

Regulatory Reform Subcommittee

Thursday, February 18, 2021
10:00 AM – 12:00 PM
Morris Hall (17 HOB)

Meeting Packet

Chris Sprowls
Speaker

Bob Rommel
Chair

The Florida House of Representatives

Commerce Committee
Regulatory Reform Subcommittee

Chris Sprowls
Speaker

Bob Rommel
Chair

AGENDA

Thursday, February 18, 2021
10:00 AM – 12:00 PM
Morris Hall (17 HOB)

I. Call to Order & Roll Call

II. Welcoming Remarks

III. Consideration of the following bills(s):

HB 137 by *Rep. Harding*
Fire Sprinklers

HB 329 by *Rep. Tomkow*
Alcoholic Beverage Licenses

HB 369 by *Rep. Rodriguez*
Construction Contracting Regulation Exemption

HB 403 by *Rep. Giallombardo*
Home-based Businesses

IV. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4870 Fax: (850) 410-0096

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Regulatory Reform Subcommittee

Start Date and Time:	Thursday, February 18, 2021 10:00 am
End Date and Time:	Thursday, February 18, 2021 12:00 pm
Location:	Morris Hall (17 HOB)
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 137 Fire Sprinklers by Harding
HB 329 Alcoholic Beverage Licenses by Tomkow
HB 369 Construction Contracting Regulation Exemption by Rodriguez
HB 403 Home-based Businesses by Giallombardo

The Chair requests that all amendments should be filed by 6 p.m. on Wednesday, February 17, 2021, including amendments filed by Members of the Committee/Subcommittee.

This meeting will be live-streamed on https://thefloridachannel.org/. Audience seating will be socially distanced and limited to the press and those persons wishing to provide substantive testimony on the filed bills or draft legislation. Persons who wish to attend must register at www.myfloridahouse.gov, and pick up a pass at the Legislative Welcome Center on the 4th Floor of the Capitol beginning two hours before the start of the meeting. Seating will be available on a first-come, first-served basis. The pass will indicate whether you will be seated in the main meeting room or in 12 HOB which has been made available for onsite virtual testimony. Registration closes three hours before the meeting starts.

NOTICE FINALIZED on 02/11/2021 4:02PM by Rigas.Amanda

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 137 Fire Sprinklers
SPONSOR(S): Harding
TIED BILLS: **IDEN./SIM. BILLS:** SB 286

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee		Brackett DB	Anstead LA
2) Commerce Committee			

SUMMARY ANALYSIS

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer as the State Fire Marshal, and requires the State Fire Marshal to adopt the Florida Fire Prevention Code (Fire Code). The Fire Code sets forth fire safety standards (including certain national codes) for buildings and structures, and is enforced by local fire officials within each county, municipality, and special fire districts in the state.

The State Fire Marshal is also responsible for licensing and regulating fire system protection contractors in the state. A "fire protection system" is a system designed to protect buildings, structures, and special hazards from fires. In order to engage in the business of laying out, fabricating, installing, inspecting, altering, repairing, or servicing a fire protection system in Florida, a person must be certified as a fire protection system contractor.

Fire protection system contractors are divided into five categories, and their ability to practice is limited to the category or categories that the contractor has obtained certification in. The five categories are:

- Contractor I
- Contractor II
- Contractor III
- Contractor IV
- Contractor V

Fire protection systems are designed by licensed engineers and architects. A fire protection systems contractor may not design a fire protection system unless specifically authorized by current law. Currently, Contractors I, II, and IV may design fire protection systems of 49 or fewer sprinklers, design the alteration of an existing fire sprinkler system that consists of the relocation, addition, or deletion of 49 sprinklers or fewer, and design fire protection systems for one and two family dwellings regardless of size.

The bill:

- Provides that a Contractor V may no longer inspect, alter, repair, or service underground piping for a fire protection system unless the Contractor V is under the direction of a Contractor I or II.
  - The bill does not change a Contractor V's ability to install and fabricate underground piping for a fire protection system.
- Provides that a Contractor I or II may **design** the alteration of an existing fire sprinkler system if the alteration consists of the relocation or deletion of 249 or fewer sprinklers, as long as:
  - There is no change of occupancy of the affected areas;
  - There is no change in the water demand; and
  - The occupancy hazard classification of the affected areas is not increased.
- Clarifies that a Contractor I - IV may install tanks supplying fuel or water to a fire protection system.

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

The bill provides for an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

State Fire Prevention – State Fire Marshal

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal (Division within the Department of Financial Services (DFS), is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety, and has the responsibility to minimize the loss of life and property in this state due to fire.[1] Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel and fire safety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts fire safety inspections of state property; and operates the Florida State Fire College.

The Division consists of two bureaus: the Bureau of Fire Standards and Training and the Bureau of Fire Prevention. The Bureau of Firefighter Standards and Training approves firefighter training curricula, offers fire service training at the Florida State Fire College, and certifies that fire service members meet industry-based standards. The Bureau of Fire Prevention conducts fire/life safety inspections and construction plans review on all state-owned buildings; regulates the fireworks and the fire sprinkler industries, inspects and licenses boilers, and certifies fire suppression industry workers.[2]

The Regulatory Licensing Section within the Bureau of Fire Prevention is responsible for enforcing all laws relating to the licensing and regulation of the following industries: Fire Equipment, Engineered Fire Protection Systems, Explosives and Sparklers.[3]

The State Fire Marshal also adopts by rule the Florida Fire Prevention Code (Fire Code), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities, and the enforcement of such fire safety laws and rules.[4]

The State Fire Marshall adopts a new edition of the Fire Code every three years. When adopting a new edition of the Fire Code, the State Fire Marshal must adopt the most recent version of the National Fire Protection Association (NFPA) Standard 1, Fire Prevention Code, and the NFPA 101 Life Safety Code.[5]

State law requires all municipalities, counties, and special districts with fire safety responsibilities to enforce the Fire Code as the minimum fire prevention code to operate uniformly among local governments and in conjunction with the Florida Building Code.[6] Each county, municipality, and special district with fire safety enforcement responsibilities must employ or contract with a fire safety inspector (certified by the State Fire Marshal) to conduct all fire safety inspections required by law.[7]

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[1] S. 633.104, F.S.

[2] Division of State Fire Marshal, *Florida State Fire Marshal*, https://www.myfloridacfo.com/Division/sfm/ (last visited Feb. 3, 2021).

[3] DFS, *Regulatory Licensing*, https://www.myfloridacfo.com/Division/SFM/BFP/RegulatoryLicensing/default.htm (last visited Feb. 6, 2021).

[4] Ss. 633.202(1) and (2), F.S.

[5] *Id.* The NFPA is the National Fire Protection Association. Founded in 1896, the NFPA delivers information and knowledge through no more than 300 consensus codes and standards, research, training, education, outreach and advocacy. NFPA, *About NFPA*, https://www.nfpa.org/about-nfpa (last visited Feb. 4, 2021).

[6] The Florida Building Code is the statewide building code for all construction in the state. Every local government must enforce the Florida Building Code and issue building permits. *See generally* ch. 553, F.S.

[7] S. 633.216(1), F.S.

Fire Protection Systems

A "fire protection system" is a system individually designed to protect the interior or exterior of a specific building or buildings, structure, or other special hazard from fire. A fire protection system includes, but is not limited to:[8]

- Water sprinkler systems;
- Water spray systems;
- Foam-water sprinkler systems;
- Foam-water spray systems;
- Carbon dioxide systems;
- Foam extinguishing systems;
- Dry chemical systems; and
- Halon and other chemical systems used for fire protection use.

Fire protection systems also include any tanks and pumps connected to fire sprinkler systems, overhead and underground fire mains, fire hydrants and hydrant mains, standpipes and hoses connected to sprinkler systems, sprinkler tank heaters, air lines, and thermal systems used in connection with fire sprinkler systems.[9]

Fire protection systems must be installed in accordance with the Fire Code and the Florida Building Code. Current law requires local governments to enforce the Fire Code and the Florida Building Code including the permitting, inspecting, and approving the installation of a fire protection system.[10] Owners of fire protection systems are responsible for the maintenance of their fire protection systems, and must contract with a certified fire protection system contractor to regularly inspect such systems.[11]

Fire Protection System Contractors

In order to engage in the business of laying out, fabricating, installing, inspecting, altering, repairing, or servicing a fire protection system in Florida, other than a pre-engineering system, a person must be certified as a fire protection system contractor.[12]

Fire protection system contractors are regulated by ch. 633, F.S., which outlines the law pertaining to fire protection system contractors in the state. The State Fire Marshal is responsible for licensing and regulating fire system protection contractors in the state.[13]

Fire protection system contractors are divided into five categories. A contractor's ability to practice is limited to the category or categories that a contractor has obtained certification. The contractor categories are:[14]

- **Contractor I** - means a person who can lay out, fabricate, install, inspect, alter, repair, and service all types of fire protection systems, excluding pre-engineered systems.

- **Contractor II** - means a person who can lay out, fabricate, install, inspect, alter, repair, and service water sprinkler systems, water spray systems, foam-water sprinkler systems, foam-water spray systems, standpipes, combination standpipes and sprinkler risers, excluding pre-engineered systems.

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[8] S. 633.102(11), F.S.
[9] *Id.*
[10] *See generally* ch. 553 and 633, F.S.; 10.1.2 and 10.1.3 of the 7th edition of the Florida Fire Prevention Code (NFPA Standard 1).
[11] S. 633.312, F.S.; 10.2.7 of the 7th edition of the Florida Fire Prevention Code (NFPA Standard 1).
[12] S. 633.336(1), F.S.
[13] Ss. 633.318 and 633.338, F.S.
[14] S. 633.102(3), F.S.

- **Contractor III** - means a person who can fabricate, install, inspect, alter, repair, and service carbon dioxide systems, foam extinguishing systems, dry chemical systems, and Halon and other chemical systems, excluding pre-engineered systems.

- **Contractor IV** - means a person who can lay out, fabricate, install, inspect, alter, repair, and service automatic fire sprinkler systems for detached one- and two- family dwellings and mobile homes. This does not include single-family dwellings in multi-dwelling buildings such as apartments, condominiums, assisted living facilities, or buildings connected to other dwellings.
    - A Contractor IV is limited to the scope of practice specified in the NFPA 13D Standard for the Installation of Sprinkler Systems in One- and Two- Family Dwellings and Manufactured Homes.

- **Contractor V** - means a person who can fabricate, install, inspect, alter, repair, and service the underground piping for a fire protection system using water as the extinguishing agent beginning at the point of service and ending no more than 1 foot above the finished floor. However, a Contractor V may not inspect underground piping that is exposed, which must be done by a Contractor I or II.[15]

A fire protection system contractor must have insurance providing coverage for comprehensive general liability for bodily injury and property damages, products liability, completed operations, and contractual liability. A Contractor I, Contractor II, Contractor III, or Contractor V must have insurance of not less than $500,000, and a Contractor IV must have insurance of not less than $250,000.[16]

In order to obtain certification as a fire protection system contractor, a person must submit a written application to the Division, pay a fee of $300, be at least 18 years of age, be of good moral character, provide proof of insurance, and pass a written exam administered by the Division.[17]

In order to sit for an exam for certification as a contractor, a person must provide evidence of the following experience and/or education depending on the certification sought by the person:[18]

- For certification as a Contractor I, a person must have 4 years of experience in the full time employment with a Contractor I, or a combination of equivalent education and experience in both water-based and chemical fire suppression systems.

- For certification as a Contractor II, a person must have 4 years of verifiable employment experience with a fire protection system as a Contractor I or Contractor II, or a combination of equivalent education and experience in water-based fire suppression systems.

- For certification as a Contractor III, a person must have 4 years of verifiable employment experience with a fire protection system as a Contractor I or Contractor II, or a combination of equivalent education and experience in chemical fire suppression systems.

- For certification as a Contractor IV, a person must be licensed as a certified plumbing contractor and successfully complete a training program of not less than 40 contact hours about the applicable installation standard described in NFPA 13D.

- For certification as a Contractor V, a person must be licensed as a certified underground utility and excavation contractor or certified plumbing contractor, or provide 4 years of verifiable experience in the full time employment of a certified underground utility and excavation contractor or certified plumbing contractor, or a combination of equivalent education and experience.

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[15] S. 633.318(9), F.S.
[16] Ss. 633.318(4), and (7), F.S.
[17] The Division has an exam for each type of fire protection system certification. Ss. 633.318(1), (2), and (4), and 633.132(1)(a), F.S.
[18] S. 633.318(3), F.S.

Fire Protection Systems with Diesel Motors

A vital part of a fire protection system is the fire pump. A fire pump is necessary if a building or structure's water supply is insufficient to provide the proper water pressure for the system to function property. The fire pump pulls water from a dedicated source, such as an underground public water supply or a water storage tank.[19] The most common **driver** for a fire pump is an electric motor or diesel engine. If a building power supply is insufficient to supply an electric motor, a diesel pump will most likely be utilized. A diesel motor requires a separate fuel tank.[20]

Current law provides that fire pump control panels and maintenance of electric and diesel pump drivers require special expertise. However, it is not economically feasible for fire protection system contractors to employ such experts full time. As a result, current law allows fire protection system contractors to subcontract with companies providing advanced technical services for the installation, servicing and maintenance of fire pump control panels and pump drivers, as long as a company is under contract with a fire protection system contractor.[21]

According to industry members, there is a question about whether fire protection system contractors can install the **tanks** providing water or diesel fuel to a fire protection system. According to industry members, some local jurisdictions interpret current law to mean that fire protection system contractors cannot install the tanks and must have a licensed liquid petroleum gas installer[22] or licensed plumber install the tanks, while other local jurisdictions interpret current law to mean that fire protection system contractors may install the tanks.[23]

Design of Fire Protection Systems

The scope of practice for certified contractors does not include designing a fire protection system. In order to design fire protection systems, a person must be licensed as a fire protection engineer[24] or architect with fire protection design experience. A fire protection engineer or architect with fire protection design may design any type of fire protection system and is not limited by type or size of the fire protection system.[25]

Architects in the state are regulated by ch. 481, pt. I, F.S., and by the Board of Architecture and Interior Design with the Department of Business and Professional Regulation (DBPR).

The practice of engineering is regulated by ch. 471, F.S., and by the Florida Board of Professional Engineers (FBPE).[26]

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[19] Tom Divine and Will Semien, *NFPA 20: Changes to the fire pump standard*, Consulting, Specifying Engineer (Nov. 14, 2017) https://www.csemag.com/articles/nfpa-20-changes-to-the-fire-pump-standard/#:~:text=The%20fire%20pump%20is%20a,the%20event%20of%20a%20fire. (last visited Feb. 5, 2017).

[20] Tracey Foster, *NFPA 20: Fire pump design*, Consulting, Specifying Engineer (Nov. 21, 2019) https://www.csemag.com/articles/nfpa-20-fire-pump-design/ (last visited Feb. 6, 2021).

[21] S. 633.336, F.S.

[22] Liquid petroleum gas installers are licensed and regulated by the Department of Agriculture and Consumer Services. Liquid petroleum is any material that is composed predominantly of propane, propylene, butanes (normal butane or isobutane), butylenes, or a mixture of such materials. Diesel fuel falls under the definition of liquid petroleum. Ch. 527, F.S.; U.S. Energy information Administration, Diesel fuel explained, https://www.eia.gov/energyexplained/diesel-fuel/ (last visited Feb. 7, 2021).

[23] Email from Suzanne Saults, Owner of St. Petersburg Fire Protection, Fire Protection Systems definition (Feb. 8, 2021); Email from Bob DiModica, General Manager of Naples Fire Protection, Inc., Fire Sprinkler FS 633.102 (Feb. 9, 2021); Email from Scott Cox, President of Cox Fire Protection, Inc., HB 137 (Feb. 10, 2021); Chris Johnson, President of Piper Fire Protection, Inc., FS 633.102 (Feb. 10, 2021).

[24] There is no fire protection engineer license provided in current law. However, in order to practice engineering in Florida including fire protection engineering, a person must be licensed as a professional engineer. *See* ch. 471, F.S.

[25] S. 633.102(3), F.S.

[26] S. 471.038(3), F.S.

Current law provides that a Contractor I, II, or IV may:[27]

- Design fire protection systems of 49 or fewer sprinklers;
- Design the alteration of an existing fire sprinkler system regardless of size as long as the alteration consists of the relocation, addition, or deletion of no more than 49 sprinklers; and
- Design a fire protection system that complies with NFPA 13D.

Effect of the Bill

The bill provides that a Contractor V may no longer inspect, alter, repair, or service underground piping for a fire protection system using water as the extinguishing agent beginning at the point of service and ending no more than 1 foot above the finished floor, unless the Contractor V is under the direction of a Contractor I or II. A Contractor V may still fabricate and install underground piping for such fire protection system.

The bill provides that a Contractor I or II may **design** the alteration of an existing fire sprinkler system if the alteration consists of the relocation or deletion of 249 or fewer sprinklers, regardless of the size of the sprinkler system, as long as:

- There is no change of occupancy of the affected areas, as defined in the Florida Building Code;[28]
- There is no change in the water demand as defined in NFPA 13, "Standard 76 for the Installation of Sprinkler Systems;" and
- The occupancy hazard classification as defined in NFPA 13 is not reduced or remains the same.[29]

It also clarifies that a Contractor I - IV may install tanks supplying fuel or water to a fire protection system.

B. SECTION DIRECTORY:

Section 1. Amending 633.102, F.S., relating to licensure for design, installation, and alteration of fire sprinklers.

Section 2. Providing for an effective date of July 1, 2021.

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.

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[27] S. 633.102(3), F.S.

[28] Every building must have an occupancy classification, which is the formal designation of the primary purpose of the building. Different classifications of occupancy represent varying levels of hazard and risk to building occupants. A change of occupancy is when a building changes its primary purpose or occupancy classification. Ss. 202 and 302 of the Seventh Edition of the Building Code.

[29] The occupancy hazard classification is a rating system that is used to help determine the minimum water needed to fight a structural fire. No hazard classification is assigned when a building has an automatic sprinkler system installed in accordance with applicable standards. NFPA, *Step 1 How Much Water is Needed?*, https://www.nfpa.org/assets/gallery/firewise/operationWater/step1_3.htm (last visited Feb. 4, 2021).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive impact by increasing the number of people who may design the alteration of fire sprinkler systems by allowing Contractors I and II to design the alteration of larger fire sprinkler protection systems.

The bill may have a negative impact by decreasing the number of people who may inspect, alter, repair, or service underground piping for certain fire protection systems, by providing that a Contractor V may no longer inspect, alter, repair, or service underground piping for a fire protection system unless they are under the direct supervision of a Contractor I or II.

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:

Currently, it is not clear if a Contractor IV may design a fire protection systems for commercial properties or multi-family dwellings, of 49 or fewer sprinklers or the alteration of an existing fire sprinkler system, as long as the alteration consists of the relocation, addition, or deletion of no more than 49 sprinklers.

It is not clear if the bill intends to provide that a Contractor I, II, and IV may **design** the alter a fire protection system, for one- and two- family dwellings and manufactured homes, or the bill intends to clarify that a Contractor I, II, and IV may alter a fire protection system for one- and two- family dwellings and manufactured homes.

It is not clear if the bill intends to include the Contractor III in the provision that allows Contractors I - IV to install tanks supplying fuel or water to a fire protection system.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to fire sprinklers; amending s. 633.102, F.S.; revising the definition of the term "Contractor V" to authorize such fire protection system contractors to design and alter certain systems; revising the definition of the term "fire protection system"; providing an effective date.

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

Section 1. Subsections (3) and (11) of section 633.102, Florida Statutes, are amended to read:

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

(3)(a) "Contractor I" means a contractor whose business includes the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service all types of fire protection systems, excluding preengineered systems.

(b) "Contractor II" means a contractor whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service water sprinkler systems, water spray systems, foam-water sprinkler systems, foam-water spray systems, standpipes, combination standpipes and sprinkler risers, all piping that is an integral part of the system beginning at the point of service

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

as defined in this section, sprinkler tank heaters, air lines, thermal systems used in connection with sprinklers, and tanks and pumps connected thereto, excluding preengineered systems.

(c) "Contractor III" means a contractor whose business is limited to the execution of contracts requiring the ability to fabricate, install, inspect, alter, repair, and service carbon dioxide systems, foam extinguishing systems, dry chemical systems, and Halon and other chemical systems, excluding preengineered systems.

(d) "Contractor IV" means a contractor whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service automatic fire sprinkler systems for detached one-family dwellings, detached two-family dwellings, and mobile homes, excluding preengineered systems and excluding single-family homes in cluster units, such as apartments, condominiums, and assisted living facilities or any building that is connected to other dwellings. A Contractor IV is limited to the scope of practice specified in NFPA 13D.

(e) "Contractor V" means a contractor whose business is limited to the execution of contracts requiring the ability to fabricate and install~~, install, inspect, alter, repair, and service~~ the underground piping for a fire protection system using water as the extinguishing agent beginning at the point of service as defined in this act and ending no more than 1 foot

above the finished floor. A Contractor V may inspect, alter, repair, and service underground piping for a water-based fire protection system only under the direction of a Contractor I or Contractor II.

~~The definitions in~~ This subsection may not be construed to include engineers or architects within the defined terms and does ~~do~~ not limit or prohibit a licensed fire protection engineer or architect with fire protection design experience from designing any type of fire protection system. A distinction is made between system design concepts prepared by the design professional and system layout as defined in this section and typically prepared by the contractor. However, a person certified under this chapter as a Contractor I or~~,~~ Contractor II~~, or Contractor IV under this chapter~~ may design new fire protection systems of 49 or fewer sprinklers;~~, and~~ may design the alteration of an existing fire sprinkler system if the alteration consists of the relocation, addition, or deletion of ~~not more than~~ 49 or fewer sprinklers, notwithstanding the size of the existing fire sprinkler system; or may design the alteration of an existing fire sprinkler system if the alteration consists of the relocation or deletion of 249 or fewer sprinklers, notwithstanding the size of the existing fire sprinkler system, if there is no change of occupancy, as defined in the Florida Building Code, of the affected areas and there is

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no change in the water demand as defined in NFPA 13, "Standard for the Installation of Sprinkler Systems," and if the occupancy hazard classification as defined in NFPA 13 is reduced or remains the same as a result of the alteration. A person certified as a Contractor I, Contractor II, or Contractor IV may design or alter a fire protection system, the scope of which complies with NFPA 13D, "Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes," as adopted by the State Fire Marshal, notwithstanding the number of fire sprinklers. Contractor-developed plans may not be required by any local permitting authority to be sealed by a registered professional engineer.

(11) "Fire protection system" means a system individually designed to protect the interior or exterior of a specific building or buildings, structure, or other special hazard from fire. Such systems include, but are not limited to, water sprinkler systems, water spray systems, foam-water sprinkler systems, foam-water spray systems, carbon dioxide systems, foam extinguishing systems, dry chemical systems, and Halon and other chemical systems used for fire protection use. Such systems also include any overhead and underground fire mains, fire hydrants and hydrant mains, standpipes and hoses connected to sprinkler systems, sprinkler tank heaters, air lines, thermal systems used in connection with fire sprinkler systems, ~~and~~ tanks providing water supply or pump fuel piping, and pumps connected to fire

sprinkler systems.

Section 2. This act shall take effect July 1, 2021.

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REGULATORY REFORM SUBCOMMITTEE

HB 137 by Rep. Harding
Fire Sprinklers

AMENDMENT SUMMARY
February 18, 2021

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

- Allows a Contractor V to continue altering, repairing, or servicing underground piping for a water-based fire protection system without supervision.
    - A Contractor may not inspect underground piping for such systems unless they are under the direction of a Contractor I or II.
- Clarifies that a Contractor I, II, and IV may design the alteration of an existing fire sprinkler system for one- and two- family dwellings and manufactured homes.
- Clarifies that a Contractor III may not install tanks supplying water or fuel to a fire sprinkler system.

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: Regulatory Reform Subcommittee

Representative Harding offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsections (3) and (11) of section 633.102, Florida Statutes, are amended to read:

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

(3)(a) "Contractor I" means a contractor whose business includes the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service all types of fire protection systems, excluding preengineered systems.

(b) "Contractor II" means a contractor whose business is limited to the execution of contracts requiring the ability to

lay out, fabricate, install, inspect, alter, repair, and service water sprinkler systems, water spray systems, foam-water sprinkler systems, foam-water spray systems, standpipes, combination standpipes and sprinkler risers, all piping that is an integral part of the system beginning at the point of service as defined in this section, sprinkler tank heaters, air lines, thermal systems used in connection with sprinklers, and tanks and pumps connected thereto, excluding preengineered systems.

(c) "Contractor III" means a contractor whose business is limited to the execution of contracts requiring the ability to fabricate, install, inspect, alter, repair, and service carbon dioxide systems, foam extinguishing systems, dry chemical systems, and Halon and other chemical systems, excluding preengineered systems.

(d) "Contractor IV" means a contractor whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service automatic fire sprinkler systems for detached one-family dwellings, detached two-family dwellings, and mobile homes, excluding preengineered systems and excluding single-family homes in cluster units, such as apartments, condominiums, and assisted living facilities or any building that is connected to other dwellings. A Contractor IV is limited to the scope of practice specified in NFPA 13D.

(e) "Contractor V" means a contractor whose business is

limited to the execution of contracts requiring the ability to fabricate, install, ~~inspect,~~ alter, repair, and service the underground piping for a fire protection system using water as the extinguishing agent beginning at the point of service as defined in this act and ending no more than 1 foot above the finished floor. A Contractor V may inspect underground piping for a water-based fire protection system under the direction of a Contractor I or Contractor II.

~~The definitions in~~ This subsection may not be construed to include engineers or architects within the defined terms and does ~~do~~ not limit or prohibit a licensed fire protection engineer or architect with fire protection design experience from designing any type of fire protection system. A distinction is made between system design concepts prepared by the design professional and system layout as defined in this section and typically prepared by the contractor. However, a person certified under this chapter as a Contractor I or~~,~~ Contractor II~~, or Contractor IV under this chapter~~ may design new fire protection systems of 49 or fewer sprinklers;~~, and~~ may design the alteration of an existing fire sprinkler system if the alteration consists of the relocation, addition, or deletion of ~~not more than~~ 49 or fewer sprinklers, notwithstanding the size of the existing fire sprinkler system; or may design the alteration of an existing fire sprinkler system if the

alteration consists of the relocation or deletion of 249 or fewer sprinklers, notwithstanding the size of the existing fire sprinkler system, if there is no change of occupancy of the affected areas, as defined in the Florida Building Code and the Florida Fire Prevention Code, and there is no change in the water demand as defined in NFPA 13, "Standard for the Installation of Sprinkler Systems," and if the occupancy hazard classification as defined in NFPA 13 is reduced or remains the same as a result of the alteration. A person certified as a Contractor I, Contractor II, or Contractor IV may design a new fire protection system or design the alteration of an existing fire protection system, the scope of which complies with NFPA 13D, "Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes," as adopted by the State Fire Marshal, notwithstanding the number of fire sprinklers. Contractor-developed plans may not be required by any local permitting authority to be sealed by a registered professional engineer.

(11) "Fire protection system" means a system individually designed to protect the interior or exterior of a specific building or buildings, structure, or other special hazard from fire. Such systems include, but are not limited to, water sprinkler systems, water spray systems, foam-water sprinkler systems, foam-water spray systems, carbon dioxide systems, foam extinguishing systems, dry chemical systems, and Halon and other

chemical systems used for fire protection use. Such systems also include any overhead and underground fire mains, fire hydrants and hydrant mains, standpipes and hoses connected to sprinkler systems, sprinkler tank heaters, air lines, thermal systems used in connection with fire sprinkler systems, and tanks providing water supply or pump fuel, including piping for such tanks, and pumps connected to fire sprinkler systems.

Section 2. This act shall take effect July 1, 2021.

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 fire sprinklers; amending s. 633.102, F.S.; revising the definition of the term "Contractor V"; authorizing certain fire protection system contractors to design certain systems; revising the definition of the term "fire protection system"; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 329 Alcoholic Beverage Licenses
SPONSOR(S): Tomkow
TIED BILLS: **IDEN./SIM. BILLS:** SB 134

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee		Willson MW	Anstead
2) 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. The Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation administers and enforces the Beverage Law.

The bill:

- Allows certain restaurants to sell or deliver alcoholic beverages in a sealed container to-go, if accompanied by food.
- Amends s. 564.09, F.S., to specify that a restaurant patron may take home a partially consumed bottle of wine with the purchase of "a meal."
- Allows a restaurant licensed to sell wine to sell or deliver wine bottles, individual servings of wine, and wine-based beverages to-go in a sealed container, if accompanied by food.
- Removes the "full course" part of the meal requirement for taking home an unfinished bottle of wine.
- Allows bars to sell or deliver liquor bottles, individual servings of liquor, or liquor-based beverages to-go in a sealed container, if accompanied by food.

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

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

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] "Wine" means "all beverages made from fresh fruits, berries, or grapes, either by natural fermentation or by natural fermentation with brandy added, in the manner required by the laws and regulations of the United States, and includes all sparkling wines, champagnes, combination of the aforesaid beverages, sake, vermouths, and like products.[4]

Restaurants - Off-Premises Consumption of Wine

Restaurants licensed to sell wine on the premises may permit patrons to remove one bottle of wine for consumption off the licensed premises under the following conditions:

- The patron must have purchased a full-course meal consisting of a salad or vegetable, entrée, a beverage, and bread and consumed a portion of the bottle of wine with the meal;
- Before the partially-consumed bottle of wine is removed from the premises, the bottle must be securely resealed by the licensee, or the licensee's employee, and placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been opened or tampered with after having been sealed;
- A dated receipt for the wine and meal must be attached to the container; and
- The container must be placed in a locked glove compartment, trunk, or other area behind the last upright seat of a motor vehicle that does not have a trunk.[5]

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.[6]

Special Licenses

Section 561.20(1), F.S., limits, by county, the number of alcoholic beverage licenses that may be issued for the sale of distilled spirits, to one license per 7,500 residents within the county. These limited

[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] S. 564.01, F.S.
[5] S. 564.09, F.S.
[6] S. 561.57(1) & (2), F.S.

alcoholic beverage licenses are known as "quota" licenses. The quota license is the only alcoholic beverage license that is limited in number; all other types of alcoholic beverage licenses are available without limitation, if certain conditions are met.

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

Open Containers

Section 316.1936, F.S., prohibits possession[7] of open containers of alcoholic beverages in vehicles and provides certain exceptions, including a provision specifying that a bottle of wine that has been resealed and is transported pursuant to s. 564.09, F.S., is not an open container.[8]

Executive Orders

On March 20, 2020, Governor DeSantis signed Executive Order 20-71[9], which suspended vendors licensed to sell alcohol for consumption on premises from selling alcohol for on-site consumption, while clarifying that such licensees may continue to sell alcoholic beverages in sealed containers for off-premises consumption. The Order also prohibited restaurants from selling food for on-site consumption. Restaurants were permitted to continue to sell food for take-out or delivery. The Order suspended current law prohibiting specially licensed restaurants (SRX) from selling package sales of alcohol for delivery, take-out, or consumption off-premises so long as the alcohol is in a sealed container and the order includes food. The Order also suspended current law prohibiting the return of undamaged alcohol purchased for events cancelled by COVID-19.

Effect of the Bill

The bill amends s. 561.20(2)(a)4., F.S., to specify that special restaurant licensees (SRX) may sell or deliver alcoholic beverages by the package in a sealed container for off-premises consumption, including wine-based and liquor-based beverages prepared by the licensee and packaged in a container sealed by the licensee. The sale or delivery of such beverages must be **accompanied by the sale of food**, and the delivery of alcoholic beverages must comply with s. 561.57, F.S. Malt beverages sold or delivered pursuant to this provision must comply with container size, labeling, and filling requirements.

The bill amends s. 564.09, F.S., to specify that a restaurant patron need only purchase "a meal" in order to remove a partially consumed bottle of wine from the restaurant. The bill also authorizes restaurants which are licensed to sell wine for consumption on the premises to sell or deliver a manufacturer-sealed bottle of wine, or an individual serving of wine or wine-based beverage prepared by the licensee, for off-premises consumption if the wine is delivered in a container sealed by the licensee and the sale or delivery is **accompanied by the purchase of a meal**. Such deliveries must comply with s. 561.57, F.S.

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[7] S. 316.1936(3), F.S. specifies that "An open container shall be considered to be in the possession of the operator of a vehicle if the container is not in the possession of a passenger and is not located in a locked glove compartment, locked trunk, or other locked nonpassenger area of the vehicle."

[8] S. 316.1936(9), F.S.

[9] Executive Order 20-71 expires upon the expiration of Executive Order 20-52, which was most recently extended pursuant to Executive Order 20-316 on Dec. 29, 2020, for an additional 60 days,.

The bill amends s. 565.045, F.S., to specify that vendors licensed under s. 565.02(1)(b)-(f), F.S.,[10] generally non package-store quota license holders, may sell or deliver alcoholic beverages in manufacturer-sealed containers. The bill also authorizes such licensees to sell or deliver an individual serving of liquor or a liquor-based beverage prepared by the licensee for off-premises consumption if the container is sealed by the licensee and accompanied by the sale of food.

The bill has an effective date of July 1, 2021.

B. SECTION DIRECTORY:

Section 1 Amends s. 561.20, F.S.; authorizing certain food service establishments to sell or deliver alcoholic beverages for off-premises consumption if specified requirements are met and deletes a provision prohibiting certain food service establishments from operating as a package store.

Section 2 Amends s. 564.09, F.S.; revising provisions that authorize a restaurant to allow patrons to remove partially consumed bottles of wine from a restaurant for off-premises consumption and authorizing certain restaurants to sell or deliver wine in specified packages under certain circumstances.

Section 3 Amends s. 565.045, F.S.; revising requirements for the sale of alcoholic beverages by certain vendors and authorizing certain vendors to deliver specified alcoholic beverages and liquor under certain circumstances.

Sections 4-5 Reenacts ss. 316.1936(9) and 564.05, F.S., relating to the possession of open containers of alcoholic beverages in vehicles and the limitation of size of individual wine containers, respectively, to incorporate the amendments made to s. 564.09, F.S., in references thereto.

Section 6 Provides for 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.

[10] S. 565.02(1)(b)-(f), F.S., refers to vendors who are permitted to sell any alcoholic beverage regardless of alcoholic content for consumption on the premises.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may enable food service establishments that also hold certain alcoholic beverage licenses to increase their sales revenue through the sale of alcoholic beverages with food delivery orders.

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:

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

A bill to be entitled

An act relating to alcoholic beverage licenses; amending s. 561.20, F.S.; authorizing certain food service establishments to sell or deliver alcoholic beverages for off-premises consumption if specified requirements are met; deleting a provision prohibiting certain food service establishments from operating as a package store; amending s. 564.09, F.S.; revising provisions that authorize a restaurant to allow patrons to remove partially consumed bottles of wine from a restaurant for off-premises consumption; authorizing certain restaurants to sell or deliver wine in specified packages under certain circumstances; amending s. 565.045, F.S.; revising requirements for the sale of alcoholic beverages by certain vendors; authorizing certain vendors to deliver specified alcoholic beverages and liquor under certain circumstances; reenacting ss. 316.1936(9) and 564.05, F.S., relating to the possession of open containers of alcoholic beverages in vehicles and the limitation of size of individual wine containers, respectively, to incorporate the amendments made to s. 564.09, F.S., in references thereto; providing an effective date.

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

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

Section 1. Paragraph (a) of subsection (2) of section 561.20, Florida Statutes, is amended to read:

561.20 Limitation upon number of licenses issued.—

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

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

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

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

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

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

beverage revenue from the sale of food and nonalcoholic beverages during the first 60-day operating period and each 12-month operating period thereafter. A licensee under this subparagraph may sell or deliver alcoholic beverages by the package in a sealed container for off-premises consumption if the sale or delivery is accompanied by the sale of food within the same order. Such authorized sale or delivery includes wine-based and liquor-based beverages prepared by the licensee and packaged in a container sealed by the licensee. Any sale or delivery of malt beverages must comply with the container size, labeling, and filling requirements imposed under s. 563.06. Any delivery of an alcoholic beverage under this subparagraph must comply with s. 561.57. A food service establishment granted a special license on or after January 1, 1958, pursuant to general or special law may not ~~operate as a package store and may not~~ sell intoxicating beverages under such license after the hours of serving or consumption of food have elapsed. Failure by a licensee to meet the required percentage of food and nonalcoholic beverage gross revenues during the covered operating period shall result in revocation of the license or denial of the pending license application. A licensee whose license is revoked or an applicant whose pending application is denied, or any person required to qualify on the special license application, is ineligible to have any interest in a subsequent application for such a license for a period of 120 days after

the date of the final denial or revocation;

5. Any caterer, deriving at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages at each catered event, licensed by the Division of Hotels and Restaurants under chapter 509. This subparagraph does not apply to a culinary education program, as defined in s. 381.0072(2), which is licensed as a public food service establishment by the Division of Hotels and Restaurants and provides catering services. Notwithstanding any law to the contrary, a licensee under this subparagraph shall sell or serve alcoholic beverages only for consumption on the premises of a catered event at which the licensee is also providing prepared food, and shall prominently display its license at any catered event at which the caterer is selling or serving alcoholic beverages. A licensee under this subparagraph shall purchase all alcoholic beverages it sells or serves at a catered event from a vendor licensed under s. 563.02(1), s. 564.02(1), or licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), as appropriate. A licensee under this subparagraph may not store any alcoholic beverages to be sold or served at a catered event. Any alcoholic beverages purchased by a licensee under this subparagraph for a catered event that are not used at that event must remain with the customer; provided that if the vendor accepts unopened alcoholic beverages, the licensee may return such alcoholic beverages to the vendor for a

credit or reimbursement. Regardless of the county or counties in which the licensee operates, a licensee under this subparagraph shall pay the annual state license tax set forth in s. 565.02(1)(b). A licensee under this subparagraph must maintain for a period of 3 years all records and receipts for each catered event, including all contracts, customers' names, event locations, event dates, food purchases and sales, alcoholic beverage purchases and sales, nonalcoholic beverage purchases and sales, and any other records required by the department by rule to demonstrate compliance with the requirements of this subparagraph. Notwithstanding any law to the contrary, any vendor licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), may, without any additional licensure under this subparagraph, serve or sell alcoholic beverages for consumption on the premises of a catered event at which prepared food is provided by a caterer licensed under chapter 509. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph may ~~shall~~ not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. ~~Nothing in~~ This section does not ~~shall~~ permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. The Division of Alcoholic Beverages and Tobacco is hereby authorized

to adopt rules to administer the license created in this subparagraph, to include rules governing licensure, recordkeeping, and enforcement. The first $300,000 in fees collected by the division each fiscal year pursuant to this subparagraph shall be deposited in the Department of Children and Families' Operations and Maintenance Trust Fund to be used only for alcohol and drug abuse education, treatment, and prevention programs. The remainder of the fees collected shall be deposited into the Hotel and Restaurant Trust Fund created pursuant to s. 509.072; or

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

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

b. If the culinary education program provides catering services, this special license shall also allow the sale and

consumption of alcoholic beverages on the premises of a catered event at which the licensee is also providing prepared food. A culinary education program that provides catering services is not required to derive at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages. Notwithstanding any law to the contrary, a licensee that provides catering services under this sub-subparagraph shall prominently display its beverage license at any catered event at which the caterer is selling or serving alcoholic beverages. Regardless of the county or counties in which the licensee operates, a licensee under this sub-subparagraph shall pay the annual state license tax set forth in s. 565.02(1)(b). A licensee under this sub-subparagraph must maintain for a period of 3 years all records required by the department by rule to demonstrate compliance with the requirements of this sub-subparagraph.

c. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph does not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. ~~Nothing in~~ This subparagraph does not ~~shall~~ permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. Any culinary education program that holds a license

to sell alcoholic beverages shall comply with the age requirements set forth in ss. 562.11(4), 562.111(2), and 562.13.

d. The Division of Alcoholic Beverages and Tobacco may adopt rules to administer the license created in this subparagraph, to include rules governing licensure, recordkeeping, and enforcement.

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

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

is in existence. Any special license now in existence heretofore issued under this law cannot be renewed except in the name of the owner of the hotel, motel, motor court, or restaurant or, in the event the hotel, motel, motor court, or restaurant is leased, in the name of the lessee of the hotel, motel, motor court, or restaurant in which the license is located and must remain in the name of the owner or lessee so long as the license is in existence. Any license issued under this section shall be marked "Special," and nothing herein provided shall limit, restrict, or prevent the issuance of a special license for any restaurant or motel which shall hereafter meet the requirements of the law existing immediately before ~~prior to~~ the effective date of this act, if construction of such restaurant has commenced before ~~prior to~~ the effective date of this act and is completed within 30 days thereafter, or if an application is on file for such special license at the time this act takes effect; and any such licenses issued under this proviso may be annually renewed as now provided by law. Nothing herein prevents an application for transfer of a license to a bona fide purchaser of any hotel, motel, motor court, or restaurant by the purchaser of such facility or the transfer of such license pursuant to law.

Section 2. Section 564.09, Florida Statutes, is amended to read:

564.09 Restaurants; off-premises consumption of wine.—

(1) Notwithstanding any other provision of law, a restaurant licensed to sell wine on the premises may permit a patron to remove one unsealed bottle of wine for consumption off the premises if the patron has purchased a ~~full course~~ meal ~~consisting of a salad or vegetable, entree, a beverage, and bread~~ and consumed a portion of the bottle of wine ~~with such meal~~ on the restaurant premises. A partially consumed bottle of wine that is to be removed from the premises must be securely resealed by the licensee or its employees before removal from the premises. The partially consumed bottle of wine shall be placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been subsequently opened or tampered with, and a dated receipt for the bottle of wine and ~~full course~~ meal shall be provided by the licensee and attached to the container. If transported in a motor vehicle, the container with the resealed bottle of wine must be placed in a locked glove compartment, a locked trunk, or the area behind the last upright seat of a motor vehicle that is not equipped with a trunk.

(2) Notwithstanding any other provision of law, a restaurant licensed to sell wine for consumption on the premises may sell or deliver a manufacturer-sealed bottle of wine, or an individual serving of wine or wine-based beverage prepared by the licensee, for off-premises consumption if the wine is delivered in a container sealed by the licensee and the sale or

delivery is accompanied by the purchase of a meal within the same order. Any delivery made under this subsection must comply with s. 561.57.

Section 3. Subsection (1) of section 565.045, Florida Statutes, is amended to read:

565.045 Regulations for consumption on premises; penalty; exemptions.—

(1) Vendors licensed under s. 565.02(1)(b)-(f):

(a) Shall provide seats for the use of their customers;

(b) ~~. Such vendors~~ May sell or deliver alcoholic beverages by the drink or in manufacturer-sealed ~~sealed~~ containers for consumption on or off the premises where sold; and

(c) May sell or deliver an individual serving of liquor or a liquor-based beverage prepared by the licensee for off-premises consumption if the liquor or liquor-based beverage is in a container sealed by the licensee.

All sales or deliveries of alcoholic beverages made under paragraph (c) for off-premises consumption must be accompanied by the sale of food within the same order.

Section 4. For the purpose of incorporating the amendment made by this act to section 564.09, Florida Statutes, in a reference thereto, subsection (9) of section 316.1936, Florida Statutes, is reenacted and amended to read:

316.1936 Possession of open containers of alcoholic

beverages in vehicles prohibited; penalties.—

(9) A bottle of wine that has been resealed and is transported pursuant to s. 564.09 is not an open container under ~~the provisions of~~ this section.

Section 5. For the purpose of incorporating the amendment made by this act to section 564.09, Florida Statutes, in a reference thereto, section 564.05, Florida Statutes, is reenacted to read:

564.05 Limitation of size of individual wine containers; penalty.—It is unlawful for a person to sell within this state wine in an individual container holding more than 1 gallon of such wine, unless such wine is in a reusable container holding 5.16 gallons. However, qualified distributors and manufacturers may sell wine to other qualified distributors or manufacturers in any size container. Except as provided in s. 564.09, wine sold or offered for sale by a licensed vendor to be consumed off the premises shall be in the unopened original container. A person convicted of a violation of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 6. This act shall take effect July 1, 2021.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 369 Construction Contracting Regulation Exemption
SPONSOR(S): Rodriguez
TIED BILLS: **IDEN./SIM. BILLS:** SB 1212

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee		Brackett DB	Anstead
2) Commerce Committee			

SUMMARY ANALYSIS

Construction 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.

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. For example, an unlicensed person may perform contracting work if it is casual, minor, or inconsequential in nature, and the total contract price for all labor and materials is less than $2,500, subject to certain requirements.

"Chickees" are open sided wooden huts constructed with cypress logs and palm thatch leaves that are woven together by vines or thin ropes. Native Americans used chickees for housing during the Seminole wars when Native Americans were pursued by U.S. troops. Chickees are no longer used for actual housing, but chickees are still being built and used in the state. Members of certain Native American Tribes in Florida still build chickees for commercial and private interests.

Current law provides that chickees built by members of the Seminole Tribe of Florida or the Miccosukee Tribe of Indians of Florida are exempt from the requirements of the Florida Building Code. However, current law does not provide an exemption from the contractor licensing requirements for members of the Seminole Tribe and the Miccosukee Tribe of Indians who build chickees. Some local jurisdictions require that a person hold a certain state certified contractor license in order to build a chickee.

The bill creates a contracting licensure exemption by providing that members of the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida are not required to be licensed as a contractor or be an employee of a licensed contractor when constructing chickees.

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

The bill provides for an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Construction Professional Licenses

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 construction contracting regulated by the Construction Industry Licensing Board (CILB) and pt. II of ch. 489, F.S., covers electrical/alarm system contracting regulated by the Electrical Contractors' Licensing Board. Both boards are housed in the Department of Business and Professional Regulation (DBPR).

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.[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]

"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.[3]

"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.[4]

In order to perform construction contracting in the state, a person must be certified or registered as a contractor, be an employee[5] of a certified or registered contractor, or fall under an exemption provided in current law.[6]

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[1] S. 489.107, F.S.
[2] S. 489.105, F.S.
[3] *Id.*
[4] Ss. 489.105, & 489.117, F.S.
[5] "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.
[6] Ss. 489.103(2), & 489.113, F.S.

The CILB licenses the following types of contractors:[7]

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 • Tower

The CILB is divided into the following two divisions with separate jurisdictions:[8]

- Division I is comprised of the general contractor, building contractor, and residential contractor members of the CILB. Division I has jurisdiction over the regulation of general contractors, building contractors, and residential contractors.
  - General contractors are unlimited as to the type of work they may do, such as contracting to build high-rise buildings, and may perform any work requiring licensure, except as otherwise expressly provided in current law.[9]
  - Building contractors may construct commercial buildings and single-dwelling or multiple-dwelling residential buildings, which do not exceed three stories in height, and remodel, repair, or improve any size building if the services do not affect the structure of the building.[10]
  - Residential Contractors may construct, remodel, repair, or improve one-family, two-family, or three-family residences not exceeding two habitable stories above no more than one uninhabitable story.[11]

- Division II is comprised of the roofing contractor, sheet metal contractor, air-conditioning contractor, mechanical contractor, pool contractor, plumbing contractor, and underground utility and excavation contractor members of the CILB. Division II has jurisdiction over the regulation of roofing contractors, sheet metal contractors, class A, B, and C air-conditioning contractors, mechanical contractors, commercial pool/spa contractors, residential pool/spa contractors, swimming pool/spa servicing contractors, plumbing contractors, underground utility and excavation contractors, solar contractors, and pollutant storage systems contractors.

[7] S. 489.105(a)-(q), F.S.; Rule 61G4-15.015-040, F.A.C.
[8]
[9] S. 489.105(3)(a), F.S.
[10] S. 489.105(3)(b), F.S.
[11] S. 489.105(3)(c), F.S.

- A specialty contractor is one whose scope of work and responsibility is limited to a particular phase of construction as detailed in an administrative rule adopted by the CILB. Jurisdiction is dependent on the scope of work and whether Division I or Division II has jurisdiction over such work in accordance with the applicable administrative rule.[12]

In order to become a construction contractor, an applicant must meet the following criteria:[13]

- be of good moral character;
- be at least 18 years of age;
- successfully pass the certification examination; and
- meet eligibility requirements according to a combination of education and experience as approved by the board, which generally includes four years of education and/or experience depending on the license with at least one year being experience.

Exceptions to Construction Professional Licensure

An unlicensed person may perform work that falls under the scope of contracting if they fall under an exemption provided in current law. Currently, there are 23 exemptions provided in current law, including:[14]

- a person performing contracting if it is casual, minor, or inconsequential in nature, and the aggregate contract price for all labor and materials is less than $2,500, subject to certain requirements. This is referred to as the handyman exemption;

- an owner building or improving one or two-family residences, farm outbuildings, or improving commercial buildings at a cost that does not exceed $75,000, subject to certain requirements;

- an employee of an apartment community or apartment management company who makes minor repairs to existing electric water heaters, electric heating, ventilating, and air-conditioning systems subject to certain requirements;

- a person who sells or installs any finished products, materials, or articles of merchandise that are not fabricated into and do not become a permanent part of a structure such as awnings; and

- An employee of the United States, the state, or any municipality, county, irrigation district, reclamation district, or political subdivision, except school boards, state university boards of trustees, and community college boards of trustee, subject to certain requirements.

The Florida Building Code

The Florida Building Code (Building Code) is the statewide building code for all construction in the state. The Florida Building Commission (Commission), housed within the DBPR, implements the Building Code. The Commission reviews the International Code Council's I-Codes and the National Electric Code every three years to determine if it needs to update the Building Code.[15]

Part IV of ch. 553, F.S., is known as the "Florida Building Codes Act" (Act), which provides a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code that must be applied, administered, and enforced uniformly and consistently from

[12] For example, specialty swimming pool contractors have limited scopes of work for the construction of pools, spas, hot tub, and decorative or interactive water displays. *See* Fla. Admin. Code Rule 61G4-15.032.
[13] S. 489.111(2)(c), F.S.
[14] S. 489.103, F.S.
[15] S. 553.73(7), F.S.

jurisdiction to jurisdiction.[16] The Building Code is adopted, updated, and interpreted by the Commission, and is enforced by local governments.[17]

The main purpose of the Building Code is to regulate new construction or proposed modifications to existing structures in order to give the occupants the highest level of safety and the least amount of defects.[18]

The Seminole Tribe of Florida and The Miccosukee Tribe of Indians of Florida

Seminole history begins with bands of Creek Indians from Georgia and Alabama who migrated to Florida in the 1700s. Conflicts with Europeans and other tribes caused them to seek new lands to live in peace.[19] Based on their movement to Florida, these Native Americans collectively became known as Seminole, a name meaning "wild people" or "runaway." In addition to Creeks, Seminoles included Yuchis, Yamasses and other tribes that had lived and hunted all over the Florida peninsula for thousands of years. The population also included runaway slaves who found refuge among the Native Americans.[20]

On July 21, 1957, tribal members voted in favor of a Seminole Constitution which established the Seminole Tribe of Florida, and the U.S. government formally recognized them as a Native American Tribe in the same year.[21]

In order to be a member the Seminole Tribe of Florida, a person must meet the following three requirements:[22]

- Have a minimum of one-quarter Florida Seminole blood (one of the person's grandparents must have been a full-blooded Florida Seminole);
- Be able to prove (with written documentation) that he or she is directly related to a Florida Seminole who was listed on the 1957 Tribal Roll, which is the Base Roll of the Seminole Tribe of Florida; and
- Be sponsored for enrollment by someone who is currently a member of the Tribe.

The Miccosukee Tribe of Indians of Florida was originally part of the same group of Native Americans as the Seminoles. However, they separated from the Seminole Tribe and became an independent tribe. The U.S. government formally recognized the Tribe on January 11, 1962.[23]

In order to a member of the Miccosukee Tribe of Indians of Florida, a person must have a Miccosukee mother and not be enrolled in any other Tribe.[24]

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[16] *See* s. 553.72(1), F.S.
[17] Ss. 553.72, & 553.73, F.S.
[18] Florida Building Commission, *Advanced Florida Building Code Principals*, http://www.floridabuilding.org/Upload/Courses_trp/421-2-MATERIAL-Adv%20FL%20Bldg%20Code%20-%20Course%20PDF%20version%207.0.pdf (last visited Feb. 9, 2021).
[19] Florida Department of State, *Seminole History*, https://dos.myflorida.com/florida-facts/florida-history/seminole-history/ (last visited Feb. 9, 2021).
[20] *Id.*; Seminole Tribe of Florida, *Frequently Asked Questions*, https://www.semtribe.com/stof/helpful-linksmain/helpful-links (last visited on Feb. 8, 2021).
[21] *Id.* Seminole Tribe of Florida, *History*, https://www.semtribe.com/stof/history/timeline (last visited Feb. 9, 2021).
[22] Seminole Tribe of Florida, *Frequently Asked Questions*, https://www.semtribe.com/stof/helpful-linksmain/helpful-links (last visited on Feb. 8, 2021).
[23] Florida Department of Transportation, *Miccosukee Tribe of Indians of Florida*, https://www.fdot.gov/environment/na-website-files/miccosukee.shtm (last visited Feb. 8, 2021); Miccosukee Tribe of Indians of Florida, *History*, https://tribe.miccosukee.com/ (last visited Feb. 8, 2021).
[24] *Id.*

Chickees

Current law defines chickees as "an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other nonwood features."[25]

"Chickee" is the word Seminoles use for "house." The chickee style of architecture - palmetto thatch over a cypress log frame - was born during the Seminole wars (1817-1858) when Native Americans, pursued by U.S. troops, needed fast, disposable shelter while on the run.[26]

Currently, chickees are no longer used for actual housing. Members of the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida still build chickees for commercial and private interests.[27] Generally, members of the Seminole Tribe of Florida who build chickees for commercial and private interests learn how to build chickees from their ancestors.[28]

In the Miccosukee Tribe of Indians of Florida, members are taught to build chickees at a young age by experienced Tribal elders. The Tribe maintains a list of expert builders, which is maintained by the Miccosukee Business Council.[29] Tribal elders decide when a person is ready to be on the list, and the Miccosukee Business Council may add them to the list or determine that they need more instruction.[30]

When members of the public contact the Tribe about building a chickee, they are referred to the members on the list of expert builders.[31]

Currently, chickees can be constructed in a matter of hours instead of days because of improvements in technology and equipment. Nails, chainsaws and four wheelers are now used to haul heavy logs replacing the old method when Native Americans would either use manpower or wait until a thunderstorm would flood the area were logs had been cut down so they could be hauled out to the location of the new camp.[32]

Chickee Exemption from the Florida Building Code

Current law exempts chickees built by members of the Seminole Tribe of Florida or the Miccosukee Tribe of Indians of Florida from the requirements of the Building Code. Chickees that are exempt from these requirements may not have any electrical, plumbing, or other nonwood features. However, such chickees may have nonwood items underneath them such as plastic or aluminum chairs, countertops, or food and beverages.[33]

Contracting Licensure Requirement

Current law does not provide an exemption from the contractor licensing requirements for members of the Seminole Tribe of Florida or the Miccosukee Tribe of Indians of Florida who construct chickees.

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[25] S. 553.73(10)(i), F.S.
[26] Seminole Tribe of Florida, Chickee, https://www.semtribe.com/stof/culture/chickee (last visited Feb. 8, 2021).
[27] *Id.*
[28] *Id.*; WGCU Public Media, *Chickees*, (Sep. 29, 2010) https://www.youtube.com/watch?v=ipuIUXK2exQ (last visited Feb. 11, 2021).
[29] The Miccosukee Business Council consists of five elected members.
[30] Jeanine Bennett, In-House General Counsel for the Miccosukee Tribe of Indians of Florida, Miccosukee Chickee Bill (Feb. 10, 2021).
[31] *Id.*
[32] Ernie Tiger, *Chickees Provided Early Housing*, https://www.semtribe.com/stof/culture/chickee (last visited Feb. 9, 2021).
[33] *See* The Petition for Declaratory Statement of Plaza Beach Motel, Inc., Case No. 2018-012 (Fla. Building Comission) (Apr. 20, 2018).

In 2013, the CILB issued a declaratory statement stating that members of the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida are not exempt from contractor licensure requirements when building chickees for consumers outside the boundaries of their reservations.[34]

Local governments in Florida require the builder of chickee to obtain a permit and comply with all zoning and environmental regulations, local ordinances and regulations, and the Department of Health drainage requirements.[35]

In order to obtain a permit to build a chickee, local governments are requiring members of the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida to be licensed contractors or employees of a licensed contractor. Some local governments are requiring anyone wishing to build a chickee to be a licensed Division I contractor or an employee of a licensed Division I contractor.[36]

The Bill

The bill creates a contractor licensure exemption by providing that members of the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida are not required to be licensed as a contractor or be an employee of a licensed contractor when constructing chickees.

B. SECTION DIRECTORY:

Section 1. Amends s. 489.103, F.S., creating an exemption

Section 2. Provides an effective date of July 1, 2021.

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.

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[34] *See* The Petition for Declaratory Statement of City of Port St. Lucie Building Department, Case No. 2013-091(Fla. DBPR) (Dec. 23, 2013).

[35] Kathleen Croteau, Building Official, Sarasota County, Important Notice Bulletin #2017-0001 (Feb. 7, 2017) https://www.scgov.net/Home/ShowDocument?id=33926 (last visited Feb. 8, 2021); Charlotte County, Chickee Structures, https://www.charlottecountyfl.gov/departments/community-development/notices/chickee-structures.stml (last visited Feb. 8, 2021); Sara Matthis, *City Addresses Rash of Unpermitted Tiki Huts*, Keys Weekly (Jan. 14, 2019) https://keysweekly.com/42/city-addresses-rash-of-unpermitted-tiki-huts/; Miami-Dade, File Contractor Complaints, https://www.miamidade.gov/building/contractor-complaints.asp (last visited Feb. 8, 2021); Miami-Dade, Permit Exemptions, https://www.miamidade.gov/permits/exemptions.asp (last visited Feb. 8, 2021).

[36] *Id.*

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive impact on the private sector by allowing members of the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida construct chickees without having to obtain a license or work for a licensed contractor.

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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to a construction contracting regulation exemption; amending s. 489.103, F.S.; exempting from licensure a member of the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida when constructing specified structures; providing an effective date.

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

Section 1. Subsection (24) is added to section 489.103, Florida Statutes, to read:

489.103 Exemptions.—This part does not apply to:

(24) A member of the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida when constructing chickees as described in s. 553.73(10)(i).

Section 2. This act shall take effect July 1, 2021.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 403 Home-based Businesses
SPONSOR(S): Giallombardo and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 266

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee		Wright	Anstead
2) Commerce Committee			

SUMMARY ANALYSIS

The Florida Constitution grants local governments broad home rule authority, and county and municipal governments may also 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. Currently, some local governments have enacted ordinances specific to regulating home-based businesses, or businesses which operate out of a residence. Some local governments regulate the types of businesses that may be carried on at a residence, and others regulate the space in which business may occur.

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.

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

- the business operates, in whole or in part, from a residential property;
- the employees of the home-based business 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;
- as viewed from the street, 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; and
- 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 allows any adversely affected current or prospective home-based business owner to challenge any local government action regulating home-based businesses. The prevailing party may recover reasonable attorney fees and costs.

The bill has an indeterminate fiscal impact on local governments and does not appear to have a fiscal impact on the state.

The bill has an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Local Government Authority

The Florida Constitution grants authority for broad home rule by local governments. 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 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]

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.[5] Counties and municipalities may levy a business tax.[6]

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.[7]

Businesses and Occupations

General law determines whether local governments are able to regulate occupations and businesses, and to what degree.[8] If state law preempts regulation for an occupation, then, generally, local governments may not regulate that occupation.[9] 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 workers' compensation insurance coverage by a contractor; [10]
- assessing local fees and rules regarding low-voltage alarm system projects;[11]
- tobacco and nicotine products;[12]

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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] S. 205.022(5), F.S.
[6] Ss. 205.033 and 205.043, F.S.
[7] The Florida Legislature, Office of Economic and Demographic Research, 2020 Local Government Financial Information Handbook, p. 9, http://edr.state.fl.us/Content/local-government/reports/lgfih20.pdf (Feb. 10, 2021).
[8] 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.
[9] *Id.*; Wolf and Bolinger, *supra* note 17.
[10] S. 553.80(7)(a)5.c., F.S.
[11] S. 489.503(14), F.S.
[12] Ch. 569, F.S., and s. 386.209, F.S.

- firearms, weapons, and ammunition;[13]
- employment benefits;[14]
- polystyrene products;[15]
- public lodging establishments and public food service establishments;[16] and
- disposable plastic bags.[17]

Conversely, Florida law also specifically grants local jurisdictions the right to regulate businesses, occupations and professions in certain circumstances.[18] For example, Florida law specifically authorizes regulations relating to:

- zoning and land use;[19]
- 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";[20]
- the levy of local business taxes;[21]
- building code inspection fees;[22]
- tattoo establishments;[23]
- massage practices;[24]
- child care facilities;[25]
- taxis and other vehicles for hire;[26] and
- waste and sewage collection.[27]

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 that 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,[28]
- In Tampa, home-based businesses may not be conducted in any accessory building;[29]
- In Naples, home-based businesses are not allowed to conduct retail, wholesale, or warehousing activities at the residence;[30] 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.[31]

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[13] S. 790.33(1), F.S.
[14] S. 218.077, F.S.
[15] S. 500.90, F.S.
[16] S. 509.032, F.S.
[17] S. 403.7033, F.S.
[18] *Supra* note 16.
[19] S. 125.01(1)(h), F.S.
[20] S. 166.221, F.S.
[21] Ch. 205, F.S.
[22] S. 166.222, F.S.
[23] S. 381.00791, F.S.
[24] S. 480.052, F.S.
[25] S. 402.306, F.S.
[26] S. 125.01(1)(n), F.S.
[27] S. 125.01(1)(k), F.S.
[28] Volusia County, FL., Ch. 72, art. II, div. 8, s. 72-283.
[29] Tampa, FL., Ch. 27, art. VI, div. 2, s. 27-282.5.
[30] Naples, FL., Ch. 56, art. III, s. 56-92.
[31] Gainesville, FL., Ch. 30, art. V, div. 2, s. 30-5.37.

Effect of the Bill

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 in violation of the provisions in the bill.

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

- the business operates, in whole or in part, from a residential property;
- the employees of the home-based business reside in the residence, except that up to two employees that do not reside at the residence may work at the residence. However, 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; and
- the activities of the home-based business are secondary to the property's use as a residential dwelling.

The bill allows a home-based business that operates from a 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 allows any adversely affected current or prospective home-based business owner to challenge any local government action regulating home-based businesses. The prevailing party may recover reasonable attorney fees and costs incurred in challenging or defending the action, including reasonable appellate attorney fees and costs.

The bill provides an effective date of July 1, 2021.

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, 2021.

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. 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.

2. Expenditures:

Indeterminate. 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.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may allow more home-based businesses to operate more freely and 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:

The bill neither requires nor provides authority for agency rulemaking.

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; authorizing specified business owners to challenge certain local government actions; authorizing the prevailing party to recover specified attorney fees and costs; 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

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

the residential dwelling may work at the residential dwelling. However, employees of the home-based business who do not primarily work at the residential dwelling are not required to 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) Is only 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) Any adversely affected current or prospective home-based business owner may challenge any local government action in violation of this section. The prevailing party in a challenge may 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, 2021.