2020 12:00 pm
End Date and Time:	Tuesday, February 04, 2020 03:00 pm
Location:	Webster Hall (212 Knott)
Duration:	3.00 hrs

Consideration of the following bill(s):

CS/HB 279 Local Government Public Construction Works by Oversight, Transparency & Public Management Subcommittee, Smith, D.
HB 363 Lease Contracts for the Sale of Dogs and Cats by Killebrew
HB 795 Pregnant Employees by Joseph
HB 1153 Beverage Law by DiCeglie
HB 1161 Local Licensing by Plakon
HB 1169 Specialty Contracting Services by McClure
HB 1353 Private Security Services by Polsky, Plakon

Consideration of the following bill(s) with proposed committee substitute(s):

PCS for HB 537 -- Home-Based Businesses
PCS for HB 867 -- Public Accountants

Pursuant to rule 7.11, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Monday, February 3, 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., Monday, February 3, 2020.

NOTICE FINALIZED on 01/31/2020 4:17PM by Rigas.Amanda

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 279 Local Government Public Construction Works
SPONSOR(S): Oversight, Transparency & Public Management Subcommittee, Smith, D. and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 504

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Public Management Subcommittee	11 Y, 3 N, As CS	Toliver	Smith
2) Business & Professions Subcommittee		Thompson	Anstead
3) State Affairs Committee			

SUMMARY ANALYSIS

Counties, municipalities, special districts, and other political subdivisions seeking to construct or improve a public building or structure must competitively bid the project if the projected cost is in excess of $300,000. For electrical work, local governments must competitively bid projects estimated to cost more than $75,000. An exemption from the requirement to competitively award these projects exists when the governing board of a local government determines that it is in the public's best interest to use the local government's own services, employees, and equipment.

Current law also requires counties to competitively bid and award to the lowest bidder all projects for construction and reconstruction of roads and bridges that utilize the proceeds of the 80-percent portion of the surplus of the constitutional gas tax. An exception to this requirement allows a county to use its own forces for these construction and reconstruction projects if the estimated cost of a project is less than specified thresholds depending upon the type of project.

The bill raises the threshold above which a political subdivision seeking to construct or improve a public building or structure must competitively bid the project to $400,000, as well as raising the same threshold for electrical work to $100,000. The bill specifies the manner in which the estimated cost of a public building construction project must be determined when a local government governing board is deciding whether it is in the local government's best interest to perform the project using its own services, employees, and equipment. Specifically, the bill requires the estimated cost of the project to be determined using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the work, including employee compensation and benefits, equipment costs and maintenance, insurance costs, and the cost of materials.

The bill also applies this requirement to the estimated cost of construction and reconstruction projects of roads and bridges performed utilizing proceeds from the constitutional gas tax.

The bill does not appear to have a fiscal impact on state government, but it may have an indeterminate positive fiscal impact on local governments. *See* Fiscal Comments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Procurement of Construction Services

Chapter 255, F.S., specifies the procedures to be followed in the procurement of construction services for public property and publicly owned buildings. The Department of Management Services is responsible for establishing the following by rule:

- Procedures for determining the qualifications and responsibility of potential bidders prior to advertisement for and receipt of bids for building construction contracts;
- Procedures for awarding each state agency construction project to the lowest qualified bidder;
- Procedures to govern negotiations for construction contracts and contract modifications when such negotiations are determined to be in the best interest of the state; and
- Procedures for entering into performance-based contracts for the development of public facilities when those contracts are determined to be in the best interest of the state.[1]

Counties, municipalities, special districts, and other political subdivisions seeking to construct or improve a public building, structure, or other public construction works must competitively award the project if the projected cost is in excess of $300,000.[2] For electrical work, local governments must competitively award[3] projects estimated to cost more than $75,000.[4]

Exemption from Competitive Solicitation for Local Governments Performing Work

If the governing board of a local government seeking to construct or improve a public building or structure conducts a public meeting and finds by majority vote that it is in the public's best interest to perform the project using its own services, employees, and equipment, then the local government is exempt from the requirement to competitively award the contract for the project.[5] The meeting of the governing board must have been publicly noticed at least 21 days before the date of the public meeting at which the governing board takes final action.[6] The notice must identify the project, the components and scope of the project, and the estimated cost of the project using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the project, including employee compensation and benefits, equipment cost and maintenance, insurance costs, and materials.[7] The notice must state that the purpose of the meeting is to consider whether it is in the best interest of the public to perform the project using the local government's own services, employees, and equipment.[8]

At the public meeting, the governing board must allow any qualified contractor or vendor who could have been awarded the project had the project been competitively bid to present evidence regarding the project and the accuracy of the local government's estimated cost of the project.[9] In making a determination, the governing board must consider the estimated cost of the project and the accuracy of the estimated cost in light of any other information that may be presented at the public meeting. In

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[1] Section 255.29, F.S.

[2] Section 255.20(1), F.S.

[3] The term "competitively award" means to award contracts based on the submission of sealed bids, proposals submitted in response to a request for proposal, proposals submitted in response to a request for qualifications, or proposals submitted for competitive negotiation. *Id.*

[4] *Id.*

[5] Section 255.20(1)(c)9., F.S.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

addition, the board must consider whether the project requires an increase in the number of government employees or an increase in capital expenditures for public facilities, equipment, or other capital assets.[10] The governing body may further consider the impact on local economic development, the impact on small and minority business owners, the impact on state and local tax revenues, whether the private sector contractors provide health insurance and other benefits equivalent to those provided by the local government, and any other factor relevant to what is in the public's best interest.[11]

Construction and Maintenance of Roads and Bridges

Current law authorizes counties to employ labor and provide road equipment to construct and open new roads or bridges and to repair and maintain any existing roads and bridges under certain circumstances.[12] However, counties must competitively bid and award to the lowest bidder all projects for construction and reconstruction of roads and bridges, including resurfacing, that utilize the proceeds of the 80-percent portion of the surplus of the constitutional gas tax.[13] An exception to this requirement allows a county to use its own forces for these construction and reconstruction projects under the following circumstances:

- In emergencies;
- When a construction or reconstruction project has a total cumulative annual value not to exceed five percent of its 80-percent portion of the constitutional gas tax or $400,000, whichever is greater; or
- When constructing sidewalks, curbing, accessibility ramps, or appurtenances incidental to roads and bridges if each project is estimated in accordance with generally accepted cost-accounting principles to have total construction project costs of less than $400,000.[14]

In addition, if, after proper advertising, the county receives no bids for a specific project, the county may use its own forces to construct the project.[15] A county is not prohibited from performing routine maintenance as authorized by law.[16]

Effect of the Bill

The bill raises the threshold above which a political subdivision seeking to construct or improve a public building or structure must competitively bid the project from $300,000 to $400,000, and raises the same threshold for electrical work from $75,000 to $100,000.

The bill specifies the manner in which the estimated cost of a public building construction project must be determined when a local government governing board is deciding whether it is in the local government's best interest to perform the project using its own services, employees, and equipment. Specifically, the bill requires the estimated cost of the project to be determined using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the work, including employee compensation and benefits, equipment costs and maintenance, insurance costs, and the cost of materials.

The bill applies this requirement to the estimated cost of road and bridge construction and reconstruction projects performed utilizing proceeds from the constitutional gas tax, for which a county may use its own forces if the estimated cost is less than the thresholds described above for different types of projects.

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[10] *Id.*
[11] *Id.*
[12] Section 336.41, F.S.
[13] Section 336.41(4), F.S.; *see also* Art. XII, s. 9(c)(4), FLA. CONST.
[14] *Id.*
[15] *Id.*
[16] *Id.*

The bill requires a local government that performs a public building construction project using its own services, employees, and equipment to disclose the actual costs of the project after completion to the Auditor General, who must review such disclosures as part of his or her routine audits of local governments.

B. SECTION DIRECTORY:

Section 1 amends s. 255.20, F.S., relating to local bids and contracts for public construction works.

Section 2 amends s. 336.41, F.S., relating to counties; employing labor and providing road equipment; accounting; when competitive bidding required.

Section 3 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:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

The bill may have an indeterminate positive fiscal impact on local governments if the estimated cost for a local government to complete a construction project causes governing boards to select private contractors that can perform the projects at a lower cost. Any increase in projects awarded to private contractors would result in a positive fiscal impact on the private sector.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority nor require the promulgation of rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 29, 2020, the Oversight, Transparency & Public Management Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment raised the threshold above which a political subdivision seeking to construct or improve a public building or structure must competitively bid the project from $300,000 to $400,000, as well as raising the same threshold for electrical work from $75,000 to $100,000.

The analysis is drafted to the committee substitute as approved by the Oversight, Transparency & Public Management Subcommittee.

A bill to be entitled

An act relating to local government public construction works; amending s. 255.20, F.S.; revising the amount at which specified entities must competitively award certain projects; requiring the governing board of a local government to consider estimated costs of certain projects using generally accepted cost-accounting principles that account for specified costs when making a specified determination; requiring a local government that performs a project using its own services, employees, and equipment to disclose the actual costs of the project after completion to the Auditor General; requiring the Auditor General to review such disclosures as part of his or her routine audits of local governments; amending s. 336.41, F.S.; requiring estimated total construction project costs for certain projects to include specified costs; providing an effective date.

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

Section 1. Subsection (1) of section 255.20, Florida Statutes, is amended to read:

255.20 Local bids and contracts for public construction works; specification of state-produced lumber.—

(1) A county, municipality, special district as defined in chapter 189, or other political subdivision of the state seeking to construct or improve a public building, structure, or other public construction works must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally accepted cost-accounting principles to cost more than $400,000 ~~$300,000~~. For electrical work, the local government must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally accepted cost-accounting principles to cost more than $100,000 ~~$75,000~~. As used in this section, the term "competitively award" means to award contracts based on the submission of sealed bids, proposals submitted in response to a request for proposal, proposals submitted in response to a request for qualifications, or proposals submitted for competitive negotiation. This subsection expressly allows contracts for construction management services, design/build contracts, continuation contracts based on unit prices, and any other contract arrangement with a private sector contractor permitted by any applicable municipal or county ordinance, by district resolution, or by state law. For purposes of this section, cost includes the cost of all labor, except inmate labor, and the cost of equipment and materials to be used in the construction of the project. Subject to the provisions of subsection (3), the county, municipality, special district, or

other political subdivision may establish, by municipal or county ordinance or special district resolution, procedures for conducting the bidding process.

(a) Notwithstanding any other law, a governmental entity seeking to construct or improve bridges, roads, streets, highways, or railroads, and services incidental thereto, at a cost in excess of $250,000 may require that persons interested in performing work under contract first be certified or qualified to perform such work. A contractor may be considered ineligible to bid if the contractor is behind by 10 percent or more on completing an approved progress schedule for the governmental entity at the time of advertising the work. A prequalified contractor considered eligible by the Department of Transportation to bid to perform the type of work described under the contract is presumed to be qualified to perform the work described. The governmental entity may provide an appeal process to overcome that presumption with de novo review based on the record below to the circuit court.

(b) For contractors who are not prequalified by the Department of Transportation, the governmental entity shall publish prequalification criteria and procedures prior to advertisement or notice of solicitation. Such publications must include notice of a public hearing for comment on such criteria and procedures prior to adoption. The procedures must provide for an appeal process within the authority for making objections

to the prequalification process with de novo review based on the record below to the circuit court within 30 days.

(c) ~~The provisions of~~ This subsection does ~~do~~ not apply:

1. If the project is undertaken to replace, reconstruct, or repair an existing public building, structure, or other public construction works damaged or destroyed by a sudden unexpected turn of events such as an act of God, riot, fire, flood, accident, or other urgent circumstances, and such damage or destruction creates:

a. An immediate danger to the public health or safety;

b. Other loss to public or private property which requires emergency government action; or

c. An interruption of an essential governmental service.

2. If, after notice by publication in accordance with the applicable ordinance or resolution, the governmental entity does not receive any responsive bids or proposals.

3. To construction, remodeling, repair, or improvement to a public electric or gas utility system if such work on the public utility system is performed by personnel of the system.

4. To construction, remodeling, repair, or improvement by a utility commission whose major contracts are to construct and operate a public electric utility system.

5. If the project is undertaken as repair or maintenance of an existing public facility. For the purposes of this paragraph, the term "repair" means a corrective action to

restore an existing public facility to a safe and functional condition and the term "maintenance" means a preventive or corrective action to maintain an existing public facility in an operational state or to preserve the facility from failure or decline. Repair or maintenance includes activities that are necessarily incidental to repairing or maintaining the facility. Repair or maintenance does not include the construction of any new building, structure, or other public construction works or any substantial addition, extension, or upgrade to an existing public facility. Such additions, extensions, or upgrades shall be considered substantial if the estimated cost of the additions, extensions, or upgrades included as part of the repair or maintenance project exceeds the threshold amount in subsection (1) and exceeds 20 percent of the estimated total cost of the repair or maintenance project using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the work, including employee compensation and benefits, equipment cost and maintenance, insurance costs, and materials. An addition, extension, or upgrade shall not be considered substantial if it is undertaken pursuant to the conditions specified in subparagraph 1. Repair and maintenance projects and any related additions, extensions, or upgrades may not be divided into multiple projects for the purpose of evading the requirements of this subparagraph.

6. If the project is undertaken exclusively as part of a public educational program.

7. If the funding source of the project will be diminished or lost because the time required to competitively award the project after the funds become available exceeds the time within which the funding source must be spent.

8. If the local government competitively awarded a project to a private sector contractor and the contractor abandoned the project before completion or the local government terminated the contract.

9. If the governing board of the local government complies with all of the requirements of this subparagraph, conducts a public meeting under s. 286.011 after public notice, and finds by majority vote of the governing board that it is in the public's best interest to perform the project using its own services, employees, and equipment. The public notice must be published at least 21 days before the date of the public meeting at which the governing board takes final action. The notice must identify the project, the components and scope of the work, and the estimated cost of the project using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the work, including employee compensation and benefits, equipment cost and maintenance, insurance costs, and materials. The notice must specify that the purpose for the public meeting is to consider

whether it is in the public's best interest to perform the project using the local government's own services, employees, and equipment. Upon publication of the public notice and for 21 days thereafter, the local government shall make available for public inspection, during normal business hours and at a location specified in the public notice, a detailed itemization of each component of the estimated cost of the project and documentation explaining the methodology used to arrive at the estimated cost. At the public meeting, any qualified contractor or vendor who could have been awarded the project had the project been competitively bid shall be provided with a reasonable opportunity to present evidence to the governing board regarding the project and the accuracy of the local government's estimated cost of the project. In deciding whether it is in the public's best interest for the local government to perform a project using its own services, employees, and equipment, the governing board must consider the estimated cost of the project using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the work, including employee compensation and benefits, equipment costs and maintenance, insurance costs, and the cost of materials, and the accuracy of the estimated cost in light of any other information that may be presented at the public meeting and whether the project requires an increase in the number of government employees or an increase

in capital expenditures for public facilities, equipment, or other capital assets. The local government may further consider the impact on local economic development, the impact on small and minority business owners, the impact on state and local tax revenues, whether the private sector contractors provide health insurance and other benefits equivalent to those provided by the local government, and any other factor relevant to what is in the public's best interest. A local government that performs a project using its own services, employees, and equipment must disclose the actual costs of the project after completion to the Auditor General. The Auditor General shall review such disclosures as part of his or her routine audits of local governments.

10. If the governing board of the local government determines upon consideration of specific substantive criteria that it is in the best interest of the local government to award the project to an appropriately licensed private sector contractor pursuant to administrative procedures established by and expressly set forth in a charter, ordinance, or resolution of the local government adopted before July 1, 1994. The criteria and procedures must be set out in the charter, ordinance, or resolution and must be applied uniformly by the local government to avoid awarding a project in an arbitrary or capricious manner. This exception applies only if all of the following occur:

a. The governing board of the local government, after public notice, conducts a public meeting under s. 286.011 and finds by a two-thirds vote of the governing board that it is in the public's best interest to award the project according to the criteria and procedures established by charter, ordinance, or resolution. The public notice must be published at least 14 days before the date of the public meeting at which the governing board takes final action. The notice must identify the project, the estimated cost of the project, and specify that the purpose for the public meeting is to consider whether it is in the public's best interest to award the project using the criteria and procedures permitted by the preexisting charter, ordinance, or resolution.

b. The project is to be awarded by any method other than a competitive selection process, and the governing board finds evidence that:

(I) There is one appropriately licensed contractor who is uniquely qualified to undertake the project because that contractor is currently under contract to perform work that is affiliated with the project; or

(II) The time to competitively award the project will jeopardize the funding for the project, materially increase the cost of the project, or create an undue hardship on the public health, safety, or welfare.

c. The project is to be awarded by any method other than a

competitive selection process, and the published notice clearly specifies the ordinance or resolution by which the private sector contractor will be selected and the criteria to be considered.

d. The project is to be awarded by a method other than a competitive selection process, and the architect or engineer of record has provided a written recommendation that the project be awarded to the private sector contractor without competitive selection, and the consideration by, and the justification of, the government body are documented, in writing, in the project file and are presented to the governing board prior to the approval required in this paragraph.

11. To projects subject to chapter 336.

(d) If the project:

1. Is to be awarded based on price, the contract must be awarded to the lowest qualified and responsive bidder in accordance with the applicable county or municipal ordinance or district resolution and in accordance with the applicable contract documents. The county, municipality, or special district may reserve the right to reject all bids and to rebid the project, or elect not to proceed with the project. This subsection is not intended to restrict the rights of any local government to reject the low bid of a nonqualified or nonresponsive bidder and to award the contract to any other qualified and responsive bidder in accordance with the standards

and procedures of any applicable county or municipal ordinance or any resolution of a special district.

2. Uses a request for proposal or a request for qualifications, the request must be publicly advertised and the contract must be awarded in accordance with the applicable local ordinances.

3. Is subject to competitive negotiations, the contract must be awarded in accordance with s. 287.055.

(e) If a construction project greater than $300,000, or $75,000 for electrical work, is started after October 1, 1999, is to be performed by a local government using its own employees in a county or municipality that issues registered contractor licenses, and the project would require a contractor licensed under chapter 489 if performed by a private sector contractor, the local government must use a person appropriately registered or certified under chapter 489 to supervise the work.

(f) If a construction project greater than $300,000, or $75,000 for electrical work, is started after October 1, 1999, is to be performed by a local government using its own employees in a county that does not issue registered contractor licenses, and the project would require a contractor licensed under chapter 489 if performed by a private sector contractor, the local government must use a person appropriately registered or certified under chapter 489 or a person appropriately licensed under chapter 471 to supervise the work.

(g) Projects performed by a local government using its own services and employees must be inspected in the same manner required for work performed by private sector contractors.

(h) A construction project provided for in this subsection may not be divided into more than one project for the purpose of evading this subsection.

(i) This subsection does not preempt the requirements of any small-business or disadvantaged-business enterprise program or any local-preference ordinance.

(j) A county, municipality, special district as defined in s. 189.012, or any other political subdivision of the state that owns or operates a public-use airport as defined in s. 332.004 is exempt from this section when performing repairs or maintenance on the airport's buildings, structures, or public construction works using the local government's own services, employees, and equipment.

(k) A local government that owns or operates a port identified in s. 403.021(9)(b) is exempt from this section when performing repairs or maintenance on the port's buildings, structures, or public construction works using the local government's own services, employees, and equipment.

(l) A local government that owns or operates a public transit system as defined in s. 343.52, a public transportation system as defined in s. 343.62, or a mass transit system described in s. 349.04(1)(b) is exempt from this section when

performing repairs or maintenance on the buildings, structures, or public construction works of the public transit system, public transportation system, or mass transit system using the local government's own services, employees, and equipment.

(m) Any contractor may be considered ineligible to bid by the governmental entity if the contractor has been found guilty by a court of any violation of federal labor or employment tax laws regarding subjects such as safety, tax withholding, workers' compensation, reemployment assistance or unemployment tax, social security and Medicare tax, wage or hour, or prevailing rate laws within the past 5 years.

Section 2. Subsection (4) of section 336.41, Florida Statutes, is amended to read:

336.41 Counties; employing labor and providing road equipment; accounting; when competitive bidding required.—

(4) All construction and reconstruction of roads and bridges, including resurfacing, full scale mineral seal coating, and major bridge and bridge system repairs, to be performed utilizing the proceeds of the 80-percent portion of the surplus of the constitutional gas tax shall be let to contract to the lowest responsible bidder by competitive bid, except for:

(a) Construction and maintenance in emergency situations; ~~; and~~

(b) In addition to emergency work, construction and reconstruction, including resurfacing, mineral seal coating, and

bridge repairs, having a total cumulative annual value not to exceed 5 percent of its 80-percent portion of the constitutional gas tax or $400,000, whichever is greater; ~~;~~ and

(c) Construction of sidewalks, curbing, accessibility ramps, or appurtenances incidental to roads and bridges if each project is estimated in accordance with generally accepted cost-accounting principles to have total construction project costs of less than $400,000 or as adjusted by the percentage change in the Construction Cost Index from January 1, 2008,

for which the county may utilize its own forces. Estimated total construction project costs shall include all costs associated with performing and completing the work, including employee compensation and benefits, equipment costs and maintenance, insurance costs, and the cost of materials. However, if, after proper advertising, no bids are received by a county for a specific project, the county may use its own forces to construct the project, notwithstanding the limitation of this subsection. Nothing in this section shall prevent the county from performing routine maintenance as authorized by law.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 363 Lease Contracts for the Sale of Dogs and Cats
SPONSOR(S): Killebrew
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

Consumers in the United States spent $2.01 billion on live animal purchases in 2018. Over 100 million households nationwide own pets. Statistics at the state level regarding pet purchases are not readily available. However, if national data are distributed evenly across all 50 states, around $38 million was spent on live animal purchases statewide in 2018.

For consumers, pet leasing is an alternative financial mechanism to purchasing a pet with cash or credit. According to the Federal Trade Commission, pet leasing is a relatively new industry that relies on a consumer lease. Some financial services companies have partnered with pet sellers to offer such leases. The lease terms vary. The federal Consumer Lease Act regulates consumer leases to ensure that meaningful and accurate disclosure of lease terms are provided to consumers before entering into a contract.

Recently, there have been reports of retail pet stores that are using pet leases to lock consumers, who do not qualify for credit, into contracts. In Florida, the Department of Agriculture and Consumer Services, Division of Consumer Services (DACS) has received similar complaints. According to research, some of the complaints allege that retailers are overly persuasive, and that appropriate lease disclosures have not been made when the contract is signed. A sample of the complaints and other articles on this issue appears to show that certain consumers in Florida are:

- Entering into financial agreements they cannot afford;
- Not aware of all of the costs involved at the point of sale;
- Not reading the details ("fine print") in the agreements at the point of sale;
- Purchasing sick puppies; or
- Being led into financial agreements with predatory payment plans.

Florida law does not appear to specifically address consumer pet leases.

The bill prohibits future contracts that:

- Transfer ownership of a dog or cat contingent on the buyer making payments after taking possession of the animal;
- Provide for the lease of a dog or cat with the option to buy the animal at the end of the lease term; or
- Repay a loan for the purchase of a dog or cat, where a security interest is granted in the dog or cat purchased. Such provisions are void and unenforceable.

The bill deems consumers who take possession of a dog or cat under such contracts the owner, entitles the consumer to a full refund, and does not prohibit buying a dog or cat through an unsecured loan.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Pet Ownership

Sixty-seven percent of households in the United States (U.S.), or about 85 million families, own a pet. Of these households, approximately 65 million own dogs and 42 million own cats. The total number of dogs and cats owned in the U.S. is estimated to be approximately 183 million.[1]

Consumers in the U.S. spent $2.01 billion on live animal purchases in 2018. Acquisition of dogs varies by generation with more millennials turning to shelters and rescues, while baby boomers and Gen Xers look more to breeders. However, it has been found that millennials purchase pets at independent pet stores three times more often than Boomers or Gen Xers.[2]

Statistics at the state level regarding pet ownership and purchases are not readily available. However, if the national data are distributed evenly across all 50 states, the following annual statistics can be extrapolated an applied to each state:

- 1.6 million families own a pet, and of these families:
  - 1.2 million own dogs;
  - 800,000 own cats;
- 3.5 million dogs and cats are owned; and
- $38 million is spent on live animal purchases.

Pet Lease Agreements

For consumers, pet leasing is an alternative financial mechanism to purchasing a pet with cash or credit. It is unknown what portion of the total amount spent each year on pets is from pet leasing and how many dogs and cats are purchased using a pet lease agreement.

According to the Federal Trade Commission, pet leasing is a relatively new industry that relies on a consumer lease. Consumer leases are commonly associated with cars, furniture, and heavy equipment. As a result, most people considering buying a pet are not expecting to be handed a lease and many pet sellers may not be prepared to explain a lease's terms.[3]

Some financial services companies have partnered with pet sellers to offer leases. The lease terms vary. In general, pet leases run for a set time, typically one to three years. During the lease period, customers are required to make monthly payments that can total more than the list price of the pet, sometimes much more.[4]

When the lease is over, the customer does not own the pet. To purchase the pet, the customer usually must pay an additional amount. If they can't buy the pet, they must surrender it, and if the customer misses a monthly payment, the leasing company can repossess it. If the animal gets lost, stolen, or dies, or if the customer can no longer keep the pet, the customer can still be required to make

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[1] American Pet Products Association, *Press Releases: Americans Are Spending More on Pets Than Ever Before: $72 Billion*, https://www.americanpetproducts.org/press_releasedetail.asp?id=191 (last visited Jan. 31, 2020).
[2] *Id.*
[3] Federal Trade Commission, *A lease on a leash? Pet stores are leasing pets*, https://www.ftc.gov/news-events/blogs/business-blog/2018/07/lease-leash-pet-stores-are-leasing-pets (last visited Jan. 31, 2020).
[4] *Id.*

payments through the end of the lease period or pay an early termination fee. Failure to make required payments can show up on the customer's credit report and result in a collection action.[5]

Pet Lease Disclosures

The federal Consumer Lease Act (Act) regulates personal property leases that exceed four months in duration, do not exceed $50,000, and are made to consumers for personal, family, or household purposes. The purpose of the Act is to ensure that meaningful and accurate disclosure of lease terms is provided to consumers before entering into a contract.[6]

Prior to signing a lease, the Act requires, among other things, that a consumer receive a written statement that clearly and conspicuously includes the following information:

- A brief description or identification of the leased property;
- The amount of any payment by the lessee required at the inception of the lease;
- The amount paid or payable by the lessee for official fees, registration, certificate of title, or license fees or taxes;
- The amount of other charges payable by the lessee not included in the periodic payments, a description of the charges and that the lessee is liable for the difference, if any, between the anticipated fair market value of the leased property and its appraised actual value at the termination of the lease, if the lessee has such liability;
- A statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and whether or not the lessee has the option to purchase the leased property and at what price and time;
- A statement identifying all express warranties and guarantees made by the manufacturer or lessor with respect to the leased property, and identifying the party responsible for maintaining or servicing the leased property together with a description of the responsibility;
- A brief description of insurance provided or paid for by the lessor or required of the lessee, including the types and amounts of the coverages and costs;
- A description of any security interest held or to be retained by the lessor in connection with the lease and a clear identification of the property to which the security interest relates;
- The number, amount, and due dates or periods of payments under the lease and the total amount of such periodic payments;
- Where the lease provides that the lessee shall be liable for the anticipated fair market value of the property on expiration of the lease, the fair market value of the property at the inception of the lease, the aggregate cost of the lease on expiration, and the differential between them; and
- A statement of the conditions under which the lessee or lessor may terminate the lease prior to the end of the term and the amount or method of determining any penalty or other charge for delinquency, default, late payments, or early termination.[7]

If pet leases are advertised, the Act requires, among other things, disclosure that the deal is a lease, the total amount due at lease signing, and the number, amount, and timing of payments.[8] Specifically, if an advertisement for a consumer lease includes a statement of the amount of any payment or a statement that any or no initial payment is required, the advertisement must clearly and conspicuously state, as applicable:

- The transaction advertised is a lease;
- The total amount of any initial payments required on or before consummation of the lease or delivery of the property, whichever is later;
- That a security deposit is required;
- The number, amount, and timing of scheduled payments; and

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[5] *Id.*
[6] 15 U.S.C. §§ 1667-1667f.
[7] *Id.*
[8] Federal Trade Commission, *supra* note 3.

- With respect to a lease in which the liability of the consumer at the end of the lease term is based on the anticipated residual value of the property, that an extra charge may be imposed at the end of the lease term.[9]

A relatively small number of banks engage in consumer leasing. The trend seems to be for leasing to be carried out through specialized bank subsidiaries, vehicle finance companies, other finance companies, or directly by retailers.[10]

Recent Reports

Recently, there have been reports of retail pet stores that are allegedly using pet lease agreements to lock consumers into predatory contracts. The reports say that lessees are being charged two to four times the actual sticker-price for a puppy. In response, animal rights groups have spent the last two years filing lawsuits accusing leasing companies and pet stores of predatory practices.[11]

In Florida, the Florida Department of Agriculture and Consumer Services, Division of Consumer Services (DACS) has received related complaints. Some of the complaints allege that retailers are overly persuasive, and that appropriate lease disclosures are not being made when the contract is signed. A sample of the complaints[12] and news reports[13] regarding the issue appear to show that consumers in Florida are:

- Entering into financial agreements that they cannot afford;
- Not aware of all of the costs involved at the point of sale;
- Not reading the details ("fine print") in the agreements at the point of sale;
- Purchasing sick puppies; or
- Being led into a predatory payment plan.

Other States

Six states have enacted prohibitions on pet leasing and others have considered doing so.[14] The states include California,[15] Indiana,[16] Nevada,[17] New Jersey,[18] New York,[19] and Washington.[20]

Current Law

Florida law does not appear to specifically address consumer pet leases.

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[9] 15 U.S.C. §§ 1667-1667f.

[10] Federal Reserve, Regulation M Consumer Leasing Introduction, https://www.federalreserve.gov/boarddocs/caletters/2008/0805/08-05_attachment2.pdf (last visited Jan. 31, 2020).

[11] Sara DiNatale, *They thought they were buying a family dog. Turns out they were leasing it.*, Tampa Bay Times, (Dec. 27, 2018) https://www.tampabay.com/business/they-thought-they-were-buying-a-family-dog-turns-out-they-were-leasing-it-20181224/ (last visited Jan. 31, 2020).

[12] Florida Department of Agriculture and Consumer Services, Division of Consumer Services, Mediation & Enforcement office.

[13] Jeff Weinsier, Local 10 Investigates, Financing fido: Pet store loans raise eyebrows in Florida
Fine print of some agreements has buyer leasing their pets (Nov. 12, 2018), https://www.local10.com/news/2018/11/13/financing-fido-pet-store-loans-raise-eyebrows-in-florida/ (last visited Jan. 31, 2020).

[14] Connecticut considered a ban on pet leasing during the 2018 legislative session. However, the House did not take up the amended bill for consideration. Connecticut General Assembly, Research Report: State Laws Prohibiting Pet Leasing, https://www.cga.ct.gov/2018/rpt/pdf/2018-R-0264.pdf (last visited Jan. 31, 2020).

[15] Cal. Civil Code § 1670.10 (2018).

[16] Ind. Code § 24-4.5-2407.5 (2019).

[17] Nev. Rev. Stat. § 597.997 (2017).

[18] N.J. Stat. Ann. § 56:8-211 (2019).

[19] N.Y. General Business Law § 753-e (2019).

[20] Wash. Rev. Code § 63.10.070 (2019).

Proposed Changes

Effective July 1, 2020, the bill prohibits future or new contracts that:

- Transfer ownership of a dog or cat contingent on the buyer making payments after taking possession of the animal;
- Provide for the lease of a dog or cat with the option to buy the animal at the end of the lease term; or
- Repay a loan for the purchase of a dog or cat, where a security interest is granted in the dog or cat purchased.

The bill makes any such provisions void and unenforceable.

The bill deems consumers who take possession of a dog or cat under such a contract the owner and entitles the consumer to a refund of all moneys paid under the contract.

The bill does not prohibit buying a dog or cat through an unsecured loan.

B. SECTION DIRECTORY:

Section 1. Creates s. 725.09, F.S., prohibiting lease contracts for the sale of dogs and cats.

Section 2. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill prohibits certain financial agreements that are typically offered by retail pet stores to potential customers as a mechanism for obtaining a dog or cat. As a result, the bill could create a negative fiscal impact on these businesses. To the extent these agreements may be predatory, the bill could have a positive fiscal impact on consumers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill purports to apply to lease contracts involving a dog or cat. However, the bill confuses the nature of a contract for the lease of property versus the nature of a contract for the sale of property. A lease involves the possession of the property, whereas a sale involves the transfer of ownership of the property.

For example:

- Line 14 contains a catchline for the proposed statute that begins with "lease contracts" and then immediately follows with "for the sale of dogs and cats."
- Although the intent of the bill appears to relate to lease contracts, lines 23-24 speak of prohibiting certain types of loans "for the purchase of a dog or cat," and lines 17-20 speak of the transfer of ownership of a dog or cat.

The bill also creates a new section of law in chapter 725, F.S., which generally relates to fraudulent contracts. However, chapter 828, F.S., specifically relates to sales of animals.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to lease contracts for the sale of dogs and cats; creating s. 725.09, F.S.; providing that certain contract provisions entered into on or after a specified date for the sale or lease of dogs and cats are void and unenforceable; providing an exception for contracts for the repayment of unsecured loans; providing an effective date.

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

Section 1. Section 725.09, Florida Statutes, is created to read:

725.09 Lease contracts for the sale of dogs and cats.—

(1) A contract entered into on or after July 1, 2020, may not:

(a) Transfer ownership of a dog or cat in which the ownership is contingent upon the making of payments over a period of time subsequent to the transfer of possession of the dog or cat;

(b) Provide for or offer the option of transferring ownership of a dog or cat at the end of a lease term; or

(c) Repay a loan for the purchase of a dog or cat, where a security interest is granted in the dog or cat purchased;

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

and any such provision is void and unenforceable.

(2) In addition to any other remedies provided by law, the person taking possession of a dog or cat transferred under a contract described in subsection (1) is the owner of the dog or cat and is entitled to the return of all moneys paid under such contract.

(3) This section does not apply to contracts to repay an unsecured loan for the purchase of a dog or cat.

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

PCS for HB 537

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 537 Home-Based Businesses
SPONSOR(S): Business & Professions Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:** SB 778

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

SUMMARY ANALYSIS

The Florida Constitution grants local governments broad home rule authority, and county and municipal governments may exercise those powers of self-government that are provided by general or special law. As such, general law and home rule authority determines whether local governments are able to regulate businesses, and to what degree. For example, the local business tax allowed under general law and levied by counties and municipalities represents the fees charged and the method by which a local government authority grants the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction.

Currently, some local governments have ordinances specific to regulating home-based businesses, or businesses which operate out of a residence. Some local governments regulate the types of businesses which may be carried on at a residence, and others regulate the space in which business may occur.

In order to be considered a home-based businesses, the bill requires that:

- the business operates, in whole or in part, from a residential property.
- the employees of the home-based business must reside in the residence, except for up to two employees that do not reside at the residence. However, employees of the home-based business that do not primarily work at the residential dwelling are not required to reside in the dwelling.
- parking for the business activities of the home-based business complies with local zoning requirements.
- the use of the residential property is consistent with the uses of the residential areas that surround the property, but incidental and short term business uses and activities are permitted.
- the activities of the home-based business are secondary to the property's use as a residential dwelling.

The bill provides that home-based businesses will only be subject to applicable business taxes in the county and municipality where the home-based business is located.

The bill provides that local governments may not enact or enforce any ordinance, regulation, or policy, or take any action to license or otherwise regulate a home-based business in a manner that is different from other businesses in a local government's jurisdiction.

The bill allows a party to challenge any local government action regulating home-based businesses. The prevailing party is entitled to recover reasonable attorney fees and costs.

The bill does not have a fiscal impact on state government and has 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]

Local Business Tax

The local business tax, authorized in ch. 205, F.S., represents the fees charged and the method by which a local government authority grants the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction.[12] Counties and municipalities may levy a business tax.[13]

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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.
[12] S. 205.022(5), F.S.
[13] Ss. 205.033 and 205.043, F.S.

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.[14]

Businesses and Occupations

General law determines whether local governments are able to regulate occupations and businesses, and to what degree.[15] If state law preempts regulation for an occupation, then, generally, local governments may not regulate that occupation.[16] 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;[17]
- assessing local fees and rules regarding low-voltage alarm system projects;[18]
- tobacco and nicotine products;[19]
- firearms, weapons, and ammunition;[20]
- employment benefits;[21]
- polystyrene products;[22]
- public lodging establishments and public food service establishments;[23] and
- disposable plastic bags.[24]

Conversely, Florida law also specifically grants local jurisdictions the right to regulate businesses, occupations and professions in certain circumstances.[25] For example, Florida law specifically authorizes regulations relating to:

- zoning and land use;[26]
- 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";[27]
- the levy of local business taxes;[28]
- building code inspection fees;[29]
- tattoo establishments;[30]
- massage practices;[31]
- child care facilities;[32]
- taxis and other vehicles for hire;[33] and

[14] EDR, *supra* note 12, at 9.
[15] 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.
[16] *Id.*; Wolf and Bolinger, *supra* note 17.
[17] S. 553.80(7)(d), F.S.
[18] S. 489.503(14), F.S.
[19] Ch. 569, F.S., and s. 386.209, F.S.
[20] S. 790.33(1), F.S.
[21] S. 218.077, F.S.
[22] S. 500.90, F.S.
[23] S. 509.032, F.S.
[24] S. 403.7033, F.S.
[25] *Supra* note 16.
[26] S. 125.01(1)(h), F.S.
[27] S. 166.221, F.S.
[28] Ch. 205, F.S.
[29] S. 166.222, F.S.
[30] S. 381.00791, F.S.
[31] S. 480.052, F.S.
[32] S. 402.306, F.S

- waste and sewage collection.[34]

Home-based Business Regulations

Currently, some local governments have ordinances specific to regulating home-based businesses, or businesses which operate out of a residence. Some local governments regulate the types of businesses which may be carried on at a residence, and others regulate the space in which business may occur. Examples include:

- In Volusia County, home-based businesses are required to occupy no more than 25 percent of the habitable floor area of the residence,[35]
- In Tampa, home-based businesses may not be conducted in any accessory building;[36]
- In Naples, home-based businesses are not allowed to conduct retail, wholesale or warehousing activities at the residence;[37] and
- In Gainesville, a home-based business may not have more than one automobile used for the home-based business parked on the premises within view of surrounding properties. Such automobile may not have more than two signs, not exceeding two square feet in area, each mounted flat against or painted along the sides.[38]

Effect of the Bill

In order to be considered a home-based businesses, the bill requires that:

- the business operates, in whole or in part, from a residential property.
- the employees of the home-based business must reside in the residence, except that up to two employees that do not reside at the residence may work at the residence. However, other employees of the home-based business that do not primarily work at the residence are not required to reside in the residence.
- parking related to the business activities of the home-based business complies with local zoning requirements.
- as viewed from the street, the use of the residential property is consistent with the uses of the residential areas that surround the property, however incidental and short term business uses may be conducted at the residence.
- the activities of the home-based business are secondary to the property's use as a residential dwelling.

The bill allows home-based businesses that operate from residential property to operate in an area zoned for residential use.

Home-based businesses will only be subject to applicable business taxes in the county and municipality where the home-based business is located.

The bill provides that local governments may not:

- prohibit, restrict, regulate, or license home-based businesses in a manner that is different from other businesses in a local government's jurisdiction; or
- enact or enforce any ordinance, regulation, or policy, or take any action to license or otherwise regulate a home-based business outside of what is allowed in the bill.

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[33] S. 125.01(1)(n), F.S.
[34] S. 125.01(1)(k), F.S.
[35] Volusia County, FL., Ch. 72, art. II, div. 8, s. 72-283.
[36] Tampa, FL., Ch. 27, art. VI, div. 2, s. 27-282.5.
[37] Naples, FL., Ch. 56, art. III, s. 56-92.
[38] Gainesville, FL., Ch. 30, art. V, div. 2, s. 30-5.37.

The bill allows a party to challenge any local government action regulating home-based businesses. The prevailing party is entitled to recover reasonable attorney fees and costs incurred in challenging or defending the action, including reasonable appellate attorney fees and costs.

B. SECTION DIRECTORY:

Section 1 Creates s. 559.955, F.S., relating to requirements for home-based businesses.

Section 2 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:

Indeterminate.

2. Expenditures:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may allow more home-based businesses to operate more freely an efficiently.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill prohibits local governments, except the county and municipality where the home-based business is located, from collecting business taxes from home-based businesses. However, an exemption may apply given that laws having an insignificant fiscal impact are exempt from the requirements of Art. VII, s. 18 of the Florida Constitution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to home-based businesses; creating s. 559.955, F.S.; specifying conditions under which a business is considered a home-based business; authorizing a home-based business to operate in a residential zone under certain circumstances; prohibiting a local government from certain actions relating to the licensure and regulation of home-based businesses; providing an effective date.

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

Section 1. Section 559.955, Florida Statutes, is created to read:

559.955 Home-based businesses; local government restrictions.-

(1) For purposes of this section, a business is considered a home-based business if it operates, in whole or in part, from a residential property and meets the following criteria:

(a) The employees of the home-based business who work at the residential dwelling also reside in the residential dwelling, except that up to two employees who do not reside at the residential dwelling may work at the residential dwelling. However, other employees of the home-based business who do not primarily work at the residential dwelling are not required to

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

reside in the dwelling.

(b) Parking related to the business activities of the home-based business complies with local zoning requirements.

(c) As viewed from the street, the use of the residential property is consistent with the uses of the residential areas that surround the property. However, incidental and short-term business uses and activities may be conducted at the residential property.

(d) The activities of the home-based business are secondary to the property's use as a residential dwelling.

(2) A home-based business that operates from a residential property as provided in subsection (1):

(a) May operate in an area zoned for residential use.

(b) May not be prohibited, restricted, regulated, or licensed in a manner that is different from other businesses in a local government's jurisdiction.

(c) Shall only be subject to applicable business taxes under chapter 205 in the county and municipality in which the home-based business is located.

(3) Local governments may not enact or enforce any ordinance, regulation, or policy, or take any action to license or otherwise regulate a home-based business in violation of this section.

(4) A party may challenge any local government action in violation of this section. The prevailing party in a challenge

is entitled to recover reasonable attorney fees and costs incurred in challenging or defending the action, including reasonable appellate attorney fees and costs.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 795 Pregnant Employees
SPONSOR(S): Joseph
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

The Florida Civil Rights Act of 1992 (FCRA), patterned after Title II and Title VII of the federal Civil Rights Act of 1964, prohibits discrimination on the basis of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status in employment. The FCRA applies to certain employers that employ 15 or more employees.

Under federal and Florida law, employers are not specifically required to provide "reasonable accommodations" for pregnancy, childbirth or other pregnancy-related medical needs for female employees. Currently, employers only have to accommodate pregnant employees if the employer has already provided accommodations to other workers temporarily disabled for reasons unrelated to pregnancy, and if the female employee has a pregnancy related disability. General pregnancy issues, childbirth issues, and other pregnancy-related medical needs are not covered.

The bill ensures that employers "reasonably accommodate" female employees with needs related to pregnancy, childbirth, and related conditions, unless it would cause an "undue hardship" for the employer.

The bill defines "undue hardship" to mean "an accommodation requiring significant difficulty or expense when considered in light of the following factors:

- The nature, cost, and duration of the accommodation.
- The overall financial resources of the employer.
- The overall size of the business of the employer with respect to the number of employees and the number, type, and location of the employer's facilities.
- The effect on expenses and resources or any other impacts of such accommodation on the employer's operation."

The bill defines "reasonable accommodation" as making reasonable changes in the workplace, including, but not limited to, providing assistance with manual labor; temporary modification in work schedules, seating, or equipment; temporary relief from lifting requirements; reasonable time off to recover from childbirth; and reasonable private space for lactation.

The bill includes an action for a claim of unlawful employment practices under the FCRA for failure to provide reasonable accommodations and for denying employment opportunities based on the employer's need to make reasonable accommodations because of a medical need related to pregnancy. The bill also requires an employer to provide written notice of the right to be free from discrimination in relation to pregnancy.

There is no fiscal impact on local governments and an indeterminate fiscal impact on state government.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

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

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

Pregnancy Discrimination Act[4]

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

Americans with Disabilities Act[8]

Employers with 15 or more employees are covered by the Americans with Disabilities Act (ADA). Under the ADA, employees who suffer from pregnancy-related disabilities, such as preeclampsia or diabetes, are entitled to reasonable accommodation from their employers. A disability is a mental or physical impairment that substantially limits a major life activity, such as standing, lifting, walking, sleeping, or breathing. Pregnancy itself is not considered a disability under the ADA.[9]

Generally, "reasonable accommodation" means changes or modifications to the employee's schedule, duties, or workspace to help an employee perform the essential functions of the job. Examples of reasonable accommodations may include modification of work hours, restriction on lifting, leaves of absence, and transfer to a less demanding position. An employer is not required to take measures that

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[1] 42 U.S.C. § 2000a *et seq.;* 42 U.S.C. § 2000e *et seq.*
[2] 42 U.S.C. § 2000e(b).
[3] 42 U.S.C. § 2000e-2(a).
[4] Pub. L. No. 95-555, 95th Cong. (Oct. 31, 1978), codified as 42 U.S.C. § 2000e(k).
[5] 429 U.S. 125, 145 (1976).
[6] The PDA defines the terms "because of sex" or "on the basis of sex" to include pregnancy, childbirth, or related conditions and women who are affected by pregnancy, childbirth, or related conditions. It further states that these individuals must be treated the same for employment purposes, including the receipt of benefits, as any other person who is not so affected but has similar ability or inability to work.
[7] For more information, see U.S. Equal Employment Opportunity Commission, Facts about Pregnancy Discrimination, http://www.eeoc.gov/facts/fs-preg.html (last visited May 6, 2015).
[8] 42 U.S.C. § 12101 *et seq.*
[9] Deborah England, Your Right to Accommodation During Pregnancy, Nolo.com, https://www.nolo.com/legal-encyclopedia/your-right-accommodation-during-pregnancy.html (last visited Jan. 31, 2020).

would create an "undue burden," or changes that are too costly or difficult to make when considering the employer's size and resources.[10]

Florida Civil Rights Act of 1992

Patterned after Title II and Title VII, but providing broader protections, the Florida Civil Rights Act of 1992 (FCRA) was enacted to "secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status..."[11] in employment and public accommodations.[12]

Similar to Title VII, the FCRA provides a number of actions that, if undertaken because of or on the basis of an individual's race, color, religion, sex, pregnancy,[13] national origin, age, handicap, or marital status, are considered unlawful employment practices, including:[14]

- Failing to hire an individual, or otherwise discriminating against an individual with respect to compensation, terms, conditions, or privileges of employment;
- Limiting, segregating, or classifying employees or applicants for employment in ways that would deprive such individuals of employment opportunities or adversely affect an individual's status as an employee;
- Failing or refusing to refer an individual for employment;
- Excluding or expelling an individual from membership in a labor organization or limiting, segregating, or classifying the membership of a labor organization;
- Discriminating in admission to, or employment in, any program established to provide apprenticeship or other training for a profession, occupation, or trade;
- Discriminating in licensing, certification, credentials, examinations, or an organizational membership required to engage in a profession, occupation, or trade; and
- Printing or publishing ads related to membership in certain labor organizations or employment that indicate a preference, limitation, specification, or discrimination.[15]

An employer under the FCRA is any person employing 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person.[16]

Accommodations for Pregnant Employees

Under federal and Florida law, employers are not specifically required to accommodate pregnant employees, but they are required to treat pregnant employees the same as non-pregnant employees who are temporarily disabled for other reasons.[17]

The law is less clear when it comes to an employer that provides an accommodation to some, but not all, employees who are temporarily disabled for other reasons.[18] In *Young v. UPS*,[19] a pregnant

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[10] *Id.*
[11] s. 760.01, F.S.
[12] "Public accommodations" means places of public accommodation, lodgings, facilities principally engaged in selling food for consumption on the premises, gasoline stations, places of exhibition or entertainment, and other covered establishments. s. 760.02(11), F.S.
[13] "Pregnancy" was added in 2015 as a result of a discrepancy in case law as to whether it was already included in "sex." Ch. 2015-68, L.O.F.
[14] s. 760.10, F.S. Note that this section does not apply to a religious corporation, association, educational institution, or society which conditions employment opportunities to members of that religious corporation, association, educational institution, or society.
[15] s. 760.10, F.S.
[16] S. 760.02(7), F.S.
[17] *California Fed. Sav. & Loan Ass'n v. Guerra*, 479 U.S. 272, 288 (1987); England, *supra* note 9.
[18] England, *supra* note 9.
[19] *Young v. United Parcel Service*, 575 U.S. 206 (2015).

employee sued UPS after she was denied light-duty work. UPS provided light-duty work to some employees, including those who were injured on the job. But it didn't provide light duty to other employees, including pregnant employees and employees injured off the job. The Supreme Court held that employers are not required to accommodate pregnant employees any time they accommodate a subset of non-pregnant employees. However, employers must be able to show a legitimate, nondiscriminatory reason for the different treatment. If the employer doesn't have a sufficiently strong reason for treating pregnant employees differently, that may be evidence of pretext for discrimination.[20]

Florida does not have a specific law requiring employers to accommodate pregnancy-related needs, regardless of other accommodations made for other employees, but instead requires that pregnant employees be treated the same as non-pregnant employees who are similar in their ability or inability to work.[21]

Twenty-eight states have a law requiring some sort of accommodation based on pregnancy status.[22]

Claims and Remedies under Title VII and the FCRA

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

A person who wishes to file a complaint with the EEOC must do so within 300 days of a violation in a jurisdiction with a fair employment practices agency (such as Florida, which has the FCHR).[23] The EEOC must investigate and make a reasonable cause determination within 120 days after the date of the filing.[24] If the EEOC finds an absence of reasonable cause, the EEOC will dismiss the charge. If the EEOC finds reasonable cause, the EEOC must engage in informal conferencing, conciliation, and persuasion to remedy the unlawful employment practice.[25] After the EEOC concludes its investigation and issues a "right-to-sue" letter to the plaintiff, the plaintiff must file a claim in federal court under Title VII within 90 days of receipt of the letter.[26]

A person who wishes to file a complaint with the FCHR must do so within 365 days of a violation.[27] The FCHR must make a reasonable cause determination within 180 days after the filing of the complaint.[28] If the FCHR finds reasonable cause, the plaintiff may bring either a civil action or request an administrative hearing.[29] A plaintiff is required to bring a civil action under the FCRA within one year of the determination of reasonable cause by the FCHR.[30]

An employee may demonstrate her case through direct evidence of discrimination, but if she instead relies on circumstantial evidence, courts must utilize the *McDonnell Douglas*[31] burden-shifting framework.[32] Such framework requires that the party bringing the claim must first show that "(1) she is a member of a protected class; (2) she was subjected to adverse employment action; (3) her employer

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[20] *Id.*; England, *supra* note 9.
[21] *California Fed. Sav. & Loan Ass'n v. Guerra*, 479 U.S. 272, 288 (1987).
[22] A Better Balance, *State Pregnant Workers Fairness Laws*, https://www.abetterbalance.org/resources/pregnant-worker-fairness-legislative-successes/ (last visited Jan. 31, 2020).
[23] 42 U.S.C. § 2000e-5(e)(1). The enforcement procedures referenced in this paper do not apply to individuals affected by federal agencies, who have a separate process. 29 C.F.R. part 1614.
[24] 42 U.S.C. §. 2000e-5(b).
[25] *Id.*
[26] 42 U.S.C. § 2000e-5(f)(1).
[27] S. 760.11(1), F.S.
[28] S. 760.11(3), F.S.
[29] S. 760.11(4), F.S.
[30] S. 760.11(5), F.S.
[31] McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).
[32] *Diaz v. Florida*, 219 F.Supp.3d 1215 (S.D. Florida 2016)(citing *Young v. United Parcel Service*, 575 U.S. 206 (2015)).

treated similarly situated employees [not belonging to the class] more favorably; and (4) she was qualified to do the job."[33] Once she establishes her case, the burden shifts to the employer who then must articulate a legitimate, non-discriminatory reason for the employment action.[34] If the employer is able to satisfy this burden of production, the presumption of discrimination is refuted, and the burden then falls on the employee to demonstrate that the alleged reason is actually a cause for discrimination.[35]

Remedies available to persons who bring claims based upon pregnancy discrimination differ depending upon whether the claim is brought under Title VII or under the FCRA. If a plaintiff prevails under Title VII or the FCRA, the plaintiff might be entitled to an order prohibiting the discriminatory practice, as well as reinstatement or hiring, with or without back pay.[36] Depending upon the number of persons employed by the defendant employer, a Title VII claimant may also recover from $50,000 to $300,000 in aggregated compensatory and punitive damages.[37]

In contrast, there is no limit on compensatory damages under the FCRA, which include "damages for mental anguish, loss of dignity, and any other intangible injuries."[38] Punitive damages under the FCRA may not exceed $100,000.[39] However, the total recovery, including back pay, for a claimant who brings a discrimination claim against the state or its subdivisions is limited under the FCRA to $300,000.[40]

FCHR is required to make a notice which outlines information on the rights under the FCRA. Each employer, employment agency, and labor organization must keep such notice posted in conspicuous places upon its premises.[41]

Effect of the Bill

The bill provides additional requirements of employers related to preventing pregnancy-related discrimination in employment.

The bill defines the following terms for the FCRA:

- **"Pregnancy"** means pregnancy, childbirth, or related conditions, including, but not limited to, lactation or the expression of breast milk.
- **"Reasonable accommodation"** means making reasonable changes in the workplace, including, but not limited to, providing more frequent or longer breaks; assistance with manual labor; temporary job restructuring; temporary modification in work schedules, seating, or equipment; temporary relief from lifting requirements; temporary transfer to less strenuous or less hazardous work; reasonable time off to recover from childbirth; and reasonable private, nonrestroom space for lactation or the expression of breast milk.
- **"Undue hardship"** means an accommodation requiring significant difficulty or expense when considered in light of the following factors:
    - The nature, cost, and duration of the accommodation;
    - The overall financial resources of the employer;
    - The overall size of the business of the employer with respect to the number of employees and the number, type, and location of the employer's facilities; and

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[33] *Young v. United Parcel Service*, 575 U.S. 206; *Diaz v. Florida*, 219 F.Supp.3d 1215 (citing *McCann v. Tilman,* 526 F.3d at 1373 (11th Cir. 2008)(citing *EEOC v. Joe's Stone Crab, Inc.*, 220 F.3d 1263, 1286 (11th Cir. 2000))).
[34] *Diaz v. Florida*, 219 F.Supp.3d 1215 (citing Burke–Fowler v. Orange Cty., Fla., 447 F.3d 1319, 1323 (11th Cir. 2006)).
[35] *Diaz v. Florida*, 219 F.Supp.3d 1215 (citing Wilson v. B/E Aerospace, Inc, 376 F.3d 1079 (11th Cir, 2004)).
[36] *Id.*; 42 U.S.C. § 2000e-5(g).
[37] 42 U.S.C. §1981a(b)(3)
[38] S. 760.11(5), F.S.
[39] *Id.*
[40] S. 760.11(5), F.S., referring to the limited waiver of sovereign immunity in s. 768.28, F.S. Unlike the FCRA, there apparently is no limitation on total recovery, including back pay, for a claimant who brings suit against the state or its subdivisions under Title VII, though the caps on compensatory and punitive damages would apply.
[41] S. 760.10(10), F.S.

- The effect on expenses and resources or any other impacts of such accommodation on the employer's operation.

The bill provides additional actions which constitute a claim of unlawful employment practices under the FCRA for:

- failure to make reasonable accommodations, upon request, for an employee with a medical need related to pregnancy, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the employer's business. If an employer's policy requires similar accommodations to be made, or if similar accommodations have been made in the past or are currently being made for other employees for any reason, there is a rebuttable presumption that the accommodation does not impose an undue hardship on the employer.
- denying employment opportunities to an otherwise qualified job applicant or employee, if such denial is based on the employer's need to make reasonable accommodations for the applicant or employee because of a medical need related to pregnancy.
- requiring an employee to take leave if another reasonable accommodation can be provided.
- taking adverse action against an employee in the terms, conditions, or privileges of employment for requesting or using a reasonable accommodation. For purposes of this subparagraph, the term "adverse action" includes, but is not limited to, failing to reinstate an employee to her original position, or an equivalent position, with equivalent pay, seniority, and benefits after the need for such accommodation ceases or counting an employee's absences from work due to a medical need related to pregnancy against the employee under the employer's no-fault attendance policy.

An employer will not be required to create additional employment opportunities that the employer would not otherwise have created or to discharge an employee, transfer an employee who has more seniority, or promote an employee who is not qualified for the position unless the employer has a policy for doing so for other classes of employees who have a right to accommodations.

An employer must provide written notice of the right to be free from discrimination in relation to pregnancy, including the right to reasonable accommodations, to:

- New employees at the commencement of employment.
- Existing employees beginning on July 1, 2020, but no later than November 1, 2020.
- Any employee who notifies an employer of her pregnancy no later than 10 days after such notification.

An employer must post a written notice in conspicuous places on its premises of the right to be free from discrimination in relation to a medical need related to pregnancy, including the right to reasonable accommodations.

FCHR must develop education and outreach programs as necessary to inform employers, employees, and job applicants about their rights and responsibilities under the bill.

The bill may not be construed to preempt, limit, diminish, or otherwise affect any employer policy or provision or other provision of law relating to sex or pregnancy discrimination or in any way diminish the coverage for pregnancy under the FCRA or any other provision of ch. 760, F.S.

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

B. SECTION DIRECTORY:

Section 1 Amends s. 760.02, F.S., providing definitions for “reasonable accommodation” and “undue hardship.”

Section 2 Amends s. 760.10, F.S., providing requirements for certain employers to take certain actions related to an employee's needs related to pregnancy.

Section 3 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   There may be indeterminate expenditures due to additional signage required and determining appropriate spaces for breastfeeding mothers. In addition, the Commission on Human Relations is required to provide education and outreach for the acts within this legislation with no additional appropriation.[42]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may provide more job stability for employees with pregnancy-related job needs. The bill may be more costly for businesses who need to provide more job accommodations than currently required.

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:

FCHR will need to adopt rules related to developing programs and outreach materials related to pregnancy discriminations. There is sufficient rulemaking authority.

[42] Florida Department of Management Services, Agency Analysis of 2020 House Bill 795, p. 4 (Jan. 14, 2020).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to pregnant employees; amending s. 760.02, F.S.; providing definitions; amending s. 760.10, F.S.; prohibiting certain unlawful employment practices against specified employees and job applicants; requiring an employer to provide a written notice of certain rights to employees and post such notice in conspicuous places on its premises; requiring the Florida Commission on Human Relations to develop certain education and outreach programs; providing construction; providing an effective date.

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

Section 1. Subsections (12), (13), and (14) are added to section 760.02, Florida Statutes, to read:

760.02 Definitions.—For the purposes of ss. 760.01-760.11 and 509.092, the term:

(12) "Pregnancy" means pregnancy, childbirth, or related conditions, including, but not limited to, lactation or the expression of breast milk.

(13) "Reasonable accommodation" means making reasonable changes in the workplace, including, but not limited to, providing more frequent or longer breaks; assistance with manual labor; temporary job restructuring; temporary modification in

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

work schedules, seating, or equipment; temporary relief from lifting requirements; temporary transfer to less strenuous or less hazardous work; reasonable time off to recover from childbirth; and reasonable private, nonrestroom space for lactation or the expression of breast milk.

(14) "Undue hardship" means an accommodation requiring significant difficulty or expense when considered in light of the following factors:

(a) The nature, cost, and duration of the accommodation.

(b) The overall financial resources of the employer.

(c) The overall size of the business of the employer with respect to the number of employees and the number, type, and location of the employer's facilities.

(d) The effect on expenses and resources or any other impacts of such accommodation on the employer's operation.

Section 2. Paragraph (c) is added to subsection (1) of section 760.10, Florida Statutes, and subsections (11), (12), and (13) are added to that section, to read:

760.10 Unlawful employment practices.—

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

(c)1. To fail to make reasonable accommodations, upon request, for an employee with a medical need related to pregnancy, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the employer's business. If an employer's policy requires

similar accommodations to be made, or if similar accommodations have been made in the past or are currently being made for other employees for any reason, there is a rebuttable presumption that the accommodation does not impose an undue hardship on the employer.

2. To deny employment opportunities to an otherwise qualified job applicant or employee, if such denial is based on the employer's need to make reasonable accommodations for the applicant or employee because of a medical need related to pregnancy.

3. To require an employee to take leave if another reasonable accommodation can be provided.

4. To take adverse action against an employee in the terms, conditions, or privileges of employment for requesting or using a reasonable accommodation. For purposes of this subparagraph, the term "adverse action" includes, but is not limited to, failing to reinstate an employee to her original position, or an equivalent position, with equivalent pay, seniority, and benefits after the need for such accommodation ceases or counting an employee's absences from work due to a medical need related to pregnancy against the employee under the employer's no-fault attendance policy.

This paragraph does not require an employer to create additional employment opportunities that the employer would not otherwise

have created or to discharge an employee, transfer an employee who has more seniority, or promote an employee who is not qualified for the position unless the employer has a policy for doing so for other classes of employees who have a right to accommodations.

(11)(a) An employer shall provide written notice of the right to be free from discrimination in relation to pregnancy, including the right to reasonable accommodations, to:

1. New employees at the commencement of employment.

2. Existing employees beginning on July 1, 2020, but no later than November 1, 2020.

3. Any employee who notifies an employer of her pregnancy no later than 10 days after such notification.

(b) An employer shall post a written notice in conspicuous places on its premises of the right to be free from discrimination in relation to a medical need related to pregnancy, including the right to reasonable accommodations.

(12) The commission shall develop education and outreach programs as necessary to inform employers, employees, and job applicants about their rights and responsibilities under paragraph (1)(c).

(13) This section may not be construed to preempt, limit, diminish, or otherwise affect any employer policy or provision or other provision of law relating to sex or pregnancy discrimination or in any way diminish the coverage for pregnancy

under any other provision of this chapter.

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 867 Public Accountancy
SPONSOR(S): Business & Professions Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1140

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

SUMMARY ANALYSIS

In Florida, public accountancy is regulated by the Board of Accountancy under the Department of Business and Professional Regulation. The practice of public accountancy includes offering to the public the performance of services involving audits, reviews, compilations, tax preparation, management advisory or consulting services, or preparation of financial statements. In order to practice public accountancy, a person must be licensed as a certified public accountant (CPA).

Every biennium, CPAs must complete 80 hours of continuing professional education (CPE), by board rule. At least 5 percent of the total hours required by the board must be in the subject of ethics as applicable to the practice of public accounting.

Applicants for CPA licensure by endorsement must be of good moral character; complete certain CPE requirements; and either not be licensed but have passed an equivalent examination in another state or territory, or hold a license from another state or territory if the criteria issuance is equivalent to that of Florida.

Inactive status for CPA licenses can be initiated voluntarily by the licensee, or for failure to meet the CPE license renewal requirements. The board is authorized to adopt rules establishing the minimum requirements for placing a license on inactive status, renewing an inactive license, and reactivating the inactive license. Currently, a retired status for CPA licensure does not exist.

Current law allows counties and school districts, through a referendum or a county commission vote, to levy a discretionary sales surtax. For all discretionary sales surtax referendum held on or after March 23, 2018, a performance audit of the program associated with the proposed surtax must be conducted by an independent CPA, who is selected and paid by the Office of Program Policy Analysis and Government Accountability.

The bill:

- Clarifies the licensure by endorsement provision for applicants that have passed an examination but do not hold a license in "another" state or territory, to instead not require a license in "any" state or territory;
- Allows nonresidents seeking CPA license renewal to satisfy the CPE requirements (except for the ethics component), with applicable CPE requirements in the state in which his or her office is located, or Florida CPE requirements, if the other state has no CPE license renewal requirements;
- Specifies that a "majority" of the total CPE hours required for ethics training must include a review of the provisions of ch. 455, F.S., and ch. 473, F.S., and the related administrative rules; and
- Creates a "retired status" for active or inactive CPA licensees over 55 years old, including provisions governing application, good standing, volunteer work, competency, reactivation, reentry into active status, reimbursements, and the use of a title.
- Removes the requirement that performance audits for discretionary sales surtaxes must be performed by a CPA.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Practice of Public Accountancy

Background

The Florida Board of Accounting (board) in the Department of Business and Professional Regulation (DBPR) is the agency responsible for regulating and licensing more than 35,000 active and inactive certified public accountants (CPA) and more than 5,400 accounting firms in Florida. The Division of Certified Public Accounting provides administrative support to the 9-member board, which consists of 7 CPAs and 2 laypersons.[1]

To engage in the practice of public accounting, an individual or firm must be licensed and business entities must meet certain formation requirements.[2]

The "practice of public accountancy" includes offering to the public the performance of services involving audits, reviews, compilations, tax preparation, management advisory or consulting services, or preparation of financial statements.[3]

A person may be charged with a first-degree misdemeanor if they are not a licensed CPA and they perform:[4]

- Services involving the expression of an opinion on financial statements,
- The attestation as an expert in accountancy to the reliability or fairness of presentation of financial information,
- The utilization of any form of opinion or financial statements that provide a level of assurance,
- The utilization of any form of disclaimer of opinion which conveys an assurance of reliability as to matters not specifically disclaimed, or
- The expression of an opinion on the reliability of an assertion by one party for the use by a third party.

License by Endorsement

An applicant is eligible for licensure by endorsement if the applicant:[5]

- is of good moral character;
- has completed 80 hours of continuing professional education (CPE) if it has been at least 2 years since passing the licensing examination;[6] and either:
    - is not licensed, but has otherwise met the licensing requirements and has passed a licensing examination that is substantially equivalent to the Florida examination; or
    - holds a valid license to practice public accounting issued by another state or territory of the United States, if the criteria for issuance of such license are substantially equivalent to a Florida license or is otherwise permitted.

[1] S. 473.303, F.S.
[2] S. 473.302, F.S.
[3] S. 473.302(8), F.S.
[4] S. 473.322(1)(c), F.S.
[5] S. 468.8414(3), (4), F.S.
[6] R. 61H1-29.003, F.A.C.

Continuing Education

CPAs are required to complete 80 hours[7] of CPE in public accounting subjects every 2 years to renew their license. The board has the authority to prescribe by rule additional CPE hours, not to exceed 25 percent of the total hours required, for failure to complete the hours required for renewal by the end of the reestablishment period.[8]

At least 25 percent of the total hours required by the board must be in accounting-related and auditing-related subjects, as distinguished from other subjects that include federal and local taxation matters and management services.[9]

Five percent of the total hours required by the board must be in ethics applicable to the practice of public accounting. This requirement must be administered by providers approved by the board and include a review of the provisions of ch. 455, F.S., ch. 473, F.S., and the related administrative rules.[10]

Inactive Licenses

CPAs are authorized to request their license be placed on inactive status, or the licensee may be placed on inactive status for failing to meet the CPE requirements for license renewal. The board is authorized to adopt rules establishing the minimum requirements for placing a license on inactive status, renewing an inactive license, and reactivating the inactive license.[11]

The maximum CPE requirements for reactivating an inactive or delinquent license are 120 hours, including:

- At least 30 hours in accounting-related and auditing-related subjects;
- Not more than 30 hours in behavioral subjects; and
- A minimum of 8 hours in ethics subjects approved by the board.

Retired Status

The American Institute of CPAs (AICPA) estimates that approximately 75 percent of its members will be eligible to retire by the year 2020. According to AICPA, "many of these retirees are well respected business leaders in their communities who would like to find ways to continue to be of service, without necessarily remaining an active CPA in practice."[12]

The AICPA provides a uniform retired CPA status in their model rules that states may adopt allowing retired CPAs to offer a limited array of volunteer, uncompensated services to the public. Inactive CPAs, of at least 55 years of age are allowed to refer to themselves as "Retired-CPAs" and register as such with their state board of accountancy. They are able to participate in activities such as volunteer tax preparation services, government-sponsored business mentoring programs, and on boards of nonprofit organizations.[13]

Effect of the Bill

The bill revises the CPA license by endorsement provision for applicants that have passed an examination but do not hold a license in "another" state or territory. The bill simply changes "another"

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[7] S. 473.312(1)(a), F.S. allows the board to require between 48 and 80 hours of CPE every 2 years. The board requires 80 hours in r. 61H1-33.003, F.A.C.
[8] S. 473.312(1)(a), F.S.
[9] Id.
[10] S. 473.312(1)(b),(c), F.S.
[11] S. 473.313, F.S.
[12] American Institute of Certified Public Accountants, https://www.aicpa.org/advocacy/state/retiredcpastatusexposuredraft.html (last visited Jan. 10, 2020).
[13] *Id.*

state or territory to “any” state or territory.

The bill allows nonresident CPA licensees who are seeking renewal of a license in this state to satisfy the CPE requirements (except for the ethics component), if the nonresident licensee has complied with applicable CPE requirements in the state in which his or her office is located. If the state in which the nonresident licensee's office is located has no CPE license renewal requirements, the nonresident licensee must comply with Florida CPE requirements.

The bill specifies that a “majority” of the total CPE hours required for ethics training must include a review of the provisions of ch. 455, F.S., ch. 473, F.S., and the related administrative rules. Currently, no amount is specified.

The bill creates a “retired status” for CPA licensees. The bill defines a "retired licensee" as a licensee whose license has been placed in retired status by the department.

Retired status license applicants are required to:
- Be at least 55 years old;
- Hold a current active or inactive CPA license;
- Apply for the status to DBPR; and
- Be in good standing and not the subject of any sanction or disciplinary action.

Applications must be prescribed by the board and the applicant must attest that they have no association with accounting or any of the services described in s. 473.302(8)(a), (c), or (d), F.S.

Licensees granted retired status who reenter the workforce in a position that has an association with accounting or any of the services described in s. 473.302(8)(a), (c), or (d), F.S., automatically lose the retired status except for the uncompensated volunteer services that retirees are allowed to participate in.

Licensees granted retired status are allowed to:
- Serve without compensation on a board of directors or board of trustees;
- Provide volunteer tax preparation services;
- Participate in a government-sponsored business mentoring program such as the Internal Revenue Service's Volunteer Income Tax Assistance program or the Small Business Administration's SCORE program; and
- Participate in an advisory role for a similar charitable, civic, or other nonprofit organization.

The board must require retired licensees to affirm in writing their understanding of the limited types of activities allowed while in retired status and their professional duty to ensure competency to participate in the activities.

Retired licensees are authorized to:
- Accept routine reimbursement for actual costs of travel and meals associated with volunteer services or de minimis per diem amounts paid to the licensee to cover such expenses as allowed by law;
- Use the title of "retired CPA" on business cards, letterhead or other printed or electronic documents as long as it is used in a manner that is not confusing to the public; and
- Reactivate the license in a conditional manner determined by the board. The conditions of reactivation must require the payment of fees and the completion of any CPE requirements.

Retired licensees are not required to:
- Have a certificate issued with the word "retired" on the certificate; or
- Maintain the CPE requirements under s. 473.312, F.S.

Retired licensees are prohibited from offering or rendering professional services that require:

- The licensee's signature; and
- Use of the CPA title, regardless of whether the word "retired" is attached to such title.

Performance Audits for Discretionary Sales Surtaxes

The Florida Constitution preempts all forms of taxation, except ad valorem taxes on real and tangible personal property, to the state unless otherwise provided by general law.[14] Current law provides counties and school districts with limited authority to levy a discretionary sales surtax for specific purposes on transactions subject to state sales tax.[15] These purposes include:

- Operating a transportation system in a charter county;[16]
- Financing local government infrastructure projects;[17]
- Providing additional revenue for counties having less than 50,000 residents as of April 1, 1992;[18]
- Providing medical care for indigent persons;[19]
- Funding trauma centers;[20]
- Operating, maintaining, and administering a county public general hospital;[21]
- Constructing and renovating schools;[22]
- Providing emergency fire rescue services and facilities; and[23]
- Funding pension liability shortfalls.[24]

Most local discretionary sales surtaxes may only be approved by referendum, while some may be approved by an extraordinary vote of the county commission.[25]

A "performance audit" means an examination of the program conducted according to applicable government auditing standards or auditing and evaluation standards of other appropriate authoritative bodies, including the effectiveness of the program, the structure and design of the program, alternative methods of achieving the goals of the program, performance measures that may be used to track program accomplishments, the accuracy and adequacy of public documents, and reports related to the program, and compliance of the program with applicable policies, rules, and laws.[26]

For all discretionary sales surtax referendum held on or after March 23, 2018, a performance audit of the government program associated with the proposed surtax must be conducted by an independent, licensed CPA.[27] The Office of Program Policy Analysis and Government Accountability (OPPAGA) is responsible for both selecting the CPA and paying for the CPA's services. OPPAGA must procure the CPA to conduct the performance audit within 60 days of receiving the final resolution or ordinance.[28] The results of the performance audit, including any findings, recommendations, or other accompanying

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[14] Art. VII, s. 1(a), Fla. Const.
[15] Ss. 212.054 and 212.055, F.S.
[16] S. 212.055(1), F.S.
[17] S. 212.055(2), F.S.
[18] S. 212.055(3), F.S.; Note that the small county surtax may be levied by extraordinary vote of the county governing board if the proceeds are to be expended only for operating purposes.
[19] S. 212.055(4)(a), F.S. (for counties with more than 800,000 residents); s. 212.055(7), F.S. (for counties with less than 800,000 residents).
[20] S. 212.055(4)(b), F.S.
[21] S. 212.055(5), F.S.
[22] S. 212.055(6), F.S.
[23] S. 212.055(8), F.S.
[24] S. 212.055(9), F.S.
[25] *See generally* s. 212.055, F.S.; *but see* s. 212.055(3), F.S. (small county surtax may be approved by extraordinary vote of the county commission as long as surtax revenues are not used for servicing bond indebtedness), s. 212.055(4), F.S. (indigent care and trauma center surtax may be approved by extraordinary vote of the county commission), and s. 212.055(5), F.S. (county public hospital surtax may be approved by extraordinary vote of the county commission).
[26] S. 212.055(10)(c), F.S.
[27] S. 212.055(10)(a), F.S.
[28] S. 212.055(11)(b)3., F.S.

documents, must be made available on the website of the county or school district at least 60 days prior to the referendum and must be maintained on the website for at least 2 years.[29]

Effect of the Bill

The bill removes the requirement that performance audits for discretionary sales surtaxes must be performed by an independent CPA. Instead, such performance audits must be performed by a vendor experienced in performance audits and reviews.

B. SECTION DIRECTORY:

Section 1 Amends s. 212.055, F.S., removing the requirement that performance audits for discretionary sales surtaxes be performed by a CPA.

Section 2 Amends s. 473.308, F.S., revising a requirement for obtaining a license by endorsement.

Section 3 Amends s. 473.311, F.S., providing license renewal requirements for nonresident licensees.

Section 4 Amends s. 473.312, F.S., providing requirements for continuing education content.

Section 5 Amends s. 473.313, F.S., providing requirements for retired status licenses.

Section 6 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will allow retired CPAs to serve their community in certain areas of public accountancy without maintaining a license with DBPR. Some out-of-state CPAs may need to complete less CPE in order to maintain a Florida CPA license.

D. FISCAL COMMENTS:

None.

[29] S. 212.055(10)(b), F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The board will need to update rules regarding CPE and generate rules for retired status licenses. There is sufficient rulemaking authority to do so.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to public accountancy; amending s. 212.055, F.S.; removing the requirement that the surtax performance audit be performed by a certified public account licensed pursuant to ch. 473, F.S.; amending s. 473.308, F.S.; requiring certain applicants to not be licensed in any state or territory in order to be licensed by endorsement; amending s. 473.311, F.S.; providing license renewal requirements for nonresident licensees; amending s. 473.312, F.S.; requiring that a majority of the hours required for continuing education include specific content; amending s. 473.313, F.S.; authorizing certain Florida certified public accountants to apply to the Department of Business and Professional Regulation to have their license placed in a retired status; providing requirements for such conversion; providing requirements and prohibitions for retired licensees; authorizing retired licensees to use a specified title under certain circumstances; providing that retired licensees are not required to maintain continuing education requirements; authorizing retired licensees to reactivate their licenses if certain conditions are met; defining the term "retired licensee"; providing an effective date.

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

Section 1. Subsections (1) and (11) of section 212.055, Florida Statutes, are amended to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(1) CHARTER COUNTY AND REGIONAL TRANSPORTATION SYSTEM SURTAX.—

(c)1. The proposal to adopt a discretionary sales surtax as provided in this subsection and to create a trust fund within the county accounts shall be placed on the ballot in accordance with law and must be approved in a referendum held at a general election in accordance with subsection (10).

2. If the proposal to adopt a surtax is by initiative, the petition sponsor must, at least 180 days before the proposed referendum, comply with all of the following:

a. Provide a copy of the final resolution or ordinance to the Office of Program Policy Analysis and Government Accountability. The Office of Program Policy Analysis and Government Accountability shall procure a vendor experienced in performance audits and reviews ~~certified public accountant in accordance with subsection (11) for the performance audit~~.

b. File the initiative petition and its required valid signatures with the supervisor of elections. The supervisor of elections shall verify signatures and retain signature forms in the same manner as required for initiatives under s. 100.371(11).

3. The failure of an initiative sponsor to comply with the requirements of subparagraph 2. renders any referendum held void.

(11) PERFORMANCE AUDIT.—

(a) To adopt a discretionary sales surtax under this section, ~~an independent certified public accountant licensed pursuant to chapter 473 shall conduct~~ a performance audit of the program associated with the proposed surtax shall be conducted.

(b)1. At least 180 days before the referendum is held, the county or school district shall provide a copy of the final resolution or ordinance to the Office of Program Policy Analysis

and Government Accountability.

2. Within 60 days after receiving the final resolution or ordinance, the Office of Program Policy Analysis and Government Accountability shall procure the performance audit ~~certified public accountant~~ and may use carryforward funds to pay for the performance audit ~~services of the certified public accountant.~~

3. At least 60 days before the referendum is held, the performance audit must be completed and the audit report, including any findings, recommendations, or other accompanying documents, must be made available on the official website of the county or school district.

4. The county or school district shall keep the information on its website for 2 years from the date it was posted.

5. The failure to comply with the requirements under subparagraph 1. or subparagraph 3. renders any referendum held to adopt a discretionary sales surtax void.

(c) For purposes of this subsection, the term "performance audit" means an examination of the program conducted according to applicable government auditing standards or auditing and evaluation standards of other appropriate authoritative bodies. At a minimum, a performance audit must include an examination of issues related to the following:

1. The economy, efficiency, or effectiveness of the program.

2. The structure or design of the program to accomplish its goals and objectives.

3. Alternative methods of providing program services or products.

4. Goals, objectives, and performance measures used by the program to monitor and report program accomplishments.

5. The accuracy or adequacy of public documents, reports, and requests prepared by the county or school district which relate to the program.

6. Compliance of the program with appropriate policies, rules, and laws.

(d) This subsection does not apply to a referendum held to adopt the same discretionary surtax that was in place during the month of December immediately before the date of the referendum.

Section 2. Subsection (7) of section 473.308, Florida Statutes, is amended to read:

473.308 Licensure.—

(7) The board shall certify as qualified for a license by endorsement an applicant who:

(a)1. Is not licensed and has not been licensed in <u>any</u> ~~another~~ state or territory and who has met the requirements of this section for education, work experience, and good moral character and has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. 473.306; and

2. Has completed such continuing education courses as the board deems appropriate, within the limits for each applicable 2-year period as set forth in s. 473.312, but at least such courses as are equivalent to the continuing education requirements for a Florida certified public accountant licensed in this state during the 2 years immediately preceding her or his application for licensure by endorsement; or

(b)1.a. Holds a valid license to practice public accounting issued by another state or territory of the United States, if the criteria for issuance of such license were substantially equivalent to the licensure criteria that existed in this state at the time the license was issued;

b. Holds a valid license to practice public accounting issued by another state or territory of the United States but the criteria for issuance of such license did not meet the requirements of sub-subparagraph a.; has met the requirements of this section for education, work experience, and good moral character; and has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. 473.306; or

c. Holds a valid license to practice public accounting issued by another state or territory of the United States for at least 10 years before the date of application; has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by

s. 473.306; and has met the requirements of this section for good moral character; and

2. Has completed continuing education courses that are equivalent to the continuing education requirements for a Florida certified public accountant licensed in this state during the 2 years immediately preceding her or his application for licensure by endorsement.

Section 3. Subsection (1) of section 473.311, Florida Statutes, is amended to read:

473.311 Renewal of license.—

(1)(a) The department shall renew a license issued under s. 473.308 upon receipt of the renewal application and fee and upon certification by the board that the Florida certified public accountant has satisfactorily completed the continuing education requirements of s. 473.312.

(b) A nonresident licensee seeking renewal of a license in this state shall be determined to have met the continuing education requirements in s. 473.312, except for the requirements in s. 473.312(1)(c), if the licensee has complied with the continuing education requirements applicable in the state in which his or her office is located. If the state in which the nonresident licensee's office is located has no continuing education requirements for license renewals, the nonresident licensee must comply with the continuing education requirements in s. 473.312.

Section 4. Paragraph (c) of subsection (1) of section 473.312, Florida Statutes, is amended to read:

473.312 Continuing education.—

(1)

(c) Not less than 5 percent of the total hours required by the board shall be in ethics applicable to the practice of public accounting. This requirement shall be administered by providers approved by the board and a majority of the hours shall include a review of the provisions of chapter 455 and this chapter and the related administrative rules.

Section 5. Section 473.313, Florida Statutes, is amended to read:

473.313 Inactive status and retired status.—

(1) A Florida certified public accountant may request that her or his license be placed in an inactive status by making application to the department. The board may prescribe by rule fees for placing a license on inactive status, renewal of inactive status, and reactivation of an inactive license.

(a) ~~(2)~~ A license that has become inactive under this subsection ~~(1)~~ or for failure to complete the requirements in s. 473.312 may be reactivated under s. 473.311 upon application to the department. The board may prescribe by rule continuing education requirements as a condition of reactivating a license. The maximum continuing education requirements for reactivating a license are 120 hours, including at least 30 hours in

accounting-related and auditing-related subjects, not more than 30 hours in behavioral subjects, and a minimum of 8 hours in ethics subjects approved by the board, for the reactivation of a license that is inactive or delinquent.

(b) ~~(3)~~ A license that is delinquent for failure to report completion of the requirements in s. 473.312 may be reactivated under s. 473.311 upon application to the department. Reactivation requires the payment of an application fee as determined by the board and certification by the Florida certified public accountant that the applicant satisfactorily completed the continuing education requirements set forth under s. 473.311. If the license is delinquent on January 1 because of failure to report completed continuing education requirements, the applicant must submit a complete application to the board by March 15 immediately after the delinquent period.

(c) ~~(4)~~ Any Florida certified public accountant holding an inactive license may be permitted to reactivate such license in a conditional manner. The conditions of reactivation shall require the payment of fees and the completion of required continuing education.

(d) ~~(5)~~ Notwithstanding the provisions of s. 455.271, the board may, at its discretion, reinstate the license of an individual whose license has become null and void if the individual has made a good faith effort to comply with this section but has failed to comply because of illness or unusual

hardship. The individual shall apply to the board for reinstatement in a manner prescribed by rules of the board and shall pay an application fee in an amount determined by rule of the board. The board shall require that the individual meet all continuing education requirements as provided in subsection (2), pay appropriate licensing fees, and otherwise be eligible for renewal of licensure under this chapter.

(2) A Florida certified public accountant who is at least 55 years of age and currently holds an active or inactive license under this chapter may apply to the department for her or his license to be placed in a retired status. The application must be prescribed by the board and must state that the applicant has no association with accounting or any of the services described in s. 473.302(8)(a), (c), or (d). If a licensee who has been granted retired status reenters the workforce in a position that has an association with accounting or any of the services described in s. 473.302(8)(a), (c), or (d), the licensee automatically loses her or his retired status except as provided in paragraph (a).

(a) A retired licensee who serves without compensation on a board of directors or board of trustees, provides volunteer tax preparation services, participates in a government-sponsored business mentoring program such as the Internal Revenue Service's Volunteer Income Tax Assistance program or the Small Business Administration's SCORE program, or participates in an

advisory role for a similar charitable, civic, or other nonprofit organization shall continue to be eligible for retired status.

(b) The board shall require a retired licensee to affirm in writing her or his understanding of the limited types of activities in which she or he may engage while in retired status and that she or he has a professional duty to ensure that she or he holds the professional competencies necessary to participate in such activities.

(c) Licensees may convert their license to retired status only if they hold a license in good standing and are not the subject of any sanction or disciplinary action.

(d) A retired licensee may accept routine reimbursement for actual costs of travel and meals associated with volunteer services or de minimis per diem amounts paid to the licensee to cover such expenses as allowed by law.

(e) A retired licensee may use the title of "retired CPA" on any business card or letterhead or any other printed or electronic document. However, such title must not be applied in such a manner that could confuse the public as to the current status of the licensee. The licensee is not required to have a certificate issued with the word "retired" on the certificate.

(f) A retired licensee is not required to maintain the continuing education requirements under s. 473.312.

(g) A retired licensee may not offer or render

professional services that require her or his signature and use of the CPA title, regardless of whether the word "retired" is attached to such title.

(h) A retired licensee may reactivate her or his license in a conditional manner determined by the board. The conditions of reactivation must require the payment of fees and the completion of any required continuing education.

For the purposes of this subsection, the term "retired licensee" means a licensee whose license has been placed in retired status by the department.

Section 6. This act shall take effect July 1, 2020.

BUSINESS & PROFESSIONS SUBCOMMITTEE

HB 867 by Rep. Stevenson
PUBLIC ACCOUNTANCY

AMENDMENT SUMMARY
February 4, 2020

Amendment 1 by Rep. Stevenson (Line 57):
The amendment clarifies:

- the definition of "performance audit," and
- who may perform a performance audit related to a proposed local surtax for the Office of Program Policy Analysis and Government Accountability.

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 Stevenson offered the following:

Amendment

Remove lines 57-111 and insert:

Government Accountability shall procure a vendor to complete a performance audit as defined in ~~certified public accountant in accordance with~~ subsection (11) ~~for the performance audit~~.

b. File the initiative petition and its required valid signatures with the supervisor of elections. The supervisor of elections shall verify signatures and retain signature forms in the same manner as required for initiatives under s. 100.371(11).

3. The failure of an initiative sponsor to comply with the requirements of subparagraph 2. renders any referendum held void.

(11) PERFORMANCE AUDIT.—

(a) To adopt a discretionary sales surtax under this section, ~~an independent certified public accountant licensed pursuant to chapter 473 shall conduct~~ a performance audit of the program associated with the proposed surtax shall be conducted.

(b)1. At least 180 days before the referendum is held, the county or school district shall provide a copy of the final resolution or ordinance to the Office of Program Policy Analysis and Government Accountability.

2. Within 60 days after receiving the final resolution or ordinance, the Office of Program Policy Analysis and Government Accountability shall procure ~~the~~ a vendor to complete the performance audit ~~certified public accountant~~ and may use carryforward funds to pay for the performance audit ~~services of the certified public accountant~~.

3. At least 60 days before the referendum is held, the performance audit must be completed and the audit report, including any findings, recommendations, or other accompanying documents, must be made available on the official website of the county or school district.

4. The county or school district shall keep the information on its website for 2 years from the date it was posted.

5. The failure to comply with the requirements under subparagraph 1. or subparagraph 3. renders any referendum held to adopt a discretionary sales surtax void.

(c) For purposes of this subsection, the term "performance audit" has the same meaning as in s. 11.45(1)(j) ~~means an examination of the program conducted according to applicable government auditing standards or auditing and evaluation standards of other appropriate authoritative bodies. At a minimum, a performance audit must include an examination of issues related to the following:~~

~~1. The economy, efficiency, or effectiveness of the program.~~

~~2. The structure or design of the program to accomplish its goals and objectives.~~

~~3. Alternative methods of providing program services or products.~~

~~4. Goals, objectives, and performance measures used by the program to monitor and report program accomplishments.~~

~~5. The accuracy or adequacy of public documents, reports, and requests prepared by the county or school district which relate to the program.~~

~~6. Compliance of the program with appropriate policies, rules, and laws~~.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1153 Beverage Law
SPONSOR(S): DiCeglie
TIED BILLS: **IDEN./SIM. BILLS:** SB 1584

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

SUMMARY ANALYSIS

In Florida, the Beverage Law regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors, as well as the business relations between beer distributors and manufacturers. Generally, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail, and manufacturers, distributors, and exporters are generally prohibited from holding a vendor's license. There are limited exceptions, subject to certain conditions, including the ability for a craft brewery to hold a vendor's license, a restaurant to hold a manufacturer's license (brew pub), and a winery to hold up to three vendor's licenses.

Florida's "Tied House Evil Law," s. 561.42, F.S., prohibits a manufacturer or distributor of alcoholic beverages from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and prohibits a manufacturer or distributor from giving gifts, loans, property, or rebates to retail vendors. The bill amends the Tied House Evil Law.

The bill allows a brewer whose total production volume is less than 60,000 barrels (1,860,000 gallons) per year to sell, transport, and deliver (distribute) its own beer from its licensed premises to vendors in a standard keg or similar container, if the brewer does not have an existing franchise agreement with a distributor.

The bill provides for limited exemptions to the current regulations regarding agreements between beer distributors and manufacturers, as follows:

- Exempts breweries that produce 60,000 barrels or less of malt beverages per year from the requirements imposed under the Franchise Law.
- Allows any brewer to provide 120 days written notice and terminate their distributor franchise agreement, but only if the beer manufacturer accounts for 5% or less of the distributors total sales.

The bill reduces certain minimum inventory, warehouse, and sales requirements that a distributor must maintain for licensure.

The bill may have an insignificant, indeterminate fiscal impact on the Department of Business and Professional Regulation. See the Fiscal Analysis section of this analysis for more information.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Beverage Law

In Florida, the Beverage Law[1] regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors. The Division of Alcoholic Beverages and Tobacco (Division) within the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.[2]

"Alcoholic beverages" are defined in s. 561.01, F.S., as "distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume." "Malt beverages" are brewed alcoholic beverages containing malt.[3] As a unit of measurement, a "barrel" means 31 gallons and a "keg" is equal to one-half of a barrel, or 15.5 gallons.[4]

Section 561.14, F.S., specifies license and registration classifications used in the Beverage Law:

- "Manufacturers" are those "licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and to no one else within the state, unless authorized by statute."
- "Distributors" are those "licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages."
- "Importers" are those licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else in this state.[5]
- "Vendors" are those "licensed to sell alcoholic beverages at retail only" and may not "purchase or acquire in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law."

Three-Tier System and Tied House Evil

Since the repeal of Prohibition in 1933, regulation of alcohol in the United States has traditionally been based upon what is termed the "three-tier system." The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages, and the distributor obtains the beverages from the manufacturer to deliver to the vendor. The vendor makes the ultimate sale to the consumer.[6]

Generally, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail, and manufacturers, distributors, and exporters[7] are generally prohibited from holding a vendor's license.[8] Manufacturers, distributors, and vendors are generally prohibited from being licensed or having an interest in more than one tier. Limited exceptions exist, subject to certain conditions, such as the ability for a craft brewery to hold a vendor's license, a restaurant to hold a manufacturer's license (brew pub), and a winery to hold up to three vendor's licenses.[9]

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[1] Section 561.01(6), F.S., provides that the "The Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.
[2] S. 561.02, F.S.
[3] S. 563.01, F.S.
[4] *See* U.S. Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, *Conversion Tables*, https://www.ttb.gov/distilled-spirits/conversion-tables (last visited Jan. 21, 2020).
[5] S. 561.01(5), F.S.
[6] S. 561.14, F.S.
[7] S. 561.01(16), F.S. "Exporter" means any person that sells alcoholic beverages to persons for use outside the state and includes a ship's chandler and a duty-free shop
[8] S. 561.22(1), F.S.; s. 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.
[9] *See* ss. 561.22, F.S.; 561.24, F.S.; 561.14(1), F.S.; and 563.022(14), F.S.

The three-tier system is deeply rooted in the perceived evils of the "tied house" in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.[10]

Florida's "Tied House Evil Law," s. 561.42, F.S., prohibits a manufacturer or distributor of alcoholic beverages from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and prohibits a manufacturer or distributor from giving gifts, loans, property, or rebates to retail vendors.

Florida's Tied House Evil Law prohibits a licensed manufacturer or distributor from:

- having any direct or indirect financial interest in any vendor;
- assisting any vendor using gifts, loans, money or property of any description (except for bottles, barrels or other containers necessary for the transportation of beverages);
- giving any rebates of any kind whatsoever;
- engaging in cooperative advertising with a vendor;
- naming a vendor in any advertisement for a malt beverage tasting; and
- paying for particular placement, signage, or other brand promotion within a vendor premises for malt beverages produced by the manufacturer. [11]

However, the Tied House Evil Law authorizes a manufacturer or distributor of malt beverage to:

- Sell, at not less than cost, **branded expendable retailer advertising specialties** to a vendor (trays, coasters, mats, menu cards, napkins, cups, glassware, thermometers, etc.).
- Lend without charge, rent, or sell **durable retailer advertising specialties** which bear advertising matter to a vendor (clocks, pool table lights, etc.).
- Sell, at not less than cost, **consumer advertising specialties** to a vendor (ashtrays, T-shirts, bottle openers, shopping bags, etc.).[12]

Additionally, a distributor of malt beverages is allowed to:

- sell, at not less than cost, draft equipment and tapping accessories to a vendor;
- exchange, or provide without charge, any parts that are not compatible with a competitor's system and are necessary to dispense the distributor's brands;
- provide, without charge, replacement parts of nominal intrinsic value (washers, gaskets, tail pieces, hoses, hose connections, clamps, plungers, and tap markers, etc.); and
- provide, without charge, up to ten cases of glassware to a vendor licensed to sell malt beverages for on-premises consumption, subject to certain conditions.[13]

A vendor is prohibited from displaying any sign advertising any brand of alcoholic beverages outside of or on the outside of their establishment, and a manufacturer or distributor may not directly or indirectly give, lend, rent, sell or furnish a vendor with any outside sign. However, a vendor is allowed to display

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[10] *See* Andrew Tamayo, *What's Brewing in the Old North State: An Analysis of the Beer Distribution Laws Regulating North Carolina's Craft Breweries*, 88 N.C. L. REV. 2198 (2010), http://scholarship.law.unc.edu/nclr/vol88/iss6/6.

[11] S. 561.42, F.S.

[12] S. 561.42(14), F.S.

[13] *Id.* Specifically, a distributor that receives glassware at no charge on a no-charge invoice from a malt beverage manufacturer or importer may give such glassware to a vendor licensed to sell malt beverages for on-premises consumption. Each piece of glassware given to a vendor by a distributor must bear a permanent brand name intended to prominently advertise the brand. A distributor may not give a vendor more than 10 cases of glassware per calendar year per licensed premises. A vendor that receives a gift of glassware from a distributor may not sell the glassware or return it to a distributor for cash, credit, or replacement. A manufacturer or importer who sells or gives glassware to a distributor, a distributor who sells or gives glassware to a vendor, and such vendor, must maintain records of such sale or gift of glassware.

signs and other advertising materials for brands that are sold by the vendor on the interior of their licensed premises.[14]

The Division is authorized to adopt rules and require reports in order to enforce the limitations established under the Tied House Evil Law relating to credits, coupons, and other forms of assistance.[15]

Craft Breweries

Section 561.221(2), F.S., allows a brewery to receive up to eight vendor's licenses for the sale of alcoholic beverages on property consisting of a single complex that includes a brewery, which may be divided by no more than one public street or highway. These vendor's licenses are an exception to the three-tier system described in ss. 561.14 and 561.22, F.S., and to the tied house evil restrictions in s. 561.42, F.S.

A craft brewery with multiple manufacturing licenses may transfer malt beverages that it produces between its breweries, up to 100 percent of the yearly production of the receiving brewery. Alcoholic beverages that the craft brewery does not make must be obtained through a distributor, an importer, sales agent, or broker.

Distributor Qualifications

Section 561.411, F.S., requires that a distributor meet and maintain certain minimum qualifications with respect to warehouse inventory and sales. A distributor's warehouse must be owned or leased by the distributor or in public warehouse space dedicated to the distributor's use.

A distributor is required to maintain warehouse space sufficient to store an inventory of alcoholic beverages:

- equal to at least 10% of the distributor's annual case sales, or
- for which the cost of acquisition is not less than $100,000.

A distributor is required to own and maintain an inventory of alcoholic beverages:

- equal to at least 5% of the distributor's annual sales, or
- for which the cost of acquisition is not less than $100,000.

Current law requires distributors to sell alcoholic beverages to licensed vendors generally rather than a selected few licensed vendors. A distributor is considered to be selling to licensed vendors generally, if:

- the distributor sells to at least 25% of the licensed vendors in either the county where the distributor's warehouse is located or in the distributor's exclusive sales territory; or
- the distributor's total volume of sales to licensed vendors within the state or within the malt beverage distributor's exclusive sales territory during any 12-month period consists of at least 50% of individual sales which are in quantities of 10 cases or less.

Come-to-Rest Requirement

Section 561.5101, F.S., requires, for purposes of inspection and tax-revenue control, all malt beverages to come to rest at the licensed premises of an alcoholic beverage wholesaler in this state before being sold to a vendor by the wholesaler. The come-to-rest requirement does not apply to malt beverages that a craft brewery manufacturers and sells to consumers as a vendor, or to malt beverages manufactured and sold by a brew pub. It is a felony of the third degree[16] for any person in

[14] S. 561.42(10)-(12), F.S. However, only one neon, electric, or similar sign per manufacturer may be displayed in a window.
[15] S. 561.42(8), F.S.
[16] Punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

the business of selling alcoholic beverages to knowingly and intentionally sell malt beverages in a manner inconsistent with the come-to-rest requirement.

Alcoholic Beverage Deliveries

Vendors, but not manufacturers or distributors, are allowed to make deliveries away from their place of business for sales actually made at their licensed place of business. Telephone, electronic, and mail orders received at a vendor's licensed place of business are construed as a sale actually made at the vendor's licensed place of business. Deliveries may be made in vehicles that are owned or leased by the vendor, or in a third-party vehicle pursuant to a contract with a third party with whom the vendor has contracted to make deliveries, including, but not limited to, common carriers.[17]

Manufacturers and distributors are allowed to make deliveries in vehicles that they own or lease.

For compliance purposes, all licensees' vehicles are subject to search and inspection without a search warrant by authorized employees of the Division, sheriffs, deputy sheriffs, and police officers during business hours or other times the vehicle is being used to transport or deliver alcoholic beverages.[18]

Craft breweries that also hold a vendor's licenses are specifically prohibited from making deliveries under this law.[19]

Business Relations between Beer Distributors and Manufacturers (Franchise Law)

Section 563.022, F.S., governs the relationship between manufacturers of malt beverages and their distributors. This relationship is highly regulated, and apart from the limited exceptions mentioned previously, Florida brewers are required[20] to enter into a "beer distribution agreement" or "franchise agreement" with a distributor to sell their product in this state. The agreement must be in writing, filed with the state, and conform to statutory requirements.[21]

The Franchise Law specifies that distributors, but not brewers, are prohibited from waiving any of the rights granted to them under the Franchise Law.[22] Section 563.021, F.S., requires an exclusive sales territory agreement for each brand that the distributor sells for a brewer, which must be filed with the Division. A brewer may not enter into more than one distribution agreement for a given brand in a given territory.

Under the Franchise Law, brewers:

- May provide good faith, written notice that the distributor is in default of any agreement.[23]
- May terminate, cancel or refuse to renew the distribution agreement for "good cause."
- May not terminate, cancel, or fail to renew a distribution agreement without "good cause," regardless of the time period specified in the franchise agreement.[24]
    - "Good cause" exists if:
        - The distributor fails to comply with a reasonable and material provision of the agreement;
        - The brewery provided written notice to the distributor within 18 months of the failure;

[17] S. 561.57(1)–(2), F.S.
[18] *Id.*
[19] Ss. 561.221 (2)(d), F.S.; 565.57(1), F.S.
[20] S. 563.022(15), F.S. The Franchise Law applies to all written or oral agreements between a manufacturer and beer distributor in existence on June 4, 1987, as well as agreements entered into or renewed after June 4, 1987.
[21] *See* Brewer's Law, *Florida Distribution Agreement Guide,* http://brewerslaw.com/wp-content/uploads/2014/06/Florida-Beer-Distribution-Guide.pdf (last visited Jan. 21, 2020).
[22] S. 563.022(13), F.S.
[23] S. 563.022(5)(b)3., F.S.
[24] S. 563.022(5)(b)4., F.S.

- The distributor was given a reasonable opportunity to make a good faith effort to comply with the agreement; and
- The distributor was given 30 days to submit a corrective action plan, and an additional 90 days to cure in accordance with the plan.[25]

A brewer may terminate for cause, upon 15 days' notice, if the distributor:

- Files for bankruptcy, is insolvent, or is otherwise unable to remain in business.
- Has their state or federal license revoked for more than 60 days.
- Is convicted of a felony, but only if it has an adverse effect on the good will or interest of the distributor or brewer.
- Commits fraudulent conduct on a matter material to the brewer.
- Intentionally sells the brewer's products outside of their exclusive sales territory.
- Fails to pay for products 15 business days after receiving a demand for immediate payment.
- Sells, transfers, or assigns their interest in the distributorship without the written consent of the brewer.[26]

The burden is on the brewery to show that it has acted in good faith, that the notice requirements have been complied with, and that there was good cause for the termination, cancellation, nonrenewal, or discontinuance.[27]

A brewer is required to pay reasonable compensation for the diminished value of the distributor's business if the brewer cancels, terminates or fails to renew their agreement, or refuses to consent to the sale of a distributor's interest in the distributorship, without good cause.[28]

If a brewer sells or transfers their interest in the brewery, their successor is also bound by the terms and conditions of the distribution agreement.[29] The Franchise Law allows a brewer to get out of a distribution agreement if they go out of business or stop making the products covered by the agreement, upon not less than 30 days' prior written notice.[30]

In the event of a dispute arising under the Franchise Law, the prevailing party is entitled to recover costs and attorney fees.[31]

Violations and Penalties

Section 562.45(1), F.S., provides that the false entry of any record required under the Beverage Law or violation of the excise tax provisions, when done intentionally, is a felony of the third degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S. For violations of the Beverage Law where no penalty is provided, first-time offenses are punishable as a misdemeanor of the second degree and a felony of the third degree for any subsequent offenses thereafter.

Section 561.29, F.S., authorizes the Division to issue civil penalties for violations of the Beverage Law and rules issued thereto. Such penalties may not exceed $1,000 per transaction. The Division is also authorized to suspend the license of a licensee that fails to pay a civil penalty.

Effect of the Bill

Limited Self-Distribution for Certain Brewers

[25] S. 563.022(7), F.S.
[26] S. 563.022(10), F.S.
[27] S. 563.022(8), F.S.
[28] S. 563.022(17), F.S.
[29] S. 563.022(16), F.S.
[30] S. 563.022(11), F.S.
[31] S. 563.022(18)(c), F.S.

The bill:

- Defines the term "barrel" as 31 gallons. (A term not previously defined in the Beverage Law)
- Allows a brewery whose annual total production volume is less than 60,000 barrels (1,860,000 gallons) per year to sell, transport, and deliver (distribute) its own beer from its licensed premises to vendors in one of the standard keg sizes or similar containers.
    - However, a brewery with an existing franchise agreement with a distributor to distribute its product anywhere in the state is not eligible for this exemption.
- Requires that the brewer comply with certain distribution-specific laws when acting as a distributor, and exempts the craft brewer from the "come-to-rest requirement."

Distributor Qualifications

The bill:

- Reduces the inventory and warehouse space minimums that a distributor must maintain for licensure, from not less than 10% of annual case sales and a cost of acquisition of not less than $100,000 respectively, to not less than 5% and not less than $50,000.
- Reduces the percentage of licensed vendors to which a distributor must sell in order to be considered "selling to licensed vendors generally", from 25% to 10%.

Franchise Law - Termination Exemption for Small Accounts

The bill allows any brewery to terminate a franchise agreement with their distributor, after 120 days written notice, but only if the brewer accounts for 5% or less of the distributor's total sales. This provision is available to any brewer, regardless of size or annual production volume.

Franchise Law - Brewery Exemption

The bill exempts breweries that produce 60,000 barrels or less of malt beverages a year from the requirements imposed under the Franchise Law.

Sale or Purchase of Merchandise

The bill amends s. 561.42, F.S., to specify that a manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant, or any broker, sales agent, or sales person thereof, may not "directly or indirectly" assist any vendor by "furnishing, supplying, selling, renting, lending, buying for, or giving to any vendor any vehicles, equipment, furniture, fixtures, signs, supplies, credit, fees, slotting fees of any kind, advertising or cooperative advertising, or services" unless the manufacturer, distributor, etc., "regularly sells merchandise to vendors" and the sale or purchase is:

- equal to or greater than the fair market value of the merchandise;
- not combined with any sale or purchase of alcoholic beverages;
- separately itemized from the sale or purchase of alcoholic beverages; and
- both the seller and purchaser maintain records.

The bill defines the term "merchandise" as commodities, supplies, fixtures, furniture, or equipment. The term does not include alcoholic beverages or a motor vehicle or trailer requiring registration under ch. 320, F.S.

Written Agreements for Brand-Naming Rights and Associated Cooperative Advertising

The bill provides that, notwithstanding any other provision of the Tied House Evil Law, a manufacturer or importer of malt beverages and a vendor may enter into a written agreement for brand-naming rights and associated cooperative advertising if:

- The agreement is negotiated at arm's length for no more than fair market value;

- The vendor operates places of business where consumption on the premises is permitted, which premises are located within a theme park complex comprised of at least 25 contiguous acres owned and controlled by the same business entity and which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually through a controlled entrance to and exit;
- The agreement does not involve the sale or distribution of malt beverages;
- The vendor does not give preferential treatment to the alcoholic beverage brand(s) of the manufacturer or importer;
- The agreement does not limit, directly or indirectly, the sale of alcoholic beverages of another manufacturer, importer or distributor; and
- Within 10 days after execution of the agreement, the vendor files with the division a description of the written agreement for brand naming rights which includes the location, dates, and the name of the manufacturer or importer that entered into the agreement.

The bill prohibits a manufacturer or importer from soliciting or receiving, and prohibits a distributor from paying, any portion of the brand-naming rights or cooperative advertising agreement. The bill also specifies that such an agreement may not in any way obligate or place responsibility, financial or otherwise, on a distributor.

The bill defines "negotiated at arm's length" as the negotiation of a business transaction by independent parties acting in each party's own individual self-interest and conducted as if the parties were strangers, so that no conflict of interest may arise.

The bill provides that a manufacturer, importer or vendor that violates the written agreement for brand-naming rights and associated cooperative advertising provisions is subject to:

- First violation: A civil penalty up to $25,000 or the financial value of the brand-naming rights agreement, whichever is greater.
- Second violation: A civil penalty up to $100,000 or the financial value of the brand-naming rights agreement, whichever is greater.
- At the discretion of the division, in lieu of or in addition to the second civil penalty, suspension or revocation of the alcoholic beverage license for a third or subsequent violation occurring within 36 months after the date of the first violation.

The bill provides that a violation occurring more than 36 months after a first violation is deemed a first violation.

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

B. SECTION DIRECTORY:

Section 1 Amends s. 561.221, F.S., authorizing a manufacturer who possesses a vendor's license to sell, transport, and deliver to vendors under certain circumstances; providing applicability; and revising requirements for a vendor to be licensed as a manufacturer.

Section 2 Amends s. 561.411, F.S., revising alcoholic beverage inventory requirements for warehouse space owned or leased by certain distributors; and revising the percentage of licensed vendors a distributor must sell to in certain locations to be presumed to be selling to licensed vendors generally.

Section 3 Amends s. 561.42, F.S., revising terms; creating exemptions and penalties relating to the Tied House Evil Law.

Section 4 Amends s. 561.5101, F.S., revising construction related to come-to-rest requirements.

Section 5 Amends s. 561.57, F.S., authorizing certain manufacturers to transport malt beverages in vehicles owned or leased by certain persons other than the manufacturer.

Section 6 Amends s. 563.022, F.S., revising the definition of the term "manufacturer"; revising construction; authorizing a manufacturer to terminate a contract with a distributor under certain circumstances.

Section 7 Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill provides for an indeterminate positive fiscal impact through the creation of new civil penalties as listed above.

2. Expenditures:

   The bill will require DBPR to modify information technology systems to manage the new agreements and possible violations. These modifications can be made with existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Manufacturers and importers of malt beverages and qualified vendors will no longer be prohibited from entering into agreements for brand naming rights under certain circumstances. This relaxation of the Tied House Evil Law may allow certain licensees to benefit financially while negatively impacting other licensees.

D. FISCAL COMMENTS:

The bill may have a positive economic impact on new or small breweries by providing relief from certain regulatory constraints, which will allow them to operate more freely and develop during their early growth stages.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   None.

2. Other:

The bill amends the Franchise Law to allow any brewery to terminate a franchise agreement with their distributor, after 120 days written notice, but only if the brewer accounts for 5% or less of the distributor's total sales.

Additionally, the bill exempts breweries whose production volume does not exceed 60,000 barrels of malt beverages a year from the requirements imposed under the Franchise Law.

Article I, section 10 of the Florida Constitution prohibits the passage of any law which impairs the obligation of contracts. Cases interpreting Florida law have held that the application of the Franchise Law, and similar statutes, to contracts existing prior to the enactment of the statutes to be unconstitutional.[32]

However, the Florida Supreme Court has held that, relating to the interpretation of substantive changes to statutory law, the general rule is that in the absence of clear legislative intent to the contrary, a law affecting substantive rights, liabilities and duties is presumed to apply prospectively but not retroactively.[33] Florida courts have also held that "Even where the Legislature has expressly stated that a statute will have retroactive application, this Court will reject such an application if the statute impairs a vested right, creates a new obligation, or imposes a new penalty."[34]

Thus, the provisions in the bill affecting the Franchise Law may be interpreted to apply only prospectively.

B. RULE-MAKING AUTHORITY:

DBPR has sufficient rule-making authority to modify current rules to reflect the modifications provided for in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[32] *Gulfside Distributors, Inc. v. Becco, Ltd.*, 985 F.2d 513, 515 (11th Cir. 1993).

[33] *Smiley v. State*, 966 So. 2d 330, 336 (Fla. 2007). *See also* Eric Glazer and Louis Goetz, *Florida Community Association Law: Contracts Clause Application In An Ever-Changing Legislative Landscape*, Florida Bar Journal, Vol. 89, No. 8 (Sept./Oct. 2015). "In Florida, all laws are presumed to apply prospectively, unless they are remedial in nature, or designed to clarify law already in effect, and the legislature clearly expresses its intention that the law is to apply retroactively."

[34] *Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So.3d 873 (Fla. 2010).

A bill to be entitled

An act relating to the Beverage Law; amending s. 561.221, F.S.; authorizing a manufacturer who possesses a vendor's license to sell, transport, and deliver malt beverages to vendors under certain circumstances; providing applicability; revising requirements for a vendor to be licensed as a manufacturer; amending s. 561.411, F.S.; revising alcoholic beverage inventory requirements for warehouse space owned or leased by certain distributors; revising the percentage of licensed vendors a distributor must sell to in certain locations to be presumed to be selling to licensed vendors generally; amending s. 561.42, F.S.; prohibiting certain entities and persons from directly or indirectly assisting or providing specified items, monies, or services to a licensed vendor; prohibiting a licensed vendor from accepting specified items, monies, or services from certain entities or persons; authorizing the Division of Alcoholic Beverages and Tobacco adopt rules and require reports to enforce, and to impose administrative sanctions for a violation of limitations established under the Beverage Law on specified items, monies, or services; prohibiting a vendor from displaying certain signs in the window or

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

windows of his or her licensed premises; authorizing certain entities and persons to furnish, supply, sell, rent, lend, or give certain advertising material to certain vendors; defining the term "decalcomania"; providing exemptions relating to tied house evil for certain sales and purchases of merchandise; providing conditions for the exemptions; defining the term "merchandise"; prohibiting the sale of certain advertising specialties at a price higher than the actual cost to the industry member; authorizing a manufacturer or importer of malt beverages and a vendor to enter into a written agreement for certain purposes; providing requirements for such agreement; defining the term "negotiated at arm's length"; specifying that a brand-naming rights agreement does not obligate or place responsibility upon a distributor; providing civil penalties; prohibiting the division from imposing certain civil penalties; amending s. 561.5101, F.S.; revising construction; amending s. 561.57, F.S.; authorizing certain manufacturers to transport malt beverages in vehicles owned or leased by certain persons other than the manufacturer; amending s. 563.022, F.S.; revising the definition of the term "manufacturer"; revising construction; authorizing a manufacturer to terminate

a contract with a distributor under certain circumstances; providing an effective date.

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

Section 1. Paragraph (d) of subsection (2) and paragraph (a) of subsection (3) of section 561.221, Florida Statutes, are amended, and paragraph (f) is added to subsection (2) of that section, to read:

561.221 Licensing of manufacturers and distributors as vendors and of vendors as manufacturers; conditions and limitations.—

(2)

(d) A manufacturer possessing a vendor's license under this subsection is not permitted to make deliveries under s. 561.57(1), except as provided in paragraph (f).

(f) Notwithstanding other provisions of the Beverage Law, any manufacturer possessing a vendor's license under this subsection may sell, transport, and deliver to vendors, from the manufacturer's licensed premises, malt beverages that have been manufactured on its licensed premises if the manufacturer complies with applicable requirements of ss. 561.42 and 561.423 to the same extent as if the manufacturer were a distributor.

1. The sale, transport, and delivery of malt beverages is limited to kegs or similar containers that hold 5.16 gallons,

7.75 gallons, or 15.5 gallons.

2. A delivery by a manufacturer to a vendor under this paragraph is subject to s. 561.57(2).

3. This paragraph does not apply to a manufacturer who:

a. Has a franchise agreement with a distributor pursuant to s. 563.022; or

b. Has a total production volume of more than 60,000 barrels of malt beverages per year.

(3)(a) Notwithstanding other provisions of the Beverage Law, any vendor licensed in this state may be licensed as a manufacturer of malt beverages upon a finding by the division that:

1. The vendor will be engaged in brewing malt beverages at a single location and in an amount which will not exceed 5,000 barrels of malt beverages ~~10,000 kegs~~ per year. For purposes of this section ~~subsection~~, the term "barrel" ~~"keg"~~ means 31 ~~15.5~~ gallons.

2. The malt beverages so brewed will be sold to consumers for consumption on the vendor's licensed premises or on contiguous licensed premises owned by the vendor.

Section 2. Section 561.411, Florida Statutes, is amended to read:

561.411 Qualifications for distributors.—A ~~No~~ distributor's license may not ~~shall~~ be issued to or held by any person or business that ~~which~~ does not meet and maintain the

following qualifications with respect to its warehouse inventory and sales:~~.~~

(1) The distributor must maintain warehouse space which is either owned or leased by the distributor, or dedicated to the distributor's use in a public warehouse, which is sufficient to store at one time:

(a) An inventory of alcoholic beverages which is equal to at least 5 ~~10~~ percent of the distributor's annual case sales to licensed vendors within this state or to licensed vendors within the malt beverage distributor's exclusive sales territory; or

(b) An inventory for which the cost of acquisition is not less than $50,000 ~~$100,000~~.

(2) The distributor must maintain at all times, in a warehouse which is either owned or leased by the distributor or in public warehouse space dedicated to the distributor's use, an inventory of alcoholic beverages:

(a) Which consists of not less than 5 percent of the distributor's annual sales to licensed vendors within this state or within the malt beverage distributor's exclusive sales territory; or

(b) For which the cost of acquisition is not less than $50,000 ~~$100,000~~. Such ~~The~~ inventory must ~~required herein shall~~ be owned by the distributor, not held on consignment, and not acquired pursuant to a prior agreement to sell it to a specific licensee or licensees.

(c) For purposes of calculating inventory or percentage of annual sales as required by paragraphs (a) and (b), the calculation shall not include private label inventory whose label is owned by a vendor.

(3) The distributor must sell alcoholic beverages to licensed vendors generally rather than a selected few licensed vendors. For purposes of this section, a distributor shall be conclusively presumed to be selling to licensed vendors generally, if:

(a) The distributor sells to at least 10 ~~25~~ percent of the licensed vendors in the county wherein the distributor's warehouse is located or sells to at least 10 ~~25~~ percent of the licensed vendors in the malt beverage distributor's exclusive sales territory; or

(b) The distributor's total volume of sales to licensed vendors within the state or within the malt beverage distributor's exclusive sales territory during any ongoing 12-month period consists of at least 50 percent of individual sales which are in quantities of 10 cases or less.

Section 3. Subsections (13) and (14) of section 561.42, Florida Statutes, are renumbered as subsections (14) and (15), respectively, subsections (1), (8), (11), and (12) and paragraph (b) of present subsection (14) are amended, and new subsections (13) and (16) are added to that section, 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.—

(1) A ~~No~~ manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant of any of the beverages herein referred to, whether licensed or operating in this state or out-of-state, or ~~nor~~ any broker, sales agent, or sales person thereof, may not ~~shall~~ have any financial interest, directly or indirectly, in the establishment or business of any vendor licensed under the Beverage Law; nor may ~~shall~~ such manufacturer, distributor, importer, primary American source of supply, brand owner or brand registrant, or any broker, sales agent, or sales person thereof, directly or indirectly, assist any vendor by furnishing, supplying, selling, renting, lending, buying for, or giving to any vendor any vehicles, equipment, furniture, fixtures, signs, supplies, credit, fees, slotting fees of any kind, advertising or cooperative advertising, services, ~~any~~ gifts or loans of money or property of any description, or ~~by the giving of any~~ rebates of any kind whatsoever. A ~~No~~ licensed vendor may not ~~shall~~ accept, directly or indirectly, any vehicles, equipment, furniture, fixtures, signs, supplies, credit, fees, slotting fees of any kind, advertising or cooperative advertising, services, gifts ~~any gift~~ or loans ~~loan~~ of money or property of

any description, or ~~any~~ rebates of any kind whatsoever from any such manufacturer, distributor, importer, primary American source of supply, brand owner or brand registrant, or any broker, sales agent, or sales person thereof; provided, however, that this does not apply to any bottles, barrels, or other containers necessary for the legitimate transportation of such beverages or to advertising materials and does not apply to the extension of credit, for liquors sold, made strictly in compliance with ~~the provisions of~~ this section. A brand owner is a person who is not a manufacturer, distributor, importer, primary American source of supply, brand registrant, or broker, sales agent, or sales person thereof, but who directly or indirectly owns or controls any brand, brand name, or label of alcoholic beverage. ~~Nothing in~~ This section does not ~~shall~~ prohibit the ownership by vendors of any brand, brand name, or label of alcoholic beverage.

(8) The division may adopt rules and require reports to enforce, and may impose administrative sanctions for any violation of, the limitations established under the Beverage Law on any vehicles, equipment, furniture, fixtures, signs, supplies, credit, fees, slotting fees of any kind, advertising or cooperative advertising, services, gifts or loans of money or property of any description, rebates of any kind whatsoever ~~in this section on credits~~, coupons, and other forms of assistance.

(11) A vendor may display in the interior of his or her

licensed premises, including the window or windows thereof, neon, electric, or other signs that require a power source; ~~, including~~ window painting and decalcomanias applied to the surface of the interior or exterior of such windows; ~~,~~ and posters, placards, and other advertising material advertising the brand or brands of alcoholic beverages sold by him or her, whether visible or not from the outside of the licensed premises. However, a ~~, but no~~ vendor may not ~~shall~~ display in the window or windows of his or her licensed premises more than one neon, electric, or similar sign that requires a power source ~~,~~ advertising the product of any one brand of alcoholic beverage ~~manufacturer~~.

(12) Any manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant, or any broker, sales agent, or sales person thereof, may give, lend, furnish, or sell to a vendor who sells the products of such manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant any of the following: neon, ~~or~~ electric, or other signs requiring a power source; ~~signs,~~ window painting and decalcomanias applied to the surface of the interior or exterior of windows; and ~~,~~ posters, placards, and other advertising material ~~herein~~ authorized to be used or displayed by the vendor in the interior of his or her licensed premises. As used in this section, the term "decalcomania" means a picture, design, print, engraving, or label made to be

transferred onto a glass surface.

(13) Any manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant, or any broker, sales agent, or sales person thereof, who regularly sells merchandise to vendors, or any vendor who purchases merchandise from such manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant, or any broker, sales agent, or sales person thereof, does not violate subsection (1) if:

(a) Such sale or purchase is equal to or greater than the fair market value of the merchandise; not combined with any sale or purchase of alcoholic beverages; separately itemized from the sale or purchase of alcoholic beverages; and

(b) Both the seller and purchaser maintain records of any such sale or purchase, including the price and any conditions associated with such sale or purchase of the merchandise.

For purposes of this subsection, the term "merchandise" means commodities, supplies, fixtures, furniture, or equipment. The term does not include alcoholic beverages or a motor vehicle or trailer requiring registration under chapter 320.

(15) ~~(14)~~ The division shall adopt reasonable rules governing promotional displays and advertising. Such rules may not conflict with or be more stringent than the federal regulations pertaining to such promotional displays and

advertising furnished to vendors by distributors, manufacturers, importers, primary American sources of supply, or brand owners or registrants, or any broker, sales agent, or sales person thereof; however:

(b) Without limitation in total dollar value of such items provided to a vendor, a manufacturer, distributor, importer, primary American sources of supply, or brand owner~~,~~ or ~~brand~~ registrant of malt beverage, or any broker, sales agent, or sales person thereof, may rent, loan without charge for an indefinite duration, or sell durable retailer advertising specialties such as clocks, pool table lights, and the like, which bear advertising matter. If sold, such items may not be sold at a price less than the actual cost to the industry member who initially purchased the items.

(16)(a) Notwithstanding other provisions of this section, a manufacturer or importer of malt beverages and a vendor may enter into a written agreement for brand-naming rights and associated cooperative advertising, negotiated at arm's length, for no more than fair market value if all of the following conditions are met:

1. The vendor operates places of business where consumption on the premises is permitted and the premises:

a. Are located within a theme park complex consisting of at least 25 contiguous acres owned and controlled by the same business entity;

b. Contain permanent exhibitions and a variety of recreational activities; and

c. Has a minimum of 1 million visitors annually with a controlled entrance to, and exit from, the enclosed area.

2. Such agreement does not involve, either in whole or in part, the sale or distribution of malt beverages between the manufacturer or importer, or the manufacturer's or importer's distributor, and a vendor.

3. The vendor, as a result of such agreement, does not give preferential treatment to the alcoholic beverage brand or brands of the manufacturer or importer with whom the vendor has entered into such agreement.

4. Such agreement does not directly or indirectly limit the sale of alcoholic beverages of another manufacturer or importer, or distributor.

5. Within 10 days after execution of such agreement, the vendor files with the division a description of the agreement which includes the location, dates, and the name of the manufacturer or importer that entered into the agreement.

As used in this paragraph, the term "negotiated at arm's length" means the negotiation of a business transaction by independent parties acting in each party's own individual self-interest and conducted as if the parties were strangers, so that no conflict of interest may arise.

(b) A manufacturer or importer of malt beverages who is a party to a brand-naming rights agreement may not, directly or indirectly, solicit or receive from any of its distributors any portion of the payment due from the manufacturer or importer of malt beverages to the vendor pursuant to such agreement. Such agreement exists solely between the manufacturer and the vendor and does not, directly or indirectly, in any way obligate or place responsibility, financial or otherwise, upon a distributor.

(c) Notwithstanding s. 561.29(3) and (4), a manufacturer of malt beverages, an importer of malt beverages, or a vendor who violates this subsection is subject to:

1. A civil penalty of not more than $25,000, for a first violation.

2. A civil penalty of not more than $100,000 for a second violation occurring within 36 months after the date of the first violation.

3. At the discretion of the division, in lieu of or in addition to the penalty imposed under subparagraph 2., suspension or revocation of the alcoholic beverage license for a third or subsequent violation occurring within 36 months after the date of the first violation.

A violation occurring more than 36 months after a first violation is deemed a first violation under this paragraph. When

imposing a civil penalty within the ranges provided in subparagraphs 1. and 2., the division may not impose a civil penalty in an amount greater than the financial value of the brand-naming rights agreement.

Section 4. Subsection (1) of section 561.5101, Florida Statutes, is amended to read:

561.5101 Come-to-rest requirement; exceptions; penalties.—

(1) For purposes of inspection and tax-revenue control, all malt beverages, except those manufactured and sold by the same licensee, pursuant to s. 561.221(2) or (3), must come to rest at the licensed premises of an alcoholic beverage wholesaler in this state before being sold to a vendor by the wholesaler. The prohibition contained in this subsection does not apply to the shipment of malt beverages commonly known as private labels. The prohibition contained in this subsection shall not prevent a manufacturer from shipping malt beverages for storage at a bonded warehouse facility, provided that such malt beverages are distributed as provided in this subsection or to an out-of-state entity. This subsection does not prohibit a manufacturer from delivering alcoholic beverages to a licensed vendor as provided in s. 561.221(2)(f).

Section 5. Subsection (2) of section 561.57, Florida Statutes, is amended to read:

561.57 Deliveries by licensees.—

(2) Deliveries made by a manufacturer or distributor away

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

from his or her place of business may be made only in vehicles that are owned or leased by the licensee. However, a manufacturer authorized to make deliveries under s. 561.221(2)(f) to the licensed premises of a vendor may transport malt beverages in a vehicle owned or leased by the manufacturer or any person who has been disclosed on a license application filed by the manufacturer and approved by the division. By acceptance of an alcoholic beverage license and the use of such vehicles, the licensee agrees that such vehicle shall always be subject to be inspected and searched without a search warrant, for the purpose of ascertaining that all provisions of the alcoholic beverage laws are complied with, by authorized employees of the division and also by sheriffs, deputy sheriffs, and police officers during business hours or other times the vehicle is being used to transport or deliver alcoholic beverages.

Section 6. Paragraph (h) of subsection (2) and paragraph (d) of subsection (14) of section 563.022, Florida Statutes, are amended, and subsection (22) is added to that section, to read:

563.022 Relations between beer distributors and manufacturers.—

(2) DEFINITIONS.—In construing this section, unless the context otherwise requires, the word, phrase, or term:

(h) "Manufacturer" means any person who manufactures more than 60,000 barrels of malt beverage a year or imports beer for

distribution to distributors licensed in Florida.

(14) MANUFACTURER; PROHIBITED INTERESTS.—

(d) ~~Nothing in~~ The Beverage Law does not ~~shall be construed to~~ prohibit a manufacturer from shipping products to or between its breweries, or between its breweries and the licensed premises of a vendor as provided in s. 561.221(2)(f), without a distributor's license.

(22) TERMINATION OF CONTRACTS.—Notwithstanding this section, a manufacturer may terminate a contract with a distributor after at least 120 days' written notice if the sale of products to the distributor by the manufacturer does not exceed 5 percent of the distributor's total alcoholic beverage sales in the prior calendar year.

Section 7. This act shall take effect July 1, 2020.

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BUSINESS AND PROFESSIONS SUBCOMMITTEE

HB 1153 by Rep. DiCeglie
Beverage Law

AMENDMENT SUMMARY
February 4, 2020

Amendment 1 by Rep. DiCeglie (Line 75):

The amendment makes a technical, conforming change to the bill relating to the use of the term "keg" in s. 561.221, F.S.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1153 (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 DiCeglie offered the following:

Amendment

Remove line 75 and insert:

limited to containers that hold 5.16 gallons,

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1161 Local Licensing
SPONSOR(S): Plakon
TIED BILLS: **IDEN./SIM. BILLS:** SB 890

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

SUMMARY ANALYSIS

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. General law determines whether local governments are able to regulate occupations and businesses, and to what degree. If state law preempts regulation for an occupation, then, generally, local governments may not regulate that occupation. **If an occupation is not regulated by the state, local governments are able to regulate such occupations and impose licensing requirements.**

Construction contractors and specialty contractors are licensed and regulated by the state. However, the state gives local governments the specific authority to license and regulate certain contractors and gives contractors the choice: become **certified** with the state and practice statewide **or** become **registered** in a local jurisdiction and only practice in that jurisdiction. Jobs that fall outside the definition or job scope of contractors and specialty contractors are able to be regulated and licensed by local jurisdictions. If licensed by a local jurisdiction, that licensee is only allowed to perform that job in the jurisdiction in which the license is held.

The bill allows an individual with a **local noncontractor license – for occupations that are not currently regulated by the state but are only required by specific local governments** – to work on real property, to work within the scope of the license throughout the state with no geographic limitation, and without obtaining an additional local license, taking an examination, or paying additional fees. The bill allows local governments to have disciplinary authority over licensees who are licensed in another jurisdiction. However, the bill does not expand the authorization for registered local contractors or specialty contractors to work anywhere in Florida.

The bill would allow local licensees, such as, cabinet makers, drywall, fence and deck installers, and rain gutter, interior remodeling, masonry, painting, paving, stuccoing, vinyl siding, and decorative tile and granite workers, to be licensed in one jurisdiction but work anywhere in the state.

The bill requires DBPR to maintain a local licensing website to allow the public to review the licensing status of local licensees. The bill also requires a local government to transmit specified local licensing information to DBPR or to maintain its own website that DBPR may link too.

Local licensees working outside the jurisdiction in which they were issued a local license must provide consumers seeking services from the licensee sufficient information to access local licensing information and to verify the licensee's status in the original licensing jurisdiction.

The bill has a fiscal impact on state government. The bill has an indeterminate, but likely insignificant, fiscal impact on local governments. See Fiscal Comments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current 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]

Revenue Sources Authorized in the Florida Constitution[5]

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[6] 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.[7]
>
> 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.[8]

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

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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] 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).
[6] "Ad valorem tax" means a tax based upon the assessed value of property." Section 192.001(1), F.S.
[7] Art. VII, s. 1(a), Fla. Const.
[8] Art. VII, s. 9(a), Fla. Const.

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.[9]

Preemption

State preemption precludes a local government from exercising authority in a particular area, and requires consistency with the state constitution or state statute.[10] 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.[11]

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.[12] Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.[13] When local ordinances have been enacted in the face of state preemption, the effect has been to find such ordinances null and void.[14]

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.[15]

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.[16]

General law determines whether local governments are able to regulate occupations and businesses, and to what degree.[17] If state law preempts regulation for an occupation, then, generally, local governments may not regulate that occupation.[18] 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; [19]
- assessing local fees and rules regarding low-voltage alarm system projects;[20]
- tobacco and nicotine products;[21]
- firearms, weapons, and ammunition;[22]
- employment benefits;[23]

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[9] EDR, *supra* note 5.
[10] 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).
[11] *Id.*
[12] *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).
[13] *Mulligan*, 934 So. 2d at 1243.
[14] *See, e.g., Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami,* 812 So.2d 504 (Fla. 3d DCA 2002).
[15] Wolf and Bolinder, *supra* note 17.
[16] S. 20.165, F.S.
[17] 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.
[18] *Id.*; Wolf and Bolinger, *supra* note 17.
[19] S. 553.80(7)(d), F.S.
[20] S. 489.503(14), F.S.
[21] Ch. 569, F.S., and s. 386.209, F.S.
[22] S. 790.33(1), F.S.
[23] S. 218.077, F.S.

- polystyrene products;[24]
- public lodging establishments and public food service establishments;[25] and
- disposable plastic bags.[26]

Conversely, Florida law also specifically grants local jurisdictions the right to regulate businesses, occupations and professions in certain circumstances.[27] 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";[28]
- the levy of local business taxes;[29]
- building code inspection fees;[30]
- tattoo establishments;[31]
- massage practices;[32]
- child care facilities;[33]
- taxis and other vehicles for hire;[34] and
- waste and sewage collection.[35]

If an occupation is not regulated or preempted by the state, local governments are generally able to regulate such occupations and impose licensing requirements. Some counties and municipalities choose to require certain local licenses, while others do not.

There are vast differences from jurisdiction to jurisdiction as to what work requires a license and what does not.[36] For example, only seven counties require a cabinetry specialty license; and nineteen counties require a painting license. There are also vast differences from jurisdiction to jurisdiction on what is required to obtain such licenses. For example, Hillsborough County requires an applicant to have a year of experience and pay a $280 licensing fee to obtain a painting license. Other counties do not require any experience. Broward County requires a license for residential interior remodeling that requires three years of experience, and an exam and a fee. Such licenses are not required by the state for interior remodeling, painting or cabinetry.

Construction Industry Licensing Board

The Construction Industry Licensing Board (CILB) within the Department of Business and Professional Regulation (DBPR) is responsible for licensing and regulating the construction industry in this state under part I of ch. 489, F.S.[37]

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[24] S. 500.90, F.S.
[25] S. 509.032, F.S.
[26] S. 403.7033, F.S.
[27] *Supra* note 25.
[28] S. 166.221, F.S.
[29] Ch. 205, F.S.
[30] S. 166.222, F.S.
[31] S. 381.00791, F.S.
[32] S. 480.052, F.S.
[33] S. 402.306, F.S
[34] S. 125.01(1)(n), F.S.
[35] S. 125.01(1)(k), F.S.
[36] Information obtained by the Business and Professions Subcommittee in December 2018 after review of county websites and obtaining certain information from each county in response to information requests by committee staff.
[37] *See* s. 489.107, F.S.

Construction contractors are either certified or registered by the CILB. 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.[38]

"Certified contractors" are individuals who have met competency requirements for a particular trade category and holds a geographically unlimited certificate of competency from the DBPR that allows them to contract in any jurisdiction in the state.[39]

"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. Registered contractors must register their license with the CILB after obtaining a local license.[40]

The CILB also creates certified specialty contractor's license through rulemaking. Certified specialty contractors are contractors whose scope of work is limited to a particular phase of construction that is a subset of a certified contractor's scope of work, such as a solar water heating specialty contractor[41] or a building demolition specialty contractor.[42] Certified specialty contractors are permitted to practice in any jurisdiction in the state.[43]

The CILB licenses the following types of contractors:[44]

Statutory Licenses	Specialty Licenses
• 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

[38] S. 489.107, F.S.
[39] Ss. 489.105(8) and 489.113(1), F.S.
[40] Ss. 489.105, & 489.117, F.S.
[41] Rule 61G4-15.012, F.A.C.
[42] Rule 61G4-15.038, F.A.C.
[43] S. 489.105(3)(q), F.S.
[44] S. 489.105(a)-(q), F.S.; Rr. 61G4-15.015-040, F.A.C.

Fee for Certification and Registration

As provided in s. 489.109, F.S., an applicant for certification as a contractor is required to pay an initial application fee not to exceed $150, and, if an examination cost is included in the application fee, the combined amount may not exceed $350. For an applicant for registration as a contractor, the initial application fee may not exceed $100, and the initial registration fee and the renewal fee may not exceed $200.[45] The initial application fee and the renewal fee is $50 for an application to certify or register a business.[46]

Fees must be adequate to ensure the continued operation of the CILB, and must be based on estimates of DBPR of the revenue required to implement part I of ch. 489, F.S., and statutory provisions regulating the construction industry.[47]

All certified and registered contractors must pay a fee of $4 to DBPR at the time of application or renewal, to fund projects relating to the building construction industry or continuing education programs offered to building construction industry workers in Florida, to be selected by the Florida Building Commission.[48]

Local Regulation of Construction Trades

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.[49] 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.[50]

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.[51]

According to DBPR:[52]

> Other than the [Division I and Division II] state-certified or state-registered professions, other professional trades of construction are not subject to regulation at the state level. However, under local government authority, counties and municipalities have created additional local categories for regulation within the construction industry (i.e., painting, flooring, cabinetry, masonry, plastering, and other construction-related trades). Under this local regulation patchwork, varying regulations and fees often create burdens and limitations on a professional's ability to operate freely and competitively between jurisdictions.

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[45] S. 489.109, F.S. Any applicant who seeks certification as a contractor under part I of ch. 489, F.S., by taking a practical examination must pay as an examination fee the actual cost incurred by DBPR in developing, preparing, administering, scoring, score reporting, and evaluating the examination, if the examination is conducted by DBPR.

[46] *Id.*

[47] *Id.*

[48] S. 489.109(3), F.S.

[49] Ss. 489.117, 489.131 F.S.

[50] EDR *supra*, note 5 at 1.

[51] Ss. 489.105, & 489.117(4), F.S.

[52] Department of Business and Professional Regulation, Agency Analysis of 2020 House Bill 1161, p. 3 (Oct. 1, 2020).

Effect of Proposed Changes

The bill allows an individual with a valid local license for a noncontractor job issued by a local government in Florida, to work within the scope of that local license throughout the state with no geographic limitation, and without obtaining an additional local license, taking an examination, or paying additional fees.

The expanded authorization for local licensees to work in any jurisdiction in the state does not include performance of construction contracting work that requires certification or registration from the CILB, such as roofing or plumbing.

The bill defines:

- "Local government" to mean a county or municipality in within the state.
- "Local license" to mean a license, registration, or similar permit issued and required by a local government for a noncontractor job scope.

The bill also defines "noncontractor job scope" to mean any category of work that is done to real property, which does not require certification or registration by the CILB. The term includes, but is not limited to, the performance or installation of:

- Awnings;
- Cabinetry;
- Carpentry;
- Caulking;
- Debris removal;
- Driveways;
- Drywall;
- Fence and decks;
- Flooring;
- Garage doors;
- Glass and glazing;
- Gunite;
- Gutters and downspouts;
- Hurricane shutters;
- Insulation;
- Interior remodeling;
- Irrigation;
- Landscaping;
- Lightning protection systems;
- Masonry;
- Nonelectrical signs;
- Painting;
- Paving;
- Plastering;
- Stuccoing;
- Tennis courts;
- Vinyl siding; and
- Ornamental or decorative iron, stone, tile, marble, granite, or terrazzo.

The bill provides that local governments have disciplinary authority over noncontractor licensees who are licensed by another local government but work in that jurisdiction. The bill provides that such disciplinary authority includes, but is not limited to, suspension and revocation of a licensee's ability to operate within the local government's jurisdiction.

Local governments must forward disciplinary orders to a licensee's original licensing jurisdiction. The original licensing jurisdiction may take action against a licensee for being disciplined by another local licensing jurisdiction or for violating the scope of practice for the noncontractor license.

The bill requires DBPR to create and maintain an online local licensing information system (website) to allow the public to review the licensing status of local licensees. The bill also requires a local government that issues local noncontractor licenses to transmit specified local licensing information to DBPR. The information must be transmitted by a local government at least monthly and include, at a minimum, the name, business name, address, license number, and licensing status of the local licensee. Alternatively, a local government may maintain a website that allows DBPR to link to it.

Local licensees working outside the jurisdiction in which they are licensed must provide consumers seeking services from the licensee sufficient information to allow access to local licensing information and to verify the licensee's status in the licensee's original licensing jurisdiction.

The bill does not affect the ability of local governments to collect business taxes.

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

B. SECTION DIRECTORY:

Section 1 Creates s. 489.1175, F.S.,

Section 2 Provides an effective date.

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:

   Indeterminate.

2. Expenditures:

   Indeterminate. The bill requires local governments to transmit specified local licensing information to DBPR or maintain a website that allows DBPR to link to it. However, any such expenditures are likely to be insignificant.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive impact on people with noncontractor local licenses because they will be able to practice throughout the state without having to pay additional fees or take additional exams.

D. FISCAL COMMENTS:

According to DBPR, "The bill requires the Department of Business and Professional Regulation to create and maintain a local licensing information system available through the internet whereby the

public may review the licensing status of individuals holding a local license. Recurring cost of hosting the portal in a cloud-based internet environment is estimated at $25,000-$50,000 annually."[53]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because the bill requires a local government that issues local licenses to transmit specified local licensing information to DBPR, or instead maintain a website that allows DBPR to link to it. It also takes away a local jurisdictions ability to require a license and a licensing fee if the worker is licensed in another jurisdiction but maintains the ability of that jurisdiction to discipline such licensees. However, an exemption may apply given that laws having an insignificant fiscal impact are exempt from the requirements of Art. VII, s. 18 of the Florida Constitution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides that noncontractor licenses only apply to job scopes that do not require certification or registration by the CILB. However, the term "noncontractor job scope" includes work that requires a certification or registration as contractor in certain circumstances. For example, certain drywall and glass & glazing work requires licensure as a contractor. Additionally, there is a certified specialty glass & glazing license[54] and a certified specialty gypsum drywall license.[55] This could result in confusion about what jobs fall under the scope of a noncontractor.

The bill does not provide a remedy or a cause of action if a local government decides to enforce a licensure fee or exam against a noncontractor licensee who has obtained a license from another local government in the state. It is not clear how a local licensee will be able to obtain relief in such situations.

The bill also does not provide a remedy to DBPR if a local government does not update DBPR about the status of its noncontractor licensees. It is not clear what happens if a local government revokes or suspends a noncontractor license, but fails to notify DBPR or update its website.

The bill defines a "local license" as a license, registration, or similar **permit** issued by a local government. However, the term "permit" is generally used in part I of ch. 489, F.S., to mean a building permit. This could lead to confusion about what a permit is for purposes of determining what a noncontractor license includes and whether local jurisdictions can still require a permit.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[53] Department of Business and Professional Regulation, Agency Analysis of 2020 House Bill 1161, p. 5 (Oct. 1, 2020).
[54] Rule 61G4-15.018, F.A.C.
[55] Rule 61G4-15.017, F.A.C.

A bill to be entitled

An act relating to local licensing; creating s. 489.1175, F.S.; defining terms; providing that individuals who hold valid, active local licenses may work within the scope of such licenses in any local government jurisdiction without needing to meet certain additional licensing requirements; requiring licensees to provide consumers with certain information; providing that local governments have disciplinary jurisdiction over such licensees; requiring local governments to forward any disciplinary orders to a licensee's original licensing jurisdiction for further action; requiring the Department of Business and Professional Regulation to create and maintain a local licensing information system; requiring local governments to provide the department with specified information; providing an effective date.

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

Section 1. Section 489.1175, Florida Statutes, is created to read:

489.1175 Local licensing; portability.—

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

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

(a) "Noncontractor job scope" means any category of work that is done to real property and that does not substantially correspond to the job scope of one of the contractor categories defined in s. 489.105(3)(a)-(o). The term includes, but is not limited to, the performance or installation of awnings, cabinetry, carpentry, caulking, debris removal, driveways, drywall, fence and decks, flooring, garage doors, glass and glazing, gunite, gutters and downspouts, hurricane shutters, insulation, interior remodeling, irrigation, landscaping, lightning protection systems, masonry, nonelectrical signs, painting, paving, plastering, stuccoing, tennis courts, vinyl siding and ornamental or decorative iron, stone, tile, marble, granite, or terrazzo.

(b) "Local government" means a county or municipality within this state.

(c) "Local license" means a license, registration, or similar permit issued and required by a local government for a noncontractor job scope.

(2)(a) An individual who holds a valid, active local license may work within the scope of such license in any local government jurisdiction in addition to the original licensing jurisdiction without having to obtain an additional local license, take an additional local license examination, or pay an additional local license fee. This section does not affect the ability of any local government to collect business taxes,

subject to s. 205.065.

(b) A licensee who works in the jurisdiction of a local government under the portability protections of this section shall provide a consumer who seeks his or her services information sufficient for the consumer to access the department's local licensing information under subsection (4), so that the consumer may verify his or her license status in the relevant licensing jurisdiction.

(3) A local government has the same disciplinary jurisdiction over an individual operating outside his or her original licensing jurisdiction pursuant to this section as it has over its own local licensees, including, but not limited to, the authority to suspend or revoke an individual licensee's ability to operate within its jurisdiction. A local government shall forward any disciplinary orders to an individual's original licensing jurisdiction for further action, as appropriate. The original licensing jurisdiction may take action against a licensee for being disciplined by another local licensing jurisdiction or for violating the original licensing jurisdiction's noncontractor job scope in another jurisdiction.

(4)(a) The department shall create and maintain an online local licensing information system whereby the public may review the licensing status of individuals holding a local license.

(b) A local government that issues a local license must provide information to the department which is necessary to

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

maintain the local licensing information system with respect to the jurisdiction of such local government. Information provided must include at least the name, business name, address, license number, and licensing status of the local licensee. A local government may fulfill this obligation by maintaining its own website that the department may link to, or by providing the information at least monthly to the department.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1169 Specialty Contracting Services
SPONSOR(S): McClure
TIED BILLS: **IDEN./SIM. BILLS:** SB 1102

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

SUMMARY ANALYSIS

Construction Contractors, including pool/spa contractors, are certified by or registered with the Construction Industry Licensing Board (CILB) housed within the Department of Business and Professional Regulation. Certified contractors can practice statewide and are licensed and regulated by the CILB. Registered contractors are licensed and regulated by a local jurisdiction and may practice within that locality. Registered contractors are required to register their license with the CILB.

Specialty contractors are contractors whose scope of work is limited to a particular phase of construction that is a subset of a certified contractor's scope of work, such as drywall or demolition. Specialty contractor licenses are created by the CILB through rulemaking. Specialty contractors certified by the CILB are permitted to practice in any jurisdiction in the state. The CILB has created eight types of pool/spa specialty contractors.

In order to perform contracting in the state, a person must be certified or registered (licensed) as a contractor, be an employee of a licensed contractor, or fall under an exemption provided in current law.

One exemption allows an unlicensed person to perform contracting if the person is under the supervision of licensed general, building, or residential contractor, and the work does not require licensure as a subcontractor such as roofing or plumbing. The work must be within the scope of the supervising contractor's license, the supervising contractor must be responsible for the work, and the unlicensed person must have a direct contract with the contractor. However, this is an exemption from state licensure requirements and it does not affect the ability of local governments to impose licensing requirements on unlicensed persons.

Another exemption allows unlicensed persons to perform contracting for the construction, remodeling, repair, or improvement of single-family residences and townhouses without obtaining a local license. The unlicensed person must be under the supervision of licensed general, building, or residential contractor, and the work cannot require licensure as a subcontractor. The supervision does not require a direct contract between the general, building, or residential contractor and the unlicensed person performing the contracting.

The bill creates an exemption to licensure requirements by allowing unlicensed persons to perform specialty contracting for the construction, remodeling, repair, or improvement of commercial or residential swimming pools, hot tubs, spas, and interactive water features without obtaining a specialty contractor license or local license. The person must be under the supervision of a licensed pool/spa contractor, the work must be within the scope of the supervising pool/spa contractor's license, and the work cannot require licensure as a subcontractor. The supervision does not require a direct contract between the supervising pool/spa contractor and the unlicensed person.

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

Contractors are regulated by ch. 489, F.S., which outlines the law pertaining to contractors in the state of Florida. Part I of ch. 489, F.S., covers contracting regulated by the Construction Industry Licensing Board (CILB) and pt. II of ch. 489, F.S., covers contracting regulated by the Electrical Contractors' Licensing Board. Both boards are housed in the Department of Business and Professional Regulation (DBPR).

Contractors are either certified or registered by the CILB. 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.[1]

"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.[2]

"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. Registered contractors must register their license with the CILB after obtaining a local license.[3]

In order to perform construction contracting in the state, a person must be certified or registered as a contractor, be an employee[4] of a certified or registered contractor, or fall under an exemption provided in current law.[5]

Swimming Pool/Spa Contractors

"Commercial pool/spa contractors" are individuals who are certified or registered to construct, repair, and service any public or private swimming pool, hot tub, or spa including:[6]

- Installing, repairing, or replacing existing equipment;
- Cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes;
- Installing new pool/spa equipment, interior finishes, package pool heaters, and perimeter piping and filter piping;
- Constructing equipment rooms or housing for pool/spa equipment; and
- The scope of work of a swimming pool/spa servicing contractor.

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[1] S. 489.107, F.S.
[2] S. 489.105, F.S.
[3] Ss. 489.105, & 489.117, F.S.
[4] "Employee" means a person who receives compensation from and is under the supervision and control of an employer who regularly deducts the F.I.C.A. and withholding tax and provides workers' compensation, all as prescribed by law. S. 489.103(2)(b), F.S.
[5] Ss. 489.103(2), & 489.113, F.S.
[6] S. 489.105(3)(j), F.S.

"Residential pool/spa contractors" are individuals who are certified or registered to construct repair, and service any residential swimming pool, hot tub, or spa. The scope of work is identical to the scope of work for commercial pool/spa contractors; however, residential pool/spa contractors may only work on residential swimming pools, hot tubs, and spas.[7]

"Swimming pool/spa servicing contractors" are individuals who are certified or registered to repair and service any public or private swimming pool, hot tub, or spa including:[8]

- Repairing or replacing existing equipment;
- Cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes;
- Installing new pool/spa equipment and interior refinishing;
- Reinstalling or adding pool heaters;
- Repairing or replacing perimeter piping and filter piping;
- Repairing equipment rooms or housing for pool/spa equipment; and
- Substantially or completing draining a swimming pool, or hot tub or spa, for the purpose of repair or renovation.

The scope of work for all three types of swimming pool/spa contractors does not include direct connections to a sanitary sewer system or to potable water lines.[9]

Water treatment or cleaning a pool or spa does not require a license unless the structural integrity of the pool or spa is affected, or equipment attached to the pool or spa must be substantially or completely disassembled or replaced in order to treat the water or clean the pool. Installing an aboveground pool also does not require a license.[10]

A contractor, including pool/spa contractors, must subcontract all electrical, mechanical, plumbing, roofing, sheet metal, and air-conditioning work, to a contractor certified or registered in the respective category, unless the pool/spa contractor also holds a state certificate or registration in the respective category.[11]

In order to obtain certification as one of the swimming pool/spa contractors, a person must:[12]

- Apply to DBPR in writing;
- Be 18 years of age;
- Be of good moral character;
- Pass the examination for the certification sought; and
- Have one of the following:
    - A bachelor degree from a four year college in the appropriate field of engineering, architecture, or building construction, and one year of proven experience;
    - Four years of experience as a foreman or a skilled worker with at least one year as a foreman;
    - A combination of college and experience as a foreman or skilled worker that equals four years with at least one of the years as a foreman; or
    - One year of experience and 60 hours of instruction courses approved by the CILB; however, this only applies to swimming pool/spa servicing contractors.

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[7] S. 489.105(3)(k), F.S.
[8] S. 489.105(3)(l), F.S.
[9] S. 489.105, F.S.
[10] Ss. 489.103(6), & 489.105, F.S.; DBPR, *Trust but Verify*, http://www.myfloridalicense.com/dbpr/reg/documents/trustbutverify_000.pdf?x40199 (last visited Jan. 29, 2020).
[11] S. 489.113(3), F.S.
[12] Ss. 489.111, & 489.113, F.S.

Pool/Spa Specialty Contractors

"Certified specialty contractors" are contractors whose scope of work is limited to a particular phase of construction that is a subset of a certified contractor's scope of work, such as a drywall specialty license or a demolition specialty license. Certified specialty contractor licenses are created by the CILB through rulemaking. Certified specialty contractors are permitted to practice in any jurisdiction in the state.[13]

The CILB has created eight types of pool/spa specialty contractor certifications. Pool/spa specialty contractors, except residential swimming pool/spa servicing specialty contractors, must work under contract with and under the supervision of a licensed swimming pool/spa contractor. However, they are not required to be employees of a licensed pool/spa contractor.[14]

The CILB has created the following eight types of pool/spa specialty contractors:[15]

- Swimming Pool Layout Specialty Contractor-
  - The scope of work is limited to the layout, shaping, steel installation, and rough piping of pools, spas, and hot tub shells.
- Swimming Pool Structural Specialty Contractor-
  - The scope of work is limited to the shaping and shooting of gunite, shotcrete, concrete, or similar product mix used in the construction of swimming pools and spas, and the installation of fiberglass shells and vinyl liners.
- Swimming Pool Excavation Specialty Contractors –
  - The scope of work is limited to the excavation and earthmoving for the installation of pools, spas, and hot tub shells;
- Swimming Pool Trim Specialty Contractor –
  - The scope of work is limited to the installation of tile and coping for pools, spas, hot tub shells, and decorative or interactive water displays;
- Swimming Pool Decking Specialty Contractor-
  - The scope of work is limited to the construction and installation of concrete flatwork, pavers and bricks, retaining walls, and footings associated with the construction of pools, spas, and hot tub shells.
- Swimming Pool Piping Specialty Contractor-
  - The scope of work is limited to the installation of piping or the installation of circulating, filtering, disinfecting, controlling, or monitoring equipment and devices used in the construction of pools, spas, hot tubs, and decorative or interactive water displays or areas.
- Swimming Pool Finishes Specialty Contractor-
  - The scope of work is limited to the coating or plastering of the interior surfaces of pools, spas, or hot tub shells.
- Residential swimming pool/spa servicing specialty contractor-
  - The scope of work is identical to the scope of work for swimming pool/spa servicing contractors; however, they may only work on residential swimming pools, hot tubs, and spas.

In order to obtain one of the certified specialty pool/spa contractor a person must:[16]

- Submit a written application to the CILB;
- Be at least 18 years of age;
- Be of good moral character;
- Pass a written examination for the specialty pool/spa contractor category sought; and

[13] S. 489.105(3)(q), F.S.
[14] Rule 61G4-15.032, F.A.C.; Rule 61G4-15.040, F.A.C.
[15] *Id.*
[16] Rule 61G4-15.032, F.A.C.

- Demonstrate four years of experience in the specialty pool/spa contractor category sought, or one year of experience and 60 hours of instruction courses approved by the CILB; however, the one year of experience only applies to residential swimming pool/spa servicing contractors.

Exemptions

A current exemption allows an unlicensed person to perform contracting if the person is under the supervision of licensed general, building, or residential contractor, and the work may not be work that requires licensure as a roofing, sheet metal, air-conditioning, mechanical, pool/spa, plumbing, solar, or underground utility and excavation contractor. The work must be within the scope of the supervising contractor's license, and the supervising contractor must also be responsible for the work. The unlicensed person must have a direct contract with the contractor. However, this is an exemption from state licensure requirements and it does not affect the ability of local governments to impose licensing requirements on unlicensed persons.[17]

In 1993, the Legislature passed the "Jim Walter" exemption that allows unlicensed persons to perform contracting for the construction, remodeling, repair, or improvement of single-family residences and townhouses[18] without obtaining a **local license**. The person must be under the supervision of licensed general, building, or residential contractor, and the work may not be work that requires licensure as a roofing, sheet metal, air-conditioning, mechanical, pool/spa, plumbing, solar, or underground utility and excavation contractor.[19]

Such supervision does not require a direct contract between the licensed general, building, or residential contractor and the unlicensed person performing the contracting.[20] A legal challenge to the applicability of this exemption to local license requirements in St. Johns County was not successful.[21]

Effect of the Bill

The bill provides that unlicensed persons may perform specialty contracting for the construction, remodeling, repair, or improvement of commercial or residential swimming pools, hot tubs, spas, and interactive water features[22] without obtaining a specialty contractor license or local license. The person must be under the supervision of licensed commercial or residential pool/spa contractor or swimming pool/spa servicing contractor, the work must be within the scope of the supervising contractor's license, and the work may not be work that requires licensure as a roofing, sheet metal, air-conditioning, mechanical, plumbing, solar, or underground utility and excavation contractor.

Such supervision does not require a direct contract between the commercial or residential pool/spa contractor or swimming pool/spa servicing contractor and the unlicensed person performing the specialty contracting services.

B. SECTION DIRECTORY:

Section 1. Amends s. 489.117, F.S., creating an exemption.

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

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[17] S. 489.113(2), F.S.; *Florida Home Builders Association v. St. Johns County*, 914 So. 2d 1035 (Fla. 5th DCA 2005).
[18] "Townhouses" was added to the exemption in 2003. Ch. 03-257, Laws of Fla.
[19] Ch. 93-154, Laws of Fla.; S. 489.117, F.S.; *Florida Home Builders Association* 914 So. 2d at 1037.
[20] *Id.*
[21] *Florida Home Builders Association 914 So. 2d at 1035.*
[22] The Florida Building Code defines "interactive water features" as a structure designed to allow for recreational activities with recirculated, filtered, and treated water; but having minimal standing water. Water from the interactive fountain type features is collected by gravity below grade in a collector tank or sump. The water is filtered, disinfected and then pumped to the feature spray discharge heads. The collector tank and water filtration features required make this structure a type of public swimming pool. S. 454 of the Sixth edition of the Florida Building Code (Building).

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 may have a positive impact on the private sector by allowing persons, who are under the supervision of licensed pool/spa contractors, to perform work on pools, spas, hot tubs, and interactive water features without having to obtain a license.

D. FISCAL COMMENTS:

None.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The term "interactive water feature" is not used in ch. 489, F.S. This could lead to confusion about what an interactive water feature is, especially if the term is amended or removed from a future edition of the Florida Building Code.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to specialty contracting services; amending s. 489.117, F.S.; authorizing the performance of certain specialty contracting services for commercial or residential swimming pools, hot tubs or spas, or interactive water features by certain persons under the supervision of specified licensed contractors; providing that such supervision does not require a direct contract between specified persons; providing an effective date.

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

Section 1. Paragraph (e) is added to subsection (4) of section 489.117, Florida Statutes, to read:

489.117 Registration; specialty contractors.—

(4)

(e) Any person who is not required to be certified or registered under s. 489.105(3)(d)-(i) or s. 489.105(3)(m)-(o) may perform specialty contracting services for the construction, remodeling, repair, or improvement of commercial or residential swimming pools, hot tubs or spas, or interactive water features, as defined in the Florida Building Code, without obtaining a local contractor license or specialty license if such person is under the supervision of a person who is certified or registered

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

under s. 489.105(3)(j)-(l), provided that the work is within the scope of the supervising contractor's license. Such supervision does not require a direct contract between a person certified or registered under s. 489.105(3)(j)-(l) and the person performing specialty contracting services.

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

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

BUSINESS & PROFESSIONS SUBCOMMITTEE

HB 1169 by Rep. McClure
Specialty Contracting Services

AMENDMENT SUMMARY
February 4, 2020

Amendment 1 by Rep. McClure (Strike-all amendment):
The strike-all amendment:

- Provides that the supervising pool/spa contractor must be responsible for the work performed by the unlicensed person;
- Clarifies that the unlicensed person may not be performing any work that requires an electrical contractor's license;
- Clarifies that the unlicensed person does not have to be an employee of the supervising pool/spa contractor;
- Clarifies that the bill does not limit any other exemptions to construction contractor licensure requirements in current law such as the handyman exemption; and
- Removes the term "interactive water feature" since this term is not used anywhere in the construction contractor practice act.

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 McClure offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (e) is added to subsection (4) of section 489.117, Florida Statutes, to read:

489.117 Registration; specialty contractors.—

(4)

(e) A person who is not certified or registered may perform the work of a specialty contractor, whose limited scope of work falls under s. 489.105(3)(j)-(l), for the construction, remodeling, repair, or improvement of commercial and residential swimming pools, hot tubs, and spas, without obtaining a local license or certification as a specialty contractor, provided the

person is supervised by a contractor certified or registered under s. 489.105(3)(j)-(l), the work is within the scope of the supervising contractor's license, the supervising contractor is responsible for the work, and the work does not require certification or registration under s. 489.105(3)(d)-(i), (m)-(o), or s. 489.505. Such supervision does not require a direct contract between the contractor certified or registered under s. 489.105(3)(j)-(l) and the person performing the work, or for the person performing the work to be an employee of the contractor certified or registered under s. 489.105(3)(j)-(l). This subsection does not limit the exemptions provided in s. 489.103.

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 specialty contracting; amending s. 489.117, F.S.; authorizing the performance of certain specialty contracting for commercial or residential swimming pools, hot tubs, and spas by certain persons under the supervision of specified licensed contractors; providing that such supervision does not require a direct contract between specified persons or

for a person to be an employee of specified licensed contractors; providing an effective date

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1353 Private Security Services
SPONSOR(S): Polsky
TIED BILLS: **IDEN./SIM. BILLS:** SB 1834

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Thompson	Anstead
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The Division of Licensing within the Department of Agriculture and Consumer Services (DACS) oversees Florida's private investigative, private security and recovery services industries. This includes licensing, enforcing compliance standards, and ensuring public protection from unethical and unlicensed activity. Currently, DACS offers 22 different types of private investigative, private security and recovery services licenses, and has issued a total of 183,415 licenses to qualified applicants.

The bill:

- Allows certain military firearm experience to replace Class "K" Firearms Instructor training;
- Requires the Florida Department of Law Enforcement (FDLE) to share results from the National Instant Criminal Background Check System (NICS) and Index with DACS to determine eligibility for a Class "G" Statewide Firearm license or a Class "K" Firearms Instructor license;
- Removes the requirement that DACS provide arrest information to industry businesses;
- During a state of emergency, allows DACS to waive certain experience requirements;
- Authorizes the issuance of certain license cards in digital format;
- Allows DACS to waive the firearms training option for Class "G" Statewide Firearm recertification if the licensee holds a valid Class "K" Firearms Instructor license;
- Gives DACS more flexibility when charging late fees for renewal applications;
- Allows issuance of a temporary Class "G" Statewide Firearm license if the applicant currently holds an individual or business private investigative or security officer license;
- Authorizes DACS to publish the industry newsletter and pamphlet online in lieu of paper format;
- Removes the requirement that applicants complete the full training and examination in order to reinstate their license after a license is invalid for more than one year;
- Authorizes training for initial Class "D" Security Officer licensure to be conducted online;
- Authorizes electronic verification, instead of verification under oath, for certain applications for licensure.

The bill will have an indeterminate fiscal impact on state government and the private sector. The bill is not expected to have a fiscal impact on local governments. See Fiscal Analysis.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Private Investigative, Private Security and Recovery Services

The Division of Licensing (Division) within the Department of Agriculture and Consumer Services (DACS) oversees Florida's private investigative, private security and recovery services industries. The regulatory oversight of the private investigative, private security and recovery services industries includes licensing, enforcing compliance standards, and ensuring public protection from unethical business practices and unlicensed activity.[1]

Currently, the Division offers 22 different types of private investigative, private security and recovery services licenses. As of December 31, 2019, the Division had issued a total of 183,415 licenses to qualified applicants. The following chart provides a breakdown of the total number of each license type.[2]

License Type	License Title	Total
C	Private Investigators	7,195
CC	Private Investigator Interns	1,369
A	Private Investigative Agencies	2,790
AA	Private Investigative Agency Branch Offices	23
MA	Private Investigative Agency Managers	80
M	Private Investigative/Security Agency Managers	475
D	Security Officers	140,166
B	Security Agencies	1,770
BB	Security Agency Branch Offices	193
MB	Security Managers	1,414
AB	Security Agency/Private Investigative Agency Branch Offices	20
DS	Security Officer Schools	377
DI	Security Officer Instructors	1,678
G	Statewide Firearm Licenses	23,701
K	Firearms Instructors	638
E	Recovery Agents	799
EE	Recovery Agent Interns	351
R	Recovery Agencies	320
RR	Recovery Agency Branch Offices	40
MR	Recovery Agency Managers	2
RS	Recovery Agent Schools	5
RI	Recovery Agent Instructors	9
Total Number of Licenses		**183,415**

[1] The Florida Department of Agriculture and Consumer Services, *Division of Licensing*, https://www.fdacs.gov/Divisions-Offices/Licensing (last visited Jan. 26, 2020).

[2] The Florida Department of Agriculture and Consumer Services, *Division of Licensing Statistical Reports*, https://www.fdacs.gov/Divisions-Offices/Licensing/Statistical-Reports (last visited Jan. 27, 2020).

Initial Application for Licensure for Private Investigative, Private Security and Recovery Services

Current Situation

Each individual, partner, or principal officer in a corporation, is required to file with DACS a complete application signed and verified by the individual "under oath" as provided in s. 92.525, F.S., which authorizes documents to be verified in the following three ways:

- Under oath or affirmation taken or administered before a judge, clerks or deputy clerk of court, or any notary public;
- Under oath or affirmation taken or administered by law enforcement officer, correctional officer, or traffic officer under electronic means or in the physical presence of the affiant; or
- Signing a written declaration.[3]

However, since the law specifies that applications must be verified "under oath," the law does not allow for electronic verification of applications.

An applicant for a Class "G" Statewide Firearm license is required to submit an application, a background history check, a full set of fingerprints, and satisfy minimum training criteria for firearms established by DACS rule, including, but not limited to, 28 hours of range and classroom training taught and administered by a Class "K" Firearms Instructor, with no more than 8 hours consisting of range training.[4]

To become licensed as a Class "K" Firearms Instructor, an applicant is required to submit an application, a background history check, a full set of fingerprints, and provide one of the following certificates, which indicate a proficiency with firearms instruction:

- The Florida Criminal Justice Standards and Training Commission Instructor Certificate and written confirmation by the commission that the applicant possesses an active firearms certification;
- A valid National Rifle Association Private Security Firearm Instructor Certificate issued not more than three years before the submission of the applicant's Class "K" application; or
- A valid firearms instructor certificate issued by a federal law enforcement agency issued not more than three years before the submission of the applicant's Class "K" application.[5]

Proposed Changes

The bill authorizes former military firearms instructors to use their experience in the military as a training requirement when applying for a Class "K" Firearms Instructor license. Specifically, the bill allows applicants for a Class "K" Firearms Instructor license to submit a valid DD Form 214 issued by the United States Department of Defense not more than three years before the submission of the applicant's Class "K" application, indicating that the applicant has been honorably discharged and served at least three years in the military as a firearms instructor.

The bill clarifies that in order to obtain a Class "G" Statewide Firearms license, an individual must receive training from a licensed Class "K" Firearms Instructor.

The bill also revises the reference to the "individual" who is required to sign and verify an application by instead referencing the "applicant."

[3] S. 493.6105, F.S.
[4] *Id.*
[5] *Id.*

Criminal Background Checks

Current Situation

Individual applicants for private investigative, private security and recovery services licensure must be of good moral character, not have a disqualifying criminal history or disqualifying history of mental illness, drug or alcohol abuse, and must be authorized to work in this country. Each applicant must disclose contact and background information, and submit to a federal background check. Individuals applying for a Class "G" Statewide Firearm or a Class "K" Firearms Instructor license, must not be prohibited from purchasing or possessing a firearm by state or federal law.[6]

The National Instant Criminal Background Check System (NICS) is a national system that checks available records on persons who may be disqualified from receiving firearms, and includes active records in the NICS Indices by state. The FBI developed the system through a cooperative effort with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and local and state law enforcement agencies. The NICS is designed to respond instantly on most background check inquiries.[7]

Current law does not authorize the Florida Department of Law Enforcement (FDLE) to share information from the NICS and Indices with DACS for purposes of determining eligibility of Class "G" Statewide Firearm or a Class "K" Firearms Instructor license applicants.

Proposed Changes

The bill authorizes FDLE to provide results from the "NICS and Index" to DACS to determine eligibility for a Class "G" Statewide Firearm license or a Class "K" Firearms Instructor license to the extent allowed under federal law.

Notice of Arrest

Current Situation

Private investigative, private security and recovery services licensees are required to notify their employer within three calendar days if they are arrested. If DACS receives information about an arrest within the state of a licensee for a crime that could potentially disqualify the person from holding such a license, DACS is required to provide the arrest information to the agency that employs the licensee.[8]

Proposed Changes

The bill removes the requirement that DACS provide arrest information to an agency related to their employees. However, licensees will still be required to notify their employer within three calendar days of an arrest.

Reciprocity

Current Situation

DACS is authorized to adopt rules for:

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[6] S. 493.6106, F.S.

[7] The Federal Bureau of Investigation, *National Instant Criminal Background Check System (NICS)*, https://www.fbi.gov/services/cjis/nics (last visited Jan. 26, 2020).

[8] S. 493.6108, F.S.

- Entering into reciprocal agreements with other states or territories of the United States for the purpose of licensing persons who are currently licensed to perform similar services in the other states or territories; or
- Allowing a person who is licensed in another state or territory to perform similar services in this state, on a temporary and limited basis, without the need for licensure.[9]

The requirements in the other state or territory must be substantially similar to, or greater than, those established in Florida. The applicant is required to have "engaged in licensed activities for at least 1 year" in the other state or territory with no disciplinary action. The Commissioner of Agriculture or other appropriate authority of the other state or territory must agree to accept service of process for those licensees who are operating in this state on a temporary basis.[10]

Proposed Changes

The bill authorizes DACS to waive the requirement for out-of-state applicants to have "engaged in licensed activities for at least one year" in the other state or territory, during a declared state of emergency. This will make it easier to provide temporary private investigative, private security and recovery services during a state of emergency.

Identification Cards

Current Law

Currently, DACS provides all private investigative, private security and recovery services licensees with license identification (ID) cards. The ID cards are required to:

- Be on a form prescribed by DACS; and
- Include the licensee's name, license number, expiration date of the license, and any other information DACS deems necessary.[11]

The following licensees must be in the possession of the related ID card while on duty:

- Class "C" Private Investigators;
- Class "CC" Private Investigator Interns;
- Class "D" Security Officers;
- Class "E" Recovery Agents;
- Class "EE" Recovery Agent Interns;
- Class "M" Private Investigative/Security Agent Managers;
- Class "MA" Private Investigative Managers;
- Class "MB" Security Managers;
- Class "MR" Recovery Agency Managers; and
- Class "G" Statewide Firearms Licenses.[12]

Proposed Changes

The bill authorizes DACS to issue a single license card indicating that the licensee holds multiple classes of licenses, or an electronic license in a digital format containing a quick-response barcode identifying the individual licensure class or classes.

The bill also authorizes licensees to carry a digital image of the license card on his or her person in lieu of a physical card.

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[9] S. 493.6109, F.S.
[10] *Id.*
[11] S. 493.6111(1), F.S.
[12] *Id.*

Change of Partners

Current Situation

Each private investigative, private security and recovery services agency is required to, upon the employment or termination of employment of a licensee, report such within 15 calendar days to DACS. For terminations, the reason for termination must be reported. The report must be submitted electronically in a manner prescribed by DACS.[13]

Proposed Changes

The bill revises the requirement that private investigative, private security and recovery services agencies notify DACS of a change in employment or termination of a licensed employee. Instead, the bill requires notification only in the case of termination for a violation of the law governing the private investigative, private security and recovery services industry.

Renewal Application for Licensure

Current Situation

Currently, an applicant for renewal of a Class "G" Statewide Firearm license is required to "submit proof that he or she has received" during each year of the license period:

- A minimum of four hours of firearms recertification training taught by a Class "K" Firearms Instructor licensee; and
- Has complied with such other health and training requirements that DACS must adopt by rule.[14]

Proof of completion of firearms recertification training must be submitted to DACS by the applicant upon completion of the training.[15]

DACS is authorized to waive the firearms training requirement if:

- The applicant provides proof of current certification as a law enforcement officer or correctional officer under the Criminal Justice Standards and Training Commission and has completed law enforcement firearms requalification training annually during the previous two years of the licensure period;
- The applicant provides proof of current certification as a federal law enforcement officer and has received law enforcement firearms training administered by a federal law enforcement agency annually during the previous two years of the licensure period; or
- The applicant submits a valid firearm certificate among those specified for Class "K" Firearms Instructor licenses in s. 493.6105(6)(a), F.S., and provides proof of having completed requalification training during the previous two years of the licensure period.[16]

Additionally, each Class "K" Firearm Instructor licensee is required to submit one of the firearm certificates specified under s. 493.6105(6), F.S., as proof that he or she remains certified to provide firearms instruction.[17]

Failure of a private investigative, private security and recovery services licensee to renew a license on or before its expiration requires the licensee to:

- Renew his or her license by fulfilling the applicable renewal requirements; and

[13] S. 493.6112(2), F.S.
[14] S. 493.6113(3)(b), F.S.
[15] *Id.*
[16] *Id.*
[17] S. 493.6113(3)(d), F.S.

- Pay a late fee equal to the amount of the license fee.[18]

Proposed Changes

The bill:

- Requires Class "G" Statewide Firearm license renewal applicants to "submit proof" of compliance with other rules regarding health and training requirements; and
- Requires the Class "K" Firearms Instructors to submit proof of each student's completion of firearm requalification training to DACS electronically in a manner prescribed by DACS, instead of requiring the applicant to submit such proof.

The bill allows DACS to waive the firearms training requirement for Class "G" Statewide Firearm license renewal applicants who provide proof that they hold a valid Class "K" Firearms Instructor license. It also removes DACS' ability to waive such training for those that complete training in the previous two years.

The bill includes an additional option that allows DACS to waive the firearms training requirement for Class "G" Statewide Firearm license renewal applicant who provide proof of completion of annual firearms training in accordance with the requirements of the federal Law Enforcement Officers' Safety Act, 18 U.S.C. ss. 926B and 926C.

The bill includes an additional option that allows DACS to waive the firearms training requirement for Class "K" Firearms Instructor license renewal applicants who submit proof of having taught at least six 28-hour firearms instruction courses to Class "G" Statewide Firearm license applicants during the previous three-year licensure period.

The bill makes the automatic late fee for late filed private investigative, security, or recovery services license renewal applications discretionary, instead of mandatory.

Temporary Class "G" Statewide Firearm License

Current Situation

Currently, DACS is authorized to issue a temporary[19] Class "G" Statewide Firearm license, on a case-by-case basis, if:

- The agency or employer has certified that the applicant has been determined to be mentally and emotionally stable by either:
  - A validated written psychological test taken within the previous 12-month period;
  - An evaluation by a psychiatrist or psychologist licensed in this state or by the Federal Government made within the previous 12-month period; or
  - Presentation of a DD form 214, issued within the previous 12-month period, which establishes the absence of emotional or mental instability at the time of discharge from military service;
- DACS has reviewed the mental health and substance abuse data provided by FDLE, as authorized in s. 493.6108(3), F.S., and has determined the applicant is not prohibited from licensure based upon this data;
- The applicant has submitted a complete application for a Class "G" Statewide Firearm license, with a notation that she or he is seeking the license;
- The applicant has completed all Class "G" Statewide Firearm license minimum training requirements; and

[18] *Id.*

[19] S. 493.6115(15), F.S., provides that the temporary Class "G" license is valid until the Class "G" license is issued or denied. If the department denies the Class "G" license, any temporary Class "G" license issued to that individual is void, and the individual shall be removed from armed duties immediately.

- The applicant has received approval from DACS subsequent to its conduct of a criminal history record check as authorized in s. 493.6108(1), F.S.[20]

Proposed Changes

The bill allows issuance of a temporary Class "G" Statewide Firearm license if the applicant currently holds one of the following licenses:

- Class "C" Private Investigators;
- Class "CC" Private Investigator Interns;
- Class "D" Security Officers;
- Class "M" Private Investigative/Security Agent Managers;
- Class "MA" Private Investigative Managers; and
- Class "MB" Security Managers

Industry Newsletter

Current Situation

Currently, DACS is authorized to periodically publish a newsletter to advise private investigative, private security and recovery services licensees of information that DACS or the Private Investigation, Recovery and Security Advisory Council [21] determines is of interest to the industry. The newsletter must:

- Contain the name and locality of any licensed or unlicensed person or agency against which DACS has filed a final order relative to an administrative complaint, and the final disposition;
- Be published not less than two, or more than four, times annually; and
- Notice intervening changes to the regulatory situation.[22]

In addition, DACS is required to develop and make available to each Class "C" Private Investigator, Class "D" Security Officer, and Class "E" Recovery Agent licensee, and all interns, a pamphlet detailing in plain language the legal authority, rights, and obligations of each class of licensure. The pamphlet should present situations that the licensee may be expected to commonly encounter, and provide information on legal options, authority, limits to authority, and obligations.[23]

DACS is also required to supplement the pamphlet with citations to statutes and legal decisions, as well as a selected bibliography that would direct the licensee to certain materials, the study of which would enhance his or her professionalism. DACS must provide a single copy of the appropriate pamphlet, without charge, to each individual to whom a license is issued, but may charge for additional copies to recover publication costs. The pamphlet must be updated every two years as necessary to reflect rule or statutory changes, or court decisions.[24]

Proposed Changes

The bill authorizes DACS, at its discretion, to publish all information related to the newsletter and pamphlet online in lieu of paper format.

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[20] S. 493.6115(12), F.S.

[21] In accordance with s. 493.6104, F.S., DACS has established an advisory council known as the Private Investigation, Recovery and Security Advisory Council.

[22] S. 493.6123, F.S.

[23] *Id.*

[24] *Id.*

Private Investigative Intern License Requirements

Current Situation

Before submission of an application to DACS, the applicant for a Class "CC" Private Investigative Intern license must:

- Complete a minimum of 40 hours of professional training pertaining to general investigative techniques and the law governing private investigative, private security and recovery services, which course is offered by a state university or by a school, community college, college, or university under the purview of the Department of Education; and
- Pass an examination.[25]

The certificate evidencing satisfactory completion of the 40 hours of professional training must be submitted by the applicant with the application, and may be provided by face-to-face presentation, online technology, or a home study course in accordance with rules and procedures of the Department of Education. The administrator of the examination must verify the identity of each applicant taking the examination.[26]

Upon successful completion of the training, and passage of an examination, the school, community college, college, or university is required to issue a certificate of completion to the applicant on a form established by DACS rule.[27]

DACS is also required to establish by rule the general content of the professional training and the examination criteria.[28]

If the license of an applicant for relicensure is invalid for more than one year, the applicant must complete the full training and examination in order to reinstate their license.[29]

An individual licensed on or before August 31, 2008, is not required to complete additional training hours in order to renew an active license beyond the total required hours. In addition, the timeframe for completion in effect at the time the licensee was licensed applies.[30]

Proposed Changes

The bill requires applicants for a Class "CC" Private Investigative Intern license to complete the required training within three years after receipt of the application.

The bill requires the school, community college, college, or university, instead of the applicant, to submit proof of successful completion of the required training to DACS.

The bill removes the requirement that applicants complete the full training and examination in order to reinstate their license after a license is invalid for more than one year.

The bill also removes the exemption from having to complete additional training hours for private investigative intern renewal applicants with active licenses, who were licensed on or before August 31, 2008.

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[25] S. 493.6203(6)(b), F.S.
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] S. 493.6203(6)(c), F.S.

Private Security Services

Current Situation

An initial applicant for a Class "D" Security Officer license is required to submit proof of successful completion of a minimum of 40 hours of professional training at a school or training facility licensed by DACS. DACS must establish by rule the general content and number of hours of each subject area to be taught. Upon reapplication for a license, an individual whose license has been expired for one year or more is considered an initial applicant and must comply with the initial applicant training requirements.[31]

Proposed Changes

The bill requires Class "D" Security Officer license applicants to "successfully complete" instead of "submit proof of successful completion" of the required training within three years after date of receipt of the application. The bill also requires that, upon successful completion of the training, the schools or training facilities must submit results directly to DACS electronically in a manner prescribed by DACS rule, and provide a copy to the trainee.

The bill also authorizes the training of applicants for initial Class "D" Security Officer licensure to be conducted in-person or online, as provided by DACS rule. All approved online training must be conducted through a secure website of the school or training facility, provided that the applicant's identity, attendance, and successful completion of such training are verified.

The bill requires DACS to adopt by rule what portion of the 40 hours of training may be conducted online, the method of delivery and security protocols for online training, and any other rules necessary for the regulation of schools providing in-person or online training.

The bill also removes the requirement that applicants complete the full training and examination in order to reinstate their license after a license is invalid for more than one year.

Security Officer School or Training Facility

Current Situation

An application for a Class "D" Security Officer license must be signed and verified by the applicant under oath as provided in s. 92.525, F.S., which authorizes verification of documents in the following three ways:

- Under oath or affirmation taken or administered before a judge, clerks or deputy clerk of court, or any notary public;
- Under oath or affirmation taken or administered by law enforcement officer, correctional officer, or traffic officer under electronic means or in the physical presence of the affiant; or
- Signing a written declaration.[32]

However, since the law specifies that applications must be verified "under oath," this does not allow for electronic verification of applications.

The application for a Class "D" Security Officer license must contain, at a minimum, the following information:

- The name and address of the school or training facility and, if the applicant is an individual, her or his name, address, and social security or alien registration number;

[31] S. 493.6303(4), F.S.
[32] S. 493.6304, F.S.

- The street address of the place at which the training is to be conducted; and
- A copy of the training curriculum and final examination to be administered.[33]

Proposed Changes

The bill:
- Requires security officer school, training facility, or instructor license applicants to provide a website in their application, if applicable; and
- Removes the restriction that such applicants verify their application "under oath" as provided in s. 92.525, F.S., and simply requires verification "by the applicant as provided in s. 92.525, F.S.," which would allow for electronic verification of the application.

Recovery Agent and Recovery Agent Interns

Current Situation

Currently, an applicant for a Class "E" Recovery agent or a Class "EE" Recovery Agent Intern license is required to submit proof of successful completion of 40 hours of professional training at a school or training facility licensed by DACS. DACS is required to establish by rule the general content for the training.[34]

Proposed Changes

The bill requires initial license applicants for Class "E" Recovery Agent or Class "EE" Recovery Agent Intern licenses to "successfully complete" instead of "submit proof of successful completion" of the required training within three years after date of receipt of the application. In addition, the bill requires that upon completion of the training, the schools or training facilities must submit the results directly to DACS electronically in a manner prescribed by rule, and provide a copy to the trainee.

Recovery Agent School or Training Facility

Current Situation

An application to license a school, training facility, or instructor that offers the training for Class "E" Recovery Agent or Class "EE" Recovery Agent Intern applicants must be signed and verified by the applicant under oath as provided in s. 92.525, F.S., which authorizes verification of documents in the following three ways:
- Under oath or affirmation taken or administered before a judge, clerks or deputy clerk of court, or any notary public;
- Under oath or affirmation taken or administered by law enforcement officer, correctional officer, or traffic officer under electronic means or in the physical presence of the affiant; or
- Signing a written declaration.[35]

However, since the law specifies that the applications must be verified "under oath," the law does not allow for electronic verification of applications.

Proposed Changes

The bill removes the restriction that the school, training facility, or instructor, that offers the training for Class "E" Recovery Agent or Class "EE" Recovery Agent Intern applicants, verify their application

[33] *Id.*
[34] S. 493.6402(2), F.S.
[35] S. 493.6406, F.S.

"under oath" as provided in s. 92.525, F.S., and simply requires verification "by the applicant as provided in s. 92.525, F.S." This will allow for electronic verification of the application.

B. SECTION DIRECTORY:

Section 1 Amends s. 493.6105, F.S., relating to initial application for license.

Section 2 Amends s. 493.6106, F.S., relating to license requirements; posting.

Section 3 Amends s. 493.6108, F.S., relating to investigation of applicants by DACS.

Section 4 Amends s. 493.6109, F.S., relating to reciprocity.

Section 5 Amends s. 493.6111, F.S., relating to license; contents; identification card.

Section 6 Amends s. 493.6112, F.S., relating to notification of change in employment or termination.

Section 7 Amends s. 493.6113, F.S., relating to renewal application for licensure.

Section 8 Amends s. 493.6115, F.S., relating to weapons and firearms.

Section 9 Amends s. 493.6123, F.S., relating to the industry newsletter and pamphlets.

Section 10 Amends s. 493.6203, F.S., relating to license requirements.

Section 11 Amends s. 493.6303, F.S., relating to license requirements.

Section 12 Amends s. 493.6304, F.S., relating to security officer school or training facility.

Section 13 Amends s. 493.6403, F.S., relating to license requirements.

Section 14 Amends s. 493.6406, F.S., relating to recovery agent school or training facility.

Section 15 Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Allowing relevant military background to count towards firearm training requirements of Class "K" firearms instructor license applicants may increase the application rate and related license fees received by DACS. It is unknown how many applicants will qualify. The fiscal impact is indeterminate.

2. Expenditures:

   Removing the requirement that DACS provide arrest information to industry businesses, and authorizing DACS to publish the industry newsletter and pamphlet online instead of in paper format, may reduce the cost to DACS for providing such materials. The fiscal impact is indeterminate.

   Authorizing DACS to issue license cards in digital format for private investigative, security, or recovery services licenses may reduce the cost to DACS for creating physical license cards. It is

unknown how many licensed employees will choose to use a digital license. The fiscal impact is indeterminate. There are currently 183,415 licensed individuals and businesses in the industry.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Removing the requirement for private investigative, security, or recovery service businesses to notify DACS of a termination of employment will reduce related costs to these businesses. It is unknown how many changes in employment may occur. The fiscal impact is indeterminate.

Increasing eligibility for the firearms training waiver for Class "G" Statewide Firearm license renewal applicants will streamline the license renewal process, and likely have a positive fiscal impact on these individuals. It is unknown how many applicants will qualify. The fiscal impact is indeterminate.

Allowing Class "K" Firearms Instructor license renewals to submit proof of having taught at least six 28-hour firearms instruction courses to Class "G" Statewide Firearm applicants during the previous three-year licensure period will streamline the license renewal process and likely have a positive fiscal impact on these individuals. It is unknown how many applicants will qualify. The fiscal impact is indeterminate.

Allowing DACS to use discretion when determining the late fee for private investigative, security, or recovery services license renewal applications will have a positive fiscal impact on the private sector. The fiscal impact is indeterminate.

Requiring the training entities to submit proof of the trainees' successful completion of the training to DACS will increase expenditures to the training entities. The bill applies this change to the following entities:

- Class "K" Firearms Instructors;
- Schools, community colleges, colleges, or universities; and
- Training facilities.

Allowing Class "D" Security Officer training to be conducted online will likely reduce expenditures to these individuals since they are currently required to provide training in person, and increase revenue to the businesses that provide online training. It is unknown how many applicants will choose to participate in online training. The fiscal impact is indeterminate.

Removing the requirement that out-of-state applicants for private investigative, private security and recovery services licensure must have "engaged in licensed activities for at least one year" in the other state or territory, during a declared state of emergency, will streamline the application process and make it easier to provide temporary private investigative, private security and recovery services during a state of emergency, thereby increasing related revenues to these businesses. The fiscal impact is indeterminate.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill requires DACS to adopt by rule the following:

- The portion of the Class "D" Security Officer training that may be conducted online;
- The manner in which Class "G" Statewide Firearm license applicants must complete their training, and the manner in which the Class "K" Firearms Instructor must submit the training results to DACS;
- The manner in which Class "CC" Private Investigative Intern license applicants must complete their training, and the manner in which the school, community college, college, or university must submit the training results to DACS;
- The manner in which Class "D" Security Officer license applicants must complete their training, and the manner in which the school, or training facility must submit the training results to DACS; and
- The manner in which Class "E" Recovery Agent or Class "EE" Recovery Agent Intern license applicants must complete their training, and the manner in which the school, or training facility must submit the training results to DACS.

There appears to be sufficient rulemaking authority in the bill and current law.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to private security services; amending s. 493.6105, F.S.; requiring an applicant for a Class "K" firearms instructor license to submit a certain United States Department of Defense form issued within a specified time period before submission of the application; amending s. 493.6106, F.S.; authorizing the Department of Law Enforcement to provide criminal background check results to the Department of Agriculture and Consumer Services to determine eligibility for a Class "G" license or a Class "K" license; amending s. 493.6108, F.S.; deleting a provision requiring the department to provide certain information to an agency that employs a licensee; amending s. 493.6109, F.S.; providing an exception to a certain experience requirement for an applicant during a declared state of emergency; amending s. 493.6111, F.S.; authorizing the department to issue a single license card authorizing multiple classes of licensure and to issue such license card or an electronic license in a digital format; authorizing a licensee to carry a digital image of his or her license card in lieu of a physical card; amending s. 493.6112, F.S.; requiring each agency to report a termination of employment for certain violations;

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

amending s. 493.6113, F.S.; revising renewal application requirements for Class "G" and Class "K" licensees; requiring the department to establish by rule the amount of a renewal application late fee; amending s. 493.6115, F.S.; authorizing the department to issue a temporary Class "G" license if the applicant has been issued and currently holds specified licenses; amending s. 493.6123, F.S.; authorizing the department to publish certain information online; amending ss. 493.6203 and 493.6303, F.S.; revising and providing training requirements for an applicant for a Class "CC" or an initial Class "D" license; deleting provisions relating to renewal requirements; amending s. 493.6304, F.S.; revising application requirements for any school, training facility, or instructor who offers training for a Class "D" license; amending s. 493.6403, F.S.; revising training requirements for an applicant for an initial Class "E" or a Class "EE" license; amending s. 493.6406, F.S.; deleting the requirement that the licensure application be signed under oath for any school, training facility, or instructor who offers training for Class "E" or Class "EE" applicants; providing an effective date.

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

Section 1. Subsections (2) and (5) and paragraph (a) of subsection (6) of section 493.6105, Florida Statutes, are amended to read:

493.6105 Initial application for license.—

(2) Each application shall ~~must~~ be signed and verified by the applicant ~~individual~~ under oath as provided in s. 92.525.

(5) In addition to the requirements outlined in subsection (3), an applicant for a Class "G" license must satisfy minimum training criteria for firearms established by rule of the department, which training criteria includes, but is not limited to, 28 hours of range and classroom training taught and administered by a licensed Class "K" firearms instructor ~~licensee~~; however, no more than 8 hours of such training shall consist of range training. The department may waive the foregoing firearms training requirement if:

(a) The applicant provides proof that he or she is currently certified as a law enforcement officer or correctional officer pursuant to the requirements of the Criminal Justice Standards and Training Commission or has successfully completed the training required for certification within the last 12 months.

(b) The applicant provides proof that he or she is currently certified as a federal law enforcement officer and has

received law enforcement firearms training administered by a federal law enforcement agency.

(c) The applicant submits a valid firearm certificate among those specified in paragraph (6)(a).

(6) In addition to the requirements under subsection (3), an applicant for a Class "K" license must:

(a) Submit one of the following:

1. The Florida Criminal Justice Standards and Training Commission Instructor Certificate and written confirmation by the commission that the applicant possesses an active firearms certification.

2. A valid National Rifle Association Private Security Firearm Instructor Certificate issued not more than 3 years before the submission of the applicant's Class "K" application.

3. A valid firearms instructor certificate issued by a federal law enforcement agency issued not more than 3 years before the submission of the applicant's Class "K" application.

4. A valid DD Form 214 as issued by the United States Department of Defense not more than 3 years before the submission of the applicant's Class "K" application, indicating that the applicant has been honorably discharged and served at least 3 years in the military as a firearms instructor.

Section 2. Paragraph (g) of subsection (1) of section 493.6106, Florida Statutes, is amended to read:

493.6106 License requirements; posting.—

(1) Each individual licensed by the department must:

(g) Not be prohibited from purchasing or possessing a firearm by state or federal law if the individual is applying for a Class "G" license or a Class "K" license. The Department of Law Enforcement is authorized to provide results from the National Instant Criminal Background Check System and Index to the department to determine eligibility for a Class "G" license or a Class "K" license to the extent allowed under federal law.

Section 3. Subsection (5) of section 493.6108, Florida Statutes, is amended to read:

493.6108 Investigation of applicants by Department of Agriculture and Consumer Services.—

(5) A person licensed under this chapter must notify his or her employer within 3 calendar days if he or she is arrested for any offense. ~~If the department receives information about an arrest within the state of a person who holds a valid license issued under this chapter for a crime that could potentially disqualify the person from holding such a license, the department must provide the arrest information to the agency that employs the licensee.~~

Section 4. Paragraph (b) of subsection (2) of section 493.6109, Florida Statutes, is amended to read:

493.6109 Reciprocity.—

(2) The rules authorized in subsection (1) may be promulgated only if:

(b) The applicant has engaged in licensed activities for at least 1 year in the other state or territory with no disciplinary action against him or her; however, during a declared state of emergency, the requirement that an applicant be licensed for at least 1 year may be waived.

Section 5. Subsection (1) of section 493.6111, Florida Statutes, is amended to read:

493.6111 License; contents; identification card.—

(1) All licenses issued pursuant to this chapter shall be on a form prescribed by the department and shall include the licensee's name, license number, expiration date of the license, and any other information the department deems necessary. The department may issue a single license card authorizing multiple classes of licensure and may issue such license card or an electronic license in a digital format containing a quick-response barcode identifying the individual licensure class. Class "C," Class "CC," Class "D," Class "E," Class "EE," Class "M," Class "MA," Class "MB," Class "MR," and Class "G" licenses shall be in the possession of individual licensees while on duty. A licensee may carry a digital image of his or her license card on his or her person in lieu of a physical card.

Section 6. Subsection (2) of section 493.6112, Florida Statutes, is amended to read:

493.6112 Notification to Department of Agriculture and Consumer Services of changes of partner or officer or

employees.—

(2) Each agency shall, upon the ~~employment or~~ termination of employment of a licensee for a violation of this chapter, report such ~~employment or~~ termination within 15 calendar days to the department and~~, in the case of a termination,~~ report the reason or reasons therefor. The report shall be submitted electronically in a manner prescribed by the department.

Section 7. Paragraphs (b) and (d) of subsection (3) and subsection (4) of section 493.6113, Florida Statutes, are amended to read:

493.6113 Renewal application for licensure.—

(3) Each licensee is responsible for renewing his or her license on or before its expiration by filing with the department an application for renewal accompanied by payment of the renewal fee and the fingerprint retention fee to cover the cost of ongoing retention in the statewide automated biometric identification system established in s. 943.05(2)(b). Upon the first renewal of a license issued under this chapter before January 1, 2017, the licensee shall submit a full set of fingerprints and fingerprint processing fees to cover the cost of entering the fingerprints into the statewide automated biometric identification system pursuant to s. 493.6108(4)(a) and the cost of enrollment in the Federal Bureau of Investigation's national retained print arrest notification program. Subsequent renewals may be completed without submission

of a new set of fingerprints.

(b) Each Class "G" licensee shall additionally complete ~~submit proof that he or she has received~~ during each year of the license period a minimum of 4 hours of firearms requalification training taught by a Class "K" licensee and submit proof that he or she has complied with such other health and training requirements that the department shall adopt by rule. Proof of completion of firearms requalification training by each student shall be submitted electronically to the department by the Class "K" firearms instructor upon completion of the training in a manner prescribed by rule of the department. A Class "G" licensee must successfully complete this requalification training for each type and caliber of firearm carried in the course of performing his or her regulated duties. If the licensee fails to complete the required 4 hours of annual training during the first year of the 2-year term of the license, the license shall be automatically suspended. The licensee must complete the minimum number of hours of range and classroom training required at the time of initial licensure and submit proof of completion of such training to the department before the license may be reinstated. If the licensee fails to complete the required 4 hours of annual training during the second year of the 2-year term of the license, the licensee must complete the minimum number of hours of range and classroom training required at the time of initial licensure and submit

proof of completion of such training to the department before the license may be renewed. The department may waive the firearms training requirement if:

1. The applicant provides proof that he or she is currently certified as a law enforcement officer or correctional officer under the Criminal Justice Standards and Training Commission and has completed law enforcement firearms requalification training annually during the previous 2 years of the licensure period;

2. The applicant provides proof that he or she is currently certified as a federal law enforcement officer and has received law enforcement firearms training administered by a federal law enforcement agency annually during the previous 2 years of the licensure period; ~~or~~

3. The applicant holds a valid Class "K" license and submits a valid firearm certificate among those specified in s. 493.6105(6)(a); or ~~and provides proof of having completed requalification training during the previous 2 years of the licensure period~~

4. The applicant provides proof that he or she has completed annual firearms training in accordance with the requirements of the federal Law Enforcement Officers' Safety Act, 18 U.S.C. ss. 926B and 926C.

(d) Each Class "K" licensee shall additionally submit:

1. One of the certificates specified under s. 493.6105(6)

as proof that he or she remains certified to provide firearms instruction; or

2. Proof of having taught at least six 28-hour firearms instruction courses to Class "G" applicants during the previous 3-year licensure period.

(4) A licensee who fails to file a renewal application on or before its expiration must renew his or her license by fulfilling the applicable requirements of subsection (3) and may be required to pay ~~by paying~~ a late fee which shall not exceed ~~equal to~~ the amount of the license fee. The department shall establish by rule the amount of the late fee.

Section 8. Paragraph (f) is added to subsection (12) of section 493.6115, Florida Statutes, to read:

493.6115 Weapons and firearms.—

(12) The department may issue a temporary Class "G" license, on a case-by-case basis, if:

(f) The applicant has been issued and currently holds a valid Class "C," Class "CC," Class "D," Class "M," Class "MA," or Class "MB" license.

Section 9. Subsection (3) is added to section 493.6123, Florida Statutes, to read:

493.6123 Publication to industry.—

(3) The department, at its discretion, may publish all information required by this section online in lieu of paper format.

Section 10. Paragraphs (b) and (c) of subsection (6) of section 493.6203, Florida Statutes, is amended to read:

493.6203 License requirements.—In addition to the license requirements set forth elsewhere in this chapter, each individual or agency shall comply with the following additional requirements:

(6)

(b) Before submission of an application to the department, the applicant for a Class "CC" license must have completed a minimum of 40 hours of professional training pertaining to general investigative techniques and this chapter, which course is offered by a state university or by a school, community college, college, or university under the purview of the Department of Education, and the applicant must pass an examination. Training must have been completed within 3 years after the date of receipt of the application. The certificate evidencing satisfactory completion of the 40 hours of professional training must be submitted to the department by the school, community college, college, or university ~~with the application for a Class "CC" license~~. The training specified in this paragraph may be provided by face-to-face presentation, online technology, or a home study course in accordance with rules and procedures of the Department of Education. The administrator of the examination must verify the identity of each applicant taking the examination.

1. Upon an applicant's successful completion of each part of the approved training and passage of any required examination, the school, community college, college, or university shall issue a certificate of completion to the applicant. The certificates must be on a form established by rule of the department.

2. The department shall establish by rule the general content of the professional training and the examination criteria.

~~3. If the license of an applicant for relicensure is invalid for more than 1 year, the applicant must complete the required training and pass any required examination.~~

~~(c) An individual licensed on or before August 31, 2008, is not required to complete additional training hours in order to renew an active license beyond the total required hours, and the timeframe for completion in effect at the time he or she was licensed applies.~~

Section 11. Subsection (4) of section 493.6303, Florida Statutes, is amended to read:

493.6303 License requirements.—In addition to the license requirements set forth elsewhere in this chapter, each individual or agency must comply with the following additional requirements:

(4)(a) An applicant for an initial ~~a~~ Class "D" license must successfully complete ~~submit proof of successful completion~~

~~of~~ a minimum of 40 hours of professional training at a school or training facility licensed by the department within 3 years after the date of receipt of the application. The department shall by rule establish the general content and number of hours of each subject area to be taught. Upon completion of such training, the school or training facility shall submit the results directly to the department electronically in a manner prescribed by rule of the department. The school or training facility shall also provide a copy of the training results to the trainee.

(b) The training required in paragraph (a) may be conducted by in-person or online instruction, or a combination thereof, as provided by the department in rule. All approved online training shall be conducted through a secure website of the school or training facility, provided that the applicant's identity, attendance, and successful completion of such training are verified. The department shall adopt by rule what portion of the 40 hours of training may be conducted online, any method of delivery and security protocols for online training, and any other rules necessary for the regulation of schools providing in-person or online training ~~Upon reapplication for a license, an individual whose license has been expired for 1 year or more is considered an initial applicant and must submit proof of successful completion of 40 hours of professional training at a school or training facility licensed by the department as~~

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

~~provided in paragraph (a) before a license is issued~~.

Section 12. Subsection (2) of section 493.6304, Florida Statutes, is amended to read:

493.6304 Security officer school or training facility.—

(2) The application shall be signed and verified by the applicant ~~under oath~~ as provided in s. 92.525 and must contain, at a minimum, the following information:

(a) The name and address of the school or training facility and, if the applicant is an individual, her or his name, address, and social security or alien registration number.

(b) The street address and, if applicable, the website address of the place at which the training is to be conducted.

(c) A copy of the training curriculum and final examination to be administered.

Section 13. Subsection (2) of section 493.6403, Florida Statutes, is amended to read:

493.6403 License requirements.—

(2) An applicant for an initial ~~a~~ Class "E" or a Class "EE" license must successfully complete ~~submit proof of successful completion of~~ 40 hours of professional training at a school or training facility licensed by the department within 3 years after the date of receipt of the application. The department shall by rule establish the general content for the training. Upon completion of such training, the school or training facility shall submit the results directly to the

department electronically in a manner prescribed by rule of the department. The school or training facility shall also provide a copy of the training results to the trainee.

Section 14. Subsection (2) of section 493.6406, Florida Statutes, is amended to read:

493.6406 Recovery agent school or training facility.—

(2) The application must be signed and verified by the applicant ~~under oath~~ as provided in s. 92.525 and shall contain, at a minimum, the following information:

(a) The name and address of the school or training facility and, if the applicant is an individual, his or her name, address, and social security or alien registration number.

(b) The street address of the place at which the training is to be conducted or the street address of the Class "RS" school offering Internet-based or correspondence training.

(c) A copy of the training curriculum and final examination to be administered.

Section 15. This act shall take effect July 1, 2020.

BUSINESS & PROFESSIONS SUBCOMMITTEE

HB 1353 by Rep. Polsky
Private Security Services

AMENDMENT SUMMARY
February 4, 2020

Amendment 1 by Rep. Polsky (strike-all): The strike-all leaves the bill largely intact and does the following:

- Applies provisions uniformly to all license types in the chapter related to applications and submitting proof of training requirements;
- Clarifies provisions and makes conforming, grammatical and technical changes; and
- Authorizes armed Class "D" Security Officer licensees to be employed by a church, ecclesiastical or denominational organization, or church cemetery without the need to be employed by a security agency.

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 Polsky offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsections (2) and (5) and paragraph (a) of subsection (6) of section 493.6105, Florida Statutes, are amended to read:

493.6105 Initial application for license.—

(2) Each application shall ~~must~~ be signed and verified by the applicant ~~individual under oath~~ as provided in s. 92.525.

(5) In addition to the requirements outlined in subsection (3), an applicant for a Class "G" license must satisfy minimum training criteria for firearms established by rule of the department, which training criteria includes, but is not limited

to, 28 hours of range and classroom training taught and administered by a licensed Class "K" firearms instructor ~~licensee~~; however, no more than 8 hours of such training shall consist of range training. Upon completion of such training, the licensed Class "K" firearms instructor must submit proof of completion of training for each applicant to the department electronically in a manner prescribed by the department. The instructor must also provide a copy of the training results to the applicant who completed the training. The department may waive the foregoing firearms training requirement if:

(a) The applicant provides proof that he or she is currently certified as a law enforcement officer or correctional officer pursuant to the requirements of the Criminal Justice Standards and Training Commission or has successfully completed the training required for certification within the last 12 months.

(b) The applicant provides proof that he or she is currently certified as a federal law enforcement officer and has received law enforcement firearms training administered by a federal law enforcement agency.

(c) The applicant holds a valid Class "K" license and submits a valid firearm certificate among those specified in paragraph (6)(a).

(d) The applicant provides proof that he or she has completed annual firearms training in accordance with the

requirements of the federal Law Enforcement Officers Safety Act, 18 U.S.C. ss. 926B and 926C.

(6) In addition to the requirements under subsection (3), an applicant for a Class "K" license must:

(a) Submit one of the following:

1. The Florida Criminal Justice Standards and Training Commission Instructor Certificate and written confirmation by the commission that the applicant possesses an active firearms certification.

2. A valid National Rifle Association Private Security Firearm Instructor Certificate issued not more than 3 years before the submission of the applicant's Class "K" application.

3. A valid firearms instructor certificate issued by a federal law enforcement agency issued not more than 3 years before the submission of the applicant's Class "K" application.

4. A valid DD Form 214 as issued by the United States Department of Defense not more than 3 years before the submission of the applicant's Class "K" application, indicating that the applicant has been honorably discharged and served in the military as a firearms instructor.

Section 2. Paragraph (g) of subsection (1) of section 493.6106, Florida Statutes, is amended to read:

493.6106 License requirements; posting.—

(1) Each individual licensed by the department must:

(g) Not be prohibited from purchasing or possessing a firearm by state or federal law if the individual is applying for a Class "G" license or a Class "K" license. The Department of Law Enforcement is authorized to provide results from the National Instant Criminal Background Check System and Index to the department to determine eligibility for Class "G" licenses or Class "K" licenses to the extent allowed under federal law.

Section 3. Subsection (5) of section 493.6108, Florida Statutes, is amended to read:

493.6108 Investigation of applicants by Department of Agriculture and Consumer Services.—

(5) A person licensed under this chapter must notify his or her employer within 3 calendar days if he or she is arrested for any offense. ~~If the department receives information about an arrest within the state of a person who holds a valid license issued under this chapter for a crime that could potentially disqualify the person from holding such a license, the department must provide the arrest information to the agency that employs the licensee.~~

Section 4. Paragraph (b) of subsection (2) of section 493.6109, Florida Statutes, is amended to read:

493.6109 Reciprocity.—

(2) The rules authorized in subsection (1) may be promulgated only if:

(b) The applicant has engaged in licensed activities for at least 1 year in the other state or territory with no disciplinary action against him or her; however, during a declared state of emergency, the requirement that an applicant be licensed for at least 1 year may be waived.

Section 5. Subsection (1) of section 493.6111, Florida Statutes, is amended to read:

493.6111 License; contents; identification card.—

(1) All licenses issued pursuant to this chapter shall be on a form prescribed by the department and shall include the licensee's name, license number, expiration date of the license, and any other information the department deems necessary. The department may issue a single license card that includes each license obtained by the holder of the card. Such license card may be issued as an electronic license in digital format that contains a quick-response barcode identifying each individual licensure class or may be issued as a physical license card. Class "C," Class "CC," Class "D," Class "E," Class "EE," Class "M," Class "MA," Class "MB," Class "MR," and Class "G" licenses shall be in the possession of individual licensees while on duty. A licensee may carry a digital image of his or her license card on his or her person in lieu of a physical card.

Section 6. Subsection (2) of section 493.6112, Florida Statutes, is amended to read:

493.6112 Notification to Department of Agriculture and Consumer Services of changes of partner or officer or employees.—

(2) Each agency shall, upon the ~~employment or~~ termination of employment of a licensee for a violation of this chapter, report such ~~employment or~~ termination within 15 calendar days to the department and~~, in the case of a termination,~~ report the reason or reasons therefor. The report shall be submitted electronically in a manner prescribed by the department.

Section 7. Paragraphs (b) and (d) of subsection (3) and subsection (4) of section 493.6113, Florida Statutes, are amended to read:

493.6113 Renewal application for licensure.—

(3) Each licensee is responsible for renewing his or her license on or before its expiration by filing with the department an application for renewal accompanied by payment of the renewal fee and the fingerprint retention fee to cover the cost of ongoing retention in the statewide automated biometric identification system established in s. 943.05(2)(b). Upon the first renewal of a license issued under this chapter before January 1, 2017, the licensee shall submit a full set of fingerprints and fingerprint processing fees to cover the cost of entering the fingerprints into the statewide automated biometric identification system pursuant to s. 493.6108(4)(a) and the cost of enrollment in the Federal Bureau of

Investigation's national retained print arrest notification program. Subsequent renewals may be completed without submission of a new set of fingerprints.

(b) Each Class "G" licensee shall additionally complete ~~submit proof that he or she has received~~ during each year of the license period a minimum of 4 hours of firearms requalification training taught by a Class "K" licensee and submit proof that he or she has complied with such other health and training requirements that the department shall adopt by rule. Proof of completion of firearms requalification training by each student shall be submitted electronically to the department by the Class "K" firearms instructor upon completion of the training in a manner prescribed by rule of the department. A Class "G" licensee must successfully complete this requalification training for each type and caliber of firearm carried in the course of performing his or her regulated duties. If the licensee fails to complete the required 4 hours of annual training during the first year of the 2-year term of the license, the license shall be automatically suspended. The licensee must complete the minimum number of hours of range and classroom training required at the time of initial licensure and submit proof of completion of such training to the department before the license may be reinstated. If the licensee fails to complete the required 4 hours of annual training during the second year of the 2-year term of the license, the licensee must

complete the minimum number of hours of range and classroom training required at the time of initial licensure and submit proof of completion of such training to the department before the license may be renewed. The department may waive the firearms training requirement if:

1. The applicant provides proof that he or she is currently certified as a law enforcement officer or correctional officer under the Criminal Justice Standards and Training Commission and has completed law enforcement firearms requalification training annually during the previous 2 years of the licensure period;

2. The applicant provides proof that he or she is currently certified as a federal law enforcement officer and has received law enforcement firearms training administered by a federal law enforcement agency annually during the previous 2 years of the licensure period; ~~or~~

3. The applicant holds a valid Class "K" license and submits a valid firearm certificate among those specified in s. 493.6105(6)(a); or ~~and provides proof of having completed requalification training during the previous 2 years of the licensure period~~

4. The applicant provides proof that he or she has completed annual firearms training in accordance with the requirements of the federal Law Enforcement Officers Safety Act, 18 U.S.C. ss. 926B and 926C.

(d) Each Class "K" licensee shall additionally submit:

1. One of the certificates specified under s. 493.6105(6) as proof that he or she remains certified to provide firearms instruction; or

2. Proof of having taught at least six 28-hour firearms instruction courses to Class "G" applicants during the previous 3-year licensure period.

(4) A licensee who fails to file a renewal application on or before its expiration must renew his or her license by fulfilling the applicable requirements of subsection (3) and may be required to pay ~~by paying~~ a late fee which shall not exceed ~~equal to~~ the amount of the license fee. The department shall establish by rule the amount of the late fee.

Section 8. Paragraph (f) is added to subsection (12) of section 493.6115, Florida Statutes, to read:

493.6115 Weapons and firearms.—

(12) The department may issue a temporary Class "G" license, on a case-by-case basis, if:

(f) The applicant has been issued and currently holds a valid Class "C," Class "CC," Class "D," Class "M," Class "MA," or Class "MB" license.

Section 9. Subsection (3) is added to section 493.6123, Florida Statutes, to read:

493.6123 Publication to industry.—

(3) The department, at its discretion, may publish all information required by this section online in lieu of paper format.

Section 10. Paragraphs (b) and (c) of subsection (6) of section 493.6203, Florida Statutes, is amended to read:

493.6203 License requirements.—In addition to the license requirements set forth elsewhere in this chapter, each individual or agency shall comply with the following additional requirements:

(6)

(b) Before submission of an application to the department, the applicant for a Class "CC" license must have completed a minimum of 40 hours of professional training pertaining to general investigative techniques and this chapter, which course is offered by a state university or by a school, community college, college, or university under the purview of the Department of Education, and the applicant must pass an examination. Training must have been completed within 3 years before the date of receipt of the application. The certificate evidencing satisfactory completion of the 40 hours of professional training must be submitted to the department by the school, community college, college, or university ~~with the application for a Class "CC" license~~. The training specified in this paragraph may be provided by face-to-face presentation, online technology, or a home study course in accordance with

rules and procedures of the Department of Education. The administrator of the examination must verify the identity of each applicant taking the examination.

1. Upon an applicant's successful completion of each part of the approved training and passage of any required examination, the school, community college, college, or university shall issue a certificate of completion to the applicant. The certificates must be on a form established by rule of the department.

2. The department shall establish by rule the general content of the professional training and the examination criteria.

~~3. If the license of an applicant for relicensure is invalid for more than 1 year, the applicant must complete the required training and pass any required examination.~~

~~(c) An individual licensed on or before August 31, 2008, is not required to complete additional training hours in order to renew an active license beyond the total required hours, and the timeframe for completion in effect at the time he or she was licensed applies.~~

Section 11. Subsection (4) of section 493.6301, Florida Statutes, is amended to read:

493.6301 Classes of licenses.—

(4) A Class "D" licensee must ~~shall~~ own or be an employee of a Class "B" security agency or branch office. However, this subsection does not apply to ~~include those~~ individuals who:

(a) Are exempt under s. 493.6102(4) but ~~who~~ possess a Class "D" license solely for the purpose of holding a Class "G" license; or

(b) Carry a firearm in the course of their duties as a security officer employed by a church or by an ecclesiastical or a denominational organization that has an established physical place of worship in this state at which nonprofit religious services and activities are regularly conducted or by a church cemetery to provide security on the property of the church, organization, or cemetery.

Section 12. Subsection (4) of section 493.6303, Florida Statutes, is amended to read:

493.6303 License requirements.—In addition to the license requirements set forth elsewhere in this chapter, each individual or agency must comply with the following additional requirements:

(4)(a) An applicant for an initial ~~a~~ Class "D" license must successfully complete ~~submit proof of successful completion of~~ a minimum of 40 hours of professional training at a school or training facility licensed by the department within 3 years before the date of receipt of the application. The department shall by rule establish the general content and number of hours

of each subject area to be taught. Upon completion of such training, the school or training facility shall submit the results directly to the department electronically in a manner prescribed by rule of the department. The school or training facility shall also provide a copy of the training results to the trainee.

(b) The training required in paragraph (a) may be conducted by in-person or online instruction, or a combination thereof, as provided by the department in rule. All approved online training shall be conducted through a secure website of the school or training facility, provided that the applicant's identity, attendance, and successful completion of such training are verified. The department shall adopt by rule what portion of the 40 hours of training may be conducted online, any method of delivery and security protocols for online training, and any other rules necessary for the regulation of schools providing in-person or online training ~~Upon reapplication for a license, an individual whose license has been expired for 1 year or more is considered an initial applicant and must submit proof of successful completion of 40 hours of professional training at a school or training facility licensed by the department as provided in paragraph (a) before a license is issued~~.

Section 13. Subsection (2) of section 493.6304, Florida Statutes, is amended to read:

493.6304 Security officer school or training facility.—

(2) The application shall be signed and verified by the applicant ~~under oath~~ as provided in s. 92.525 and must contain, at a minimum, the following information:

(a) The name and address of the school or training facility and, if the applicant is an individual, her or his name, address, and social security or alien registration number.

(b) The street address and, if applicable, the website address of the place at which the training is to be conducted.

(c) A copy of the training curriculum and final examination to be administered.

Section 14. Subsection (2) of section 493.6403, Florida Statutes, is amended to read:

493.6403 License requirements.—

(2) An applicant for an initial ~~a~~ Class "E" or a Class "EE" license must successfully complete ~~submit proof of successful completion of~~ 40 hours of professional training at a school or training facility licensed by the department within 3 years before the date of receipt of the application. The department shall by rule establish the general content for the training. Upon completion of such training, the school or training facility shall submit the results directly to the department electronically in a manner prescribed by rule of the department. The school or training facility shall also provide a copy of the training results to the trainee.

Section 15. Subsection (2) of section 493.6406, Florida Statutes, is amended to read:

493.6406 Recovery agent school or training facility.—

(2) The application must be signed and verified by the applicant ~~under oath~~ as provided in s. 92.525 and shall contain, at a minimum, the following information:

(a) The name and address of the school or training facility and, if the applicant is an individual, his or her name, address, and social security or alien registration number.

(b) The street address of the place at which the training is to be conducted or the street address of the Class "RS" school offering Internet-based or correspondence training.

(c) A copy of the training curriculum and final examination to be administered.

Section 16. 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:

A bill to be entitled

An act relating to private security services; amending s. 493.6105, F.S.; requiring a licensed Class "K" firearms instructor to submit proof of completion of specified training for certain applicants to the Department of Agriculture and Consumer Services and

provide a copy of the training results to the applicant; authorizing the department to waive specified firearms training under certain circumstances; requiring an applicant for a Class "K" firearms instructor license to submit a certain United States Department of Defense form issued within a specified time period before submission of the application; amending s. 493.6106, F.S.; authorizing the Department of Law Enforcement to provide criminal background check results to the Department of Agriculture and Consumer Services to determine eligibility for a Class "G" license or a Class "K" license; amending s. 493.6108, F.S.; deleting a provision requiring the department to provide certain information to an agency that employs a licensee; amending s. 493.6109, F.S.; providing an exception to a certain experience requirement for an applicant during a declared state of emergency; amending s. 493.6111, F.S.; authorizing the department to issue a single license card authorizing multiple classes of licensure and to issue such license card or an electronic license in a digital format; authorizing a licensee to carry a digital image of his or her license card in lieu of a physical card; amending s. 493.6112, F.S.; requiring each agency to report a

termination of employment for certain violations; amending s. 493.6113, F.S.; revising renewal application requirements for Class "G" and Class "K" licensees; requiring the department to establish by rule the amount of a renewal application late fee; amending s. 493.6115, F.S.; authorizing the department to issue a temporary Class "G" license if the applicant has been issued and currently holds specified licenses; amending s. 493.6123, F.S.; authorizing the department to publish certain information online; amending ss. 493.6203 and 493.6303, F.S.; revising and providing training requirements for an applicant for a Class "CC" or an initial Class "D" license; deleting provisions relating to renewal requirements; amending s. 493.6301, F.S.; specifying that certain ownership and employment requirements do not apply to certain Class "D" licensees; amending s. 493.6304, F.S.; revising application requirements for any school, training facility, or instructor who offers training for a Class "D" license; amending s. 493.6403, F.S.; revising training requirements for an applicant for an initial Class "E" or a Class "EE" license; amending s. 493.6406, F.S.; deleting the requirement that the licensure application be signed under oath for any

school, training facility, or instructor who offers training for Class "E" or Class "EE" applicants; providing an effective date.