

Commerce Committee

Tuesday, March 9, 2021
3:45 PM - 5:45 PM
Webster Hall (212 Knott)

Meeting Packet

Chris Sprowls
Speaker

Blaise Ingoglia
Chair

The Florida House of Representatives

Commerce Committee

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Meeting Agenda

Tuesday, March 9, 2021
3:45 PM – 5:45 PM
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I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

- CS/HB 55 Building Design by Regulatory Reform Subcommittee, Overdorf
- HB 403 Home-based Businesses by Giallombardo
- CS/HB 425 Disposition of Unclaimed Property by Insurance & Banking Subcommittee, Clemons
- HB 487 Small Scale Development Amendments by Duggan
- CS/HB 515 Duties of the Attorney General by Judiciary Committee, Mariano
- CS/HB 663 Cottage Food Operations by Regulatory Reform Subcommittee, Salzman

V. Closing Remarks

VI. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 55 Building Design
SPONSOR(S): Regulatory Reform Subcommittee, Overdorf
TIED BILLS: **IDEN./SIM. BILLS:** SB 284

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	12 Y, 5 N, As CS	Brackett	Anstead
2) Local Administration & Veterans Affairs Subcommittee	12 Y, 6 N	Darden	Miller
3) Commerce Committee		Brackett	Hamon

SUMMARY ANALYSIS

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

The bill:

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

The bill has an indeterminate fiscal impact on 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

The Community Planning Act

Adopted in 1985, the Local Government Comprehensive Planning and Land Development Regulation Act, also known as Florida's Growth Management Act, was significantly revised in 2011, becoming the Community Planning Act (Act).[1] The Act governs how local governments create and adopt their local comprehensive plans. The legislative intent is for local governments to manage growth through comprehensive land use plans that preserve, promote, protect, and improve the public health, safety, comfort, good order, appearance, convenience, law enforcement and fire prevention, and general welfare.[2]

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

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

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

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

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

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

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

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

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

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

The Florida Building Code

The Florida Building Code (Building Code) is the statewide building code for all construction in the state. 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

[9] Osceola County Land Development Code, § Ch. 3, Article 3.2.2.; Code of the City of Orlando, § Ch. 58, Part 3, Section 58.517; Orange County Code, § Chapter 38, Article VIII, Division 8.
[10] Osceola County Land Development Code, § Ch. 3, Article 3.2.2.; Code of the City of Orlando, § Ch. 58, Part 3, Section 58.517; City of Winter Park Code of Ordinances, § Ch. 58, Art. 3, Section 58-67; Orange County Code, § Chapter 38, Article VIII, Division 8.
[11] Orange County Code, § Chapter 38, Article VIII, Division 8; City of Winter Park Code of Ordinances, § Ch. 58, Art. 3, Section 58-67
[12] Code of the City of Orlando, § Ch. 58, Part 3, Section 58.517.
[13] Doris S. Goldstein, *New Urbanism: Recreating Florida by Rewriting the Rules*, Florida Bar Journal, April 2006, at 63; Michigan Land Institute, 10 Principles of New Urbanism, http://www.mlui.org/mlui/news-views/articles-from-1995-to-2012.html?archive_id=678#.Xhd62ehKiUk (last visited Jan. 29, 2021); Congress for the New Urbanism, *What is New Urbanism?*, https://www.cnu.org/resources/what-new-urbanism (last visited Jan. 29, 2021).
[14] *Id*.
[15] Michael Bezruki, *Governor Signs Arkansas Housing Affordability Bill Into Law*, National Home Association of Home Builders, March 15, 2019, http://nahbnow.com/2019/03/governor-signs-arkansas-housing-affordability-bill-into-law/ (last visited Jan. 29, 2021); Doug Thompson, *Restrictions on home building barred in Arkansas*, Northwest Arkansas Democrat Gazette, March 17, 2019, https://www.nwaonline.com/news/2019/mar/17/restrictions-on-home-building-barred-in/ (last visited Jan. 29, 2021).
[16] Daniel Herriges, *Building Design Requirements Are Sometimes Bad for Cities. But Abolishing Them All Is Worse*, Strong Towns, April 11, 2019 https://www.strongtowns.org/journal/2019/4/11/design-standards-are-an-important-tool-for-cities-dont-do-away-with-them (last visited Jan. 29, 2021); Elaina Sauber, Housing design bill worries Franklin officials, Tennessean, April 18, 2017 https://www.tennessean.com/story/news/local/williamson/2017/04/18/housing-design-bill-worries-franklin-officials/100561994/ (last visited Jan. 29, 2021).

defects.[17] The Florida Building Commission (Commission), housed within the Department of Business and Professional Regulation, implements the Building Code. The Commission reviews the International Code Council's I-Codes and the National Electric Code every three years and determines if the Building Code needs updating.[18]

The Legislature has provided local governments with the power to inspect all buildings, structures, and facilities within their jurisdiction to protect the public's health, safety, and welfare.[19]

Every local government must enforce the Building Code and issue building permits.[20] A person, firm, or corporation may not construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government enforcing agency or from such persons as may be directed, by resolution or regulation, to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.[21]

Local governments may adopt amendments to the Building Code every six months that are more stringent than the Building Code requirements but those amendments are limited to the local government's jurisdiction. Amendments by local governments expire upon the adoption of the newest edition of the Building Code, requiring the local government to repeat the amendment process every three years in order to maintain a local amendment to the Building Code.[22]

States That Prohibit Local Government Regulations For Building Design Elements

North Carolina and Arkansas prohibit local governments from adopting regulations that require specific building design elements for single- and two- family dwellings unless certain conditions exist.[23] Tennessee and Georgia have considered bills to enact laws similar to North Carolina and Arkansas; however, the bills did not pass.[24]

Adopted in 2015, North Carolina's law prohibits cities and counties from adopting regulations that require "building design elements" for single- and two- family dwellings. The North Carolina law also prohibits such regulations from being applied to any zoning district or conditional district unless voluntarily consented to by the owners of all the properties subject to the proposed regulation.[25]

The North Carolina law defines "building design elements" to include the:[26]

- Exterior building color;
- Type or style of exterior cladding[27] material;
- Style or materials of roof structures or porches;
- Exterior nonstructural architectural ornamentation;
- Location or architectural styling of windows and doors, including garage doors;

[17] 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).
[18] S. 553.73(7), F.S.
[19] S. 553.72, F.S.
[20] Ss. 125.01(1)(bb), 125.56(1), & 553.80(1), F.S.
[21] *See* Ss. 125.56(4)(a) & 553.79(1), F.S.
[22] S. 553.73(4), F.S.
[23] N.C. Gen. Stat. § 160D-702; Ark. Code Ann. § 14-17-212 & 14-56-204.
[24] Georgia General Assembly, 2019-2020 Regular Session - HB 302, http://www.legis.ga.gov/Legislation/en-US/display/20192020/HB/302 (last visited Feb. 1, 2021); Tennessee General Assembly, 2017-2018 Session – HB 476 http://wapp.capitol.tn.gov/apps/Billinfo/default.aspx?BillNumber=HB0476&ga=110 (last visited Feb. 1, 2021).
[25] N.C. Gen. Stat. § 160D-702; R. Erika Churchill, Staff Attorney for the North Carolina General Assembly, Analysis of S.L. 2015-86, https://dashboard.ncleg.net/api/Services/BillSummary/2015/S25-SMST-147(sl) (last visited Feb. 1, 2021); General Assembly of North Carolina, Session Law 2015-86 Senate Bill 25, June 9, 2015 https://www.ncleg.gov/Sessions/2015/Bills/Senate/PDF/S25v3.pdf (last visited Feb. 1, 2021).
[26] N.C. Gen. Stat. § 160D-702.
[27] The Florida Building Code and the North Carolina Building Code both define "cladding" as the material that covers the exterior surface of a building, and is directly affected by wind load. S. 202 of the Florida Building Code (Residential), Seventh Edition; S. 202 of the 2018 North Carolina Building Code (Residential).

- Number and types of rooms; and
- Interior layout of rooms.

The law defines the phrase as not including:[28]

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

The North Carolina law allows cities and counties to adopt and enforce regulations that require "building design elements" for single- and two- family dwellings if:[29]

- The dwelling is located in an area designated as a local historic district;
- The dwelling is located in area designated as a historic district on the National Register of Historic Places;[30]
- The dwelling is individually designated as a local, state, or national historic landmark;
- The regulations are directly and substantially related to the requirements of North Carolina's Building Code;
- The regulations are applied to manufactured housing in a manner consistent with state and federal law; or
- The regulations are adopted as a condition for participation in the National Flood Insurance Program.[31]

The prohibition against local regulations relating to building design elements does not affect the validity or enforceability of private covenants or other contractual agreements relating to building design elements between property owners.[32]

In 2019, Arkansas passed a similar law that also prohibited cities and counties from adopting regulations that require "building design elements" for single-family dwellings. The law defines "building design elements" in the same manner as the North Carolina law, except Arkansas also includes minimum square footage in its definition and the location and design of a dwelling's garage.[33]

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

- The dwelling is in a central business district, which can be created by a city to revitalize its urban center;
- The dwelling existed and was subject to the local regulation prior to the prohibition being enacted;
- As an overlay district regulation, if a majority of owners in the district approve the regulation and the district determines the regulation does not violate Arkansas' Private Property Protection Act; or

[28] N.C. Gen. Stat. § 160D-702.
[29] *Id.*
[30] The National Register of Historic Places is the federal government's official list of historic places in the United States. The National Historic Preservation Act of 1966 authorized the register, which is administered by the National Park Service. National Park Service, *What is the National Register of Historic Places*, https://www.nps.gov/subjects/nationalregister/what-is-the-national-register.htm (last visited Feb. 1, 2021).
[31] The National Flood Insurance Program is administered by FEMA. The goal of the program is to reduce the impact of flooding on private and public structures by providing affordable insurance to property owners, and encouraging communities to adopt and enforce floodplain management regulations. FEMA, *The National Flood Insurance Program*, https://www.fema.gov/national-flood-insurance-program (last visited Feb. 1, 2021).
[32] *Id.*
[33] Ark. Code Ann. § 14-17-212 & 14-56-204; SB 170, 92nd Leg. Reg. Sess. (AR 2019).

- The regulations are directly related to an immediate public health or safety hazard and the regulation is derived from the local government's police power.[34]

Arkansas also provides that the prohibition against local regulations relating to building design elements does not affect the validity or enforceability of covenants or contracts between a property owner and a city or county.[35]

Effect of the Bill

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

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

The term "building design elements" does not include:
- Height;
- Bulk;
- Orientation;
- Location on a zoning lot; or
- The use of buffering or screening to minimize potential adverse physical or visual impacts or protect the privacy of neighbors.

The bill allows local governments to adopt and enforce regulations that require "building design elements" for residential dwellings if:
- The dwelling is listed in the National Register of Historic Places;
- The dwelling is located in a historic district in the National Register of Historic Places;
- The dwelling is listed as a historic property or located in a historic district by a local preservation ordinance;
- The regulations are adopted in order to implement the National Flood Insurance Program;
- The regulations are adopted in accordance and compliance with adopting local amendments to the Florida Building Code; or
- The dwelling is located in a community redevelopment area.[36]

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

B. SECTION DIRECTORY:

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

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

[34] *Id*.
[35] *Id*.
[36] Community redevelopment areas are neighborhoods determined by local governments to be slums, blighted areas, areas in which there is a shortage of affordable housing, or coastal and tourist areas that are deteriorating and economically distressed, which are subject to redevelopment in accordance with a community redevelopment plan. *See* Part III, ch. 163, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

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:

The bill neither provides authority for nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 10, 2020, the Regulatory Reform Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Clarifies that residential dwellings are limited to single- and two- family dwellings.

- Adds additional types of dwellings to which local governments may apply building design restrictions, including:
  - Single- and two- family dwellings located in historic districts instead of only dwellings that contribute to historic districts;
  - Single- and two- family dwellings located in community redevelopment areas; and
  - When the regulations are adopted in accordance with and in compliance with the process for adopting local amendments to the Florida Building Code.
- Clarifies that building design restrictions include the location and orientation of a garage.

The analysis is drafted to the committee substitute as passed by the Regulatory Reform Subcommittee.

A bill to be entitled

An act relating to building design; amending s. 163.3202, F.S.; prohibiting certain regulations relating to building design elements from being applied to certain dwellings; providing exceptions; defining the term "building design elements"; providing construction; providing an effective date.

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

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

163.3202 Land development regulations.—

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

1. The dwelling is listed in the National Register of Historic Places, as defined in s. 267.021(5); is located in a National Register Historic District; or is designated as a historic property or located in a historic district, under the terms of a local preservation ordinance;

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

3. The regulations are adopted pursuant to and in

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

compliance with chapter 553; or

4. The dwelling is located in a community redevelopment area, as defined in s. 163.340(10).

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

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

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

COMMERCE COMMITTEE

HB 55 by Rep. Overdorf
Building Design

AMENDMENT SUMMARY
March 9, 2021

Amendment 1 by Rep. Overdorf (line 29):
The amendment

- Provides that local governments may apply building design restrictions to dwellings in a planned unit development or a master planned community created by a local ordinance enacted on or before July 1, 2021.
- Defines “planned unit development” and “master planned community” as an area of land that is planned and developed as a single entity or in approved stages with uses and structures substantially related to the character of the entire development, or a self-contained development in which the subdivision and zoning controls are applied to the project as a whole rather than to individual lots.

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: Commerce Committee

Representative Overdorf offered the following:

Amendment (with title amendment)

Remove line 29 and insert:

5. The dwelling is located in a planned unit development or master planned community created pursuant to a local ordinance enacted on or before July 1, 2021.

(b) For purposes of this subsection, the term "planned unit development" and "master planned community" means an area of land that is planned and developed as a single entity or in approved stages with uses and structures substantially related to the character of the entire development, or a self-contained development in which the subdivision and zoning controls are applied to the project as a whole rather than to individual lots.

(c) For purposes of this subsection, the term "building

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

Remove line 6 and insert:
defining the term "planned unit development" and "master planned community"; defining the term "building design elements";

HB 403

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	10 Y, 6 N	Wright	Anstead
2) Commerce Committee		Wright	Hamon

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]
- firearms, weapons, and ammunition;[13]

[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.
[13] S. 790.33(1), F.S.

- 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]

Effect of the Bill

The bill provides that local governments may not:

[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.

- 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.

COMMERCE COMMITTEE

HB 403 by Rep. Giallombardo
Home-based Businesses

AMENDMENT SUMMARY
March 9, 2021

Amendment 1 by Rep. Giallombardo (line 57):

The amendment provides that the protections in the bill for home-based businesses do not affect or supersede any current or future condominium association declarations, cooperative association documents, or homeowners' association covenants.

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: Commerce Committee

Representative Giallombardo offered the following:

Amendment (with title amendment)

Between lines 57 and 58, insert:

Section 2. The application of this act shall not supersede any current or future declaration or declaration of condominium adopted pursuant to chapter 718, Florida Statutes, cooperative document adopted pursuant to chapter 719, Florida Statutes, or declaration or declaration of covenant adopted pursuant to chapter 720, Florida Statutes.

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

Remove line 12 and insert:

attorney fees and costs; providing that certain residential association declarations and documents may not be superseded; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 425 Disposition of Unclaimed Property
SPONSOR(S): Insurance & Banking Subcommittee, Clemons
TIED BILLS: **IDEN./SIM. BILLS:** SB 1434

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	18 Y, 0 N, As CS	Fortenberry	Luczynski
2) State Administration & Technology Appropriations Subcommittee	15 Y, 0 N	Lee	Topp
3) Commerce Committee		Fortenberry	Hamon

SUMMARY ANALYSIS

The Division of Unclaimed Property within the Florida Department of Financial Services (DFS) maintains a database of unclaimed property in its possession. Claimants' representatives are registered with DFS (registrants) to gain access to the unclaimed property database and to seek authorizations from potential claimants of unclaimed property to file claims on behalf of those claimants. Each registrant who files claims utilizes a unique power of attorney through which claimants provide authorization to registrants to file a claim on their behalf and to receive a fee for services. Some registrants utilize powers of attorney that contain legal phrases which may be confusing or problematic for claimants. The powers of attorney often also contain irrevocable clauses and stipulations, allow the registrant to claim the property if the claimant fails to do so, or permit the registrant to take legal action against the claimant if the claimant rescinds the power of attorney. The lack of uniformity in the use of the powers of attorney poses problems for consumers and DFS staff.

Florida law does not limit the fees and costs registrants may claim for recovering property for a claimant under certain circumstances. If a claimant signs a Full Disclosure Statement prior to executing of a power of attorney, a claimant's representative may collect unlimited fees and costs for providing services related to the collection of the unclaimed property. If the Full Disclosure Statement is not signed, the fees and costs are capped at 20 percent of the value of the property recovered, and not to exceed $1,000 per account owned by a natural person and claimed in the recovery. DFS may allow a claimant of unclaimed property to electronically submit a claim for unclaimed property if the amount of the claim is $1,000 or less.

The bill streamlines the unclaimed property claims law. Under the bill, DFS must adopt forms by rule entitled "Uniform Unclaimed Property Recovery Agreement" (Recovery Agreement) and "Uniform Unclaimed Property Purchase Agreement" (Purchase Agreement) (collectively, the "Agreements"). These forms will be the exclusive means of a registrant engaging a claimant or seller to file an unclaimed property claim with DFS. The Agreements will be similar to the powers of attorney used by many registrants, but will be more claimant-friendly and will provide consumer protections, including a cap on fees and costs that registrants may charge claimants in all circumstances.

The bill specifies what must be contained in the Agreements, including specific information about the amounts claimed or sold, the fees and costs received by the registrant, and identifying information for both the claimant or seller and the registrant. The Agreements cap the total fees and costs, or the total discount amount in the case of a purchase agreement, to no more than 25 percent of the claimed amount. If the total fees and costs exceed 25 percent, the fee shall be reduced to 25 percent and the net balance remitted directly to the claimant by DFS. Furthermore, the bill increases the value of property for which a claimant may submit an electronic claim from $1,000 to $2,000.

The bill has an insignificant fiscal impact on the state and does not appear to impact local government revenues or expenditures. The bill may have a positive economic benefit to consumers who have claims for unclaimed property and a negative economic impact on registered claimants' representatives.

The bill is effective upon becoming law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Florida Department of Financial Services (DFS) is composed of 13 divisions and one independent office, including the Division of Unclaimed Property. Chapter 717, F.S., provides a framework for the rightful owners to obtain unclaimed property that is held by DFS. DFS maintains a database of unclaimed property in its possession. More than 350 licensed[1] claimants' representatives are registered with DFS (registrants) to gain access to the unclaimed property database and to seek authorizations from potential claimants of unclaimed property held by DFS to file claims on behalf of those claimants.[2]

Each registrant who files claims utilizes a unique power of attorney through which claimants provide authorization to registrants to file a claim on their behalf and to receive a fee for services.[3] While each power of attorney is different, most contain language similar to the following: "I hereby authorize ZYX Associates to file a claim on my behalf for the unclaimed property accounts listed and to receive the fee I authorize."[4] The lack of uniformity in the use of the powers of attorney poses problems for both consumers and DFS staff. DFS's unclaimed property analysts are required to review and process all documents for each claim, including the unique powers of attorney.[5]

In addition to the language required in the powers of attorney,[6] some registrants utilize powers of attorney that contain legal phrases such as "representation agreement, assignment, assignment of interest, recovery agreement, or contract," which may be confusing or problematic for claimants.[7] The powers of attorney often contain irrevocable clauses and stipulations, including assignments of interests and rights, exclusivity provisions, venue and attorney fees provisions.[8] Some powers of attorney provide that if the claimant fails to act, the registrant can claim their 'assigned property' separate from the claimant.[9] Furthermore, some registrants will threaten claimants with legal action if the claimants attempt to rescind a power of attorney and file the claims themselves or hire another registrant who charges a lower fee for recovering the unclaimed property on behalf of the claimant.[10]

Section 717.135, F.S., contains different limits on the fees and costs that a registrant can recover for obtaining unclaimed property for a claimant. If a Full Disclosure Statement has been provided to an unclaimed property claimant for signature prior to the execution of a power of attorney, fees and costs collected by a claimant's representative for providing services related to the collection of the unclaimed property are unlimited.[11] If the Full Disclosure Statement has not been provided to the claimant, then the fees and costs are capped at 20 percent of the value of the property recovered, and not to exceed $1,000 per account owned by a natural person and claimed in the recovery.[12]

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[1] Pursuant to s. 717.124(1), F.S., only Florida-licensed attorneys, Florida-licensed certified public accountants, and or private investigators licensed under ch. 493, F.S., may be registered as claimants' representatives.
[2] Florida Department of Financial Services (DFS), Agency Analysis of 2021 House Bill 425, p. 1 (Feb. 9, 2021).
[3] *Id.*
[4] *Id.*
[5] *Id.*
[6] *See* s. 717.135, F.S.
[7] DFS, *supra* note 2, at 2.
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] S. 717.135, F.S. The text of the Full Disclosure Statement to be signed by a claimant is located in s. 717.135(3)(a), F.S.
[12] *Id.*

Additionally, DFS may allow a claimant of unclaimed property to electronically submit a claim for unclaimed property if the amount of the claim is $1,000 or less.[13] According to DFS, approximately 15 percent of unclaimed property claims are made electronically.[14]

Effect of the Bill

The bill changes the unclaimed property claims law to streamline the process for consumers. It provides that DFS must adopt forms by rule entitled "Uniform Unclaimed Property Recovery Agreement" (Recovery Agreement) and "Uniform Unclaimed Property Purchase Agreement" (Purchase Agreement). These Agreements will be the exclusive means of a claimant's representative engaging a claimant or seller to file an unclaimed property claim with DFS. The Agreements will be similar to the powers of attorney used by many registrants, but will be more claimant friendly and will provide consumer protections, including a cap on fees and costs that registrants may charge claimants in all circumstances.

The bill substantially amends s. 717.135, F.S., to eliminate the current power of attorney requirements and replace them with requirements for the Recovery Agreement and Purchase Agreement. Pursuant to the bill, the Recovery Agreement and Purchase Agreement must include and disclose:

- The total dollar amount of the unclaimed property accounts claimed or sold;
- Either the total percentage of all authorized fees and costs to be paid to the claimant's representative or the percentage of the value of the property to be paid as net gain to the purchasing registered claimant's representative;
- Either the total dollar amount to be deducted and received from the claimant as fees and costs by the claimant's representative or the total net dollar amount to be received by the purchasing registered claimant's representative;
- The net dollar amount the claimant or seller will receive;
- The unclaimed property account number and name of the owner for each account claimed;
- For the Purchase Agreement, a statement that the purchase price will be remitted to the seller within 30 days after the seller executes the form;
- The name, contact information, and license number of the registered claimant's representative;
- The manual signature of the claimant or seller and the date signed;
- The social security number or taxpayer identification number of the claimant or seller, if available; and
- The total fees and costs, or the total discount amount in the case of a purchase agreement, may not exceed 25 percent of the claimed amount. If the total fees and costs exceed 25 percent, the fee shall be reduced to 25 percent and the net balance remitted directly by DFS to the claimant.

The bill also increases the limit of the property value for which an electronic claim can be filed from $1,000 to $2,000. The bill allows the claimant to sign the Agreements electronically.

The Recovery Agreement and Purchase Agreement may not contain language that makes them irrevocable or that creates an assignment of any unclaimed property held by DFS. For the Purchase Agreement, the registrant, not the claimant who is selling an account of unclaimed property to the registrant, has to provide proof that the registrant has made payment to the claimant (seller) when filing the claim with DFS. If DFS does not receive proof that the seller received payment, then the claim is void.

All references to "power of attorney" within the remainder of the unclaimed property claims laws are changed to Recovery Agreement and Purchase Agreement, as appropriate, so that these forms will be utilized in unclaimed property claims going forward in lieu of powers of attorney. Section 717.1351, F.S., relating to the acquisition of unclaimed property is repealed, because it is no longer necessary following the additional changes to the unclaimed property claims laws set forth within the bill.

B. SECTION DIRECTORY:

[13] S. 717.124(7), F.S.

[14] DFS, *supra* note 2, at 2.

Section 1. Amends s. 717.124, F.S., relating to unclaimed property claims.

Section 2. Amends s. 717.12404, F.S., relating to claims on behalf of a business entity or trust.

Section 3. Amends s. 717.1315, F.S., relating to retention of records by claimant's representatives and buyers of unclaimed property.

Section 4. Amends s. 717.1322, F.S., relating to administrative and civil enforcement.

Section 5. Amends s. 717.135, F.S., relating to power of attorney to recover reported property in the custody of the department.

Section 6. Repeals s. 717.1351, F.S., relating to acquisition of unclaimed property.

Section 7. Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill will have an insignificant fiscal impact on state government. Any changes to the Unclaimed Property Management Information System will have a minimal fiscal impact on the Unclaimed Property Trust Fund.[15]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have positive economic impacts for consumers. By streamlining the unclaimed property claims process using new forms and by capping the fees and costs that a claimant's representative can charge, consumers may be able to keep a greater percentage of the unclaimed property that they recover. The bill may have negative economic impacts for some registered claimants' representatives, as they may receive a reduced percentage of a claimant's property.

[15] DFS, *supra* note 2, at 4.

D. FISCAL COMMENTS:

Replacing the current fees and costs structure with a 25 percent maximum cap for total fees and costs is more consumer friendly and easier for DFS unclaimed property analysts to review and apply. Increasing the maximum amount of a claim allowed for electronic filing from $1,000 to $2,000, will allow more claimants to file claims without the need to submit physical paperwork. This will provide for quicker receipt of property by claimants and greater efficiency for DFS.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DFS to promulgate two new forms related to unclaimed property (Recovery Agreement and Purchase Agreement) to be adopted pursuant to rule.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 17, 2021, the Insurance & Banking Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment clarifies that the registrant, not the claimant who is selling an account of unclaimed property to the registrant, has to provide proof that the registrant has made payment to the claimant (seller) when filing the claim with DFS.

The analysis is drafted to the committee substitute as passed by the Insurance & Banking Subcommittee.

A bill to be entitled

An act relating to disposition of unclaimed property; amending s. 717.124, F.S.; requiring specified agreements for certain claims; removing provisions requiring the Department of Financial Services to deny certain unclaimed property claims; increasing the threshold required to use of a different method of identity verification for electronic claims; conforming provisions to changes made by the act; amending ss. 717.12404, 717.1315, and 717.1322, F.S.; conforming provisions to changes made by the act; amending s. 717.135, F.S.; requiring the department to adopt forms for a Uniform Unclaimed Property Recovery Agreement and a Uniform Unclaimed Property Purchase Agreement; providing requirements for such agreements; providing that the agreements are the exclusive means for a claimant's representative to file a claim or to recover fees and costs; prohibiting a claimant's representative from using or distributing any other form of agreement; providing administrative and civil penalties; authorizing the department to pay additional accounts under certain circumstances; providing application; repealing s. 717.1351, F.S., relating to unclaimed property claims; providing an effective date.

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

Section 1. Subsection (1), paragraphs (b) and (c) of subsection (4), and subsections (7) and (10) of section 717.124, Florida Statutes, are amended to read:

717.124 Unclaimed property claims.—

(1) Any person, excluding another state, claiming an interest in any property paid or delivered to the department under this chapter may file with the department a claim on a form prescribed by the department and verified by the claimant or the claimant's representative. The claimant's representative must be an attorney licensed to practice law in this state, a licensed Florida-certified public accountant, or a private investigator licensed under chapter 493. The claimant's representative must be registered with the department under this chapter. The claimant, or the claimant's representative, shall provide the department with a legible copy of a valid driver license of the claimant at the time the original claim form is filed. If the claimant has not been issued a valid driver license at the time the original claim form is filed, the department shall be provided with a legible copy of a photographic identification of the claimant issued by the United States, a state or territory of the United States, a foreign nation, or a political subdivision or agency thereof or other

evidence deemed acceptable by the department by rule. In lieu of photographic identification, a notarized sworn statement by the claimant may be provided which affirms the claimant's identity and states the claimant's full name and address. The claimant must produce to the notary photographic identification of the claimant issued by the United States, a state or territory of the United States, a foreign nation, or a political subdivision or agency thereof or other evidence deemed acceptable by the department by rule. The notary shall indicate the notary's full address on the notarized sworn statement. Any claim filed without the required identification or the sworn statement with the original claim form and the original Uniform Unclaimed Property Recovery Agreement or Uniform Unclaimed Property Purchase Agreement ~~power of attorney or purchase agreement~~, if applicable, is void.

(a) Within 90 days after receipt of a claim, the department may return any claim that provides for the receipt of fees and costs greater than that permitted under this chapter or that contains any apparent errors or omissions. The department may also request that the claimant or the claimant's representative provide additional information. The department shall retain a copy or electronic image of the claim.

(b) A ~~claimant or the claimant's representative shall be deemed to have withdrawn a~~ claim is considered to have been withdrawn by a claimant or the claimant's representative if ~~no~~

~~response to~~ the department does not receive a response to its ~~department's~~ request for additional information ~~is received by the department~~ within 60 days after the notification of any apparent errors or omissions.

(c) Within 90 days after receipt of the claim, or the response of the claimant or the claimant's representative to the department's request for additional information, whichever is later, the department shall determine each claim. Such determination shall contain a notice of rights provided by ss. 120.569 and 120.57. The 90-day period shall be extended by 60 days if the department has good cause to need additional time or if the unclaimed property:

1. Is owned by a person who has been a debtor in bankruptcy;

2. Was reported with an address outside of the United States;

3. Is being claimed by a person outside of the United States; or

4. Contains documents filed in support of the claim that are not in the English language and have not been accompanied by an English language translation.

~~(d) The department shall deny any claim under which the claimant's representative has refused to authorize the department to reduce the fees and costs to the maximum permitted under this chapter.~~

(4)

(b) If an owner authorizes an attorney licensed to practice law in this state, a Florida-certified public accountant, or a private investigator licensed under chapter 493, and registered with the department under this chapter, to claim the unclaimed property on the owner's behalf, the department is authorized to make distribution of the property or money in accordance with the Uniform Unclaimed Property Recovery Agreement or Uniform Unclaimed Property Purchase Agreement under s. 717.135 ~~such power of attorney~~. The original Uniform Unclaimed Property Recovery Agreement or Uniform Unclaimed Property Purchase Agreement ~~power of attorney~~ must be executed by the claimant or seller ~~owner~~ and must be filed with the department.

(c)1. Payments of approved claims for unclaimed cash accounts must ~~shall~~ be made to the owner after deducting any fees and costs authorized by the claimant under a Uniform Unclaimed Property Recovery Agreement ~~pursuant to a written power of attorney~~. The contents of a safe-deposit box must ~~shall~~ be delivered directly to the claimant ~~notwithstanding any power of attorney or agreement to the contrary~~.

2. Payments of fees and costs authorized under a Uniform Unclaimed Property Recovery Agreement ~~pursuant to a written power of attorney~~ for approved claims must ~~shall~~ be made or issued to the law firm of the designated attorney licensed to

practice law in this state, the public accountancy firm of the licensed Florida-certified public accountant, or the designated employing private investigative agency licensed by this state. Such payments shall be made by electronic funds transfer and may be made on such periodic schedule as the department may define by rule, provided the payment intervals do not exceed 31 days. Payment made to an attorney licensed in this state, a Florida-certified public accountant, or a private investigator licensed under chapter 493, operating individually or as a sole practitioner, must ~~shall~~ be to the attorney, certified public accountant, or private investigator.

(7) The department may allow an apparent owner to electronically submit a claim for unclaimed property to the department. If a claim is submitted electronically for $2,000 ~~$1,000~~ or less, the department may use a method of identity verification other than a copy of a valid driver license, other government-issued photographic identification, or a sworn notarized statement. The department may adopt rules to implement this subsection.

(10) Notwithstanding any other provision of this chapter, the department may develop a process by which a ~~registered~~ claimant's representative or a buyer of unclaimed property may electronically submit to the department an electronic image of a completed claim and claims-related documents under ~~pursuant to~~ this chapter, including a Uniform Unclaimed Property Recovery

Agreement or Uniform Unclaimed Property Purchase Agreement ~~limited power of attorney or purchase agreement~~ that has been manually signed and dated by a claimant or seller under ~~pursuant to~~ s. 717.135 ~~or s. 717.1351~~, after the claimant's representative or the buyer of unclaimed property receives the original documents provided by the claimant or the seller for any claim. Each claim filed by a ~~registered~~ claimant's representative or a buyer of unclaimed property must include a statement by the claimant's representative or the buyer of unclaimed property attesting that all documents are true copies of the original documents and that all original documents are physically in the possession of the claimant's representative or the buyer of unclaimed property. All original documents must be kept in the original form, by claim number, under the secure control of the claimant's representative or the buyer of unclaimed property and must be available for inspection by the department in accordance with s. 717.1315. The department may adopt rules to implement this subsection.

Section 2. Subsection (2) of section 717.12404, Florida Statutes, is amended to read:

717.12404 Claims on behalf of a business entity or trust.—

(2) Claims on behalf of a dissolved corporation, a business entity other than an active corporation, or a trust must include a legible copy of a valid driver license of the person acting on behalf of the dissolved corporation, business

entity other than an active corporation, or trust. If the person has not been issued a valid driver license, the department shall be provided with a legible copy of a photographic identification of the person issued by the United States, a foreign nation, or a political subdivision or agency thereof. In lieu of photographic identification, a notarized sworn statement by the person may be provided which affirms the person's identity and states the person's full name and address. The person must produce his or her photographic identification issued by the United States, a state or territory of the United States, a foreign nation, or a political subdivision or agency thereof or other evidence deemed acceptable by the department by rule. The notary shall indicate the notary's full address on the notarized sworn statement. Any claim filed without the required identification or the sworn statement with the original claim form and the original Uniform Unclaimed Property Recovery Agreement or Uniform Unclaimed Property Purchase Agreement ~~power of attorney~~, if applicable, is void.

Section 3. Subsection (1) of section 717.1315, Florida Statutes, is amended to read:

717.1315 Retention of records by claimant's representatives and buyers of unclaimed property.—

(1) Every claimant's representative and buyer of unclaimed property shall keep and use in his or her business such books, accounts, and records of the business conducted under this

chapter to enable the department to determine whether such person is complying with this chapter and the rules adopted by the department under this chapter. Every claimant's representative and buyer of unclaimed property shall preserve such books, accounts, and records, including every Uniform Unclaimed Property Recovery Agreement or Uniform Unclaimed Property Purchase Agreement ~~power of attorney or agreement~~ between the owner and such claimant's representative or buyer, for at least 3 years after the date of the initial ~~power of attorney or~~ agreement.

Section 4. Paragraph (j) of subsection (1) of section 717.1322, Florida Statutes, is amended to read:

717.1322 Administrative and civil enforcement.—

(1) The following acts are violations of this chapter and constitute grounds for an administrative enforcement action by the department in accordance with the requirements of chapter 120 and for civil enforcement by the department in a court of competent jurisdiction:

(j) Requesting or receiving compensation for notifying a person of his or her unclaimed property or assisting another person in filing a claim for unclaimed property, unless the person is an attorney licensed to practice law in this state, a Florida-certified public accountant, or a private investigator licensed under chapter 493, or entering into, or making a solicitation to enter into, an agreement ~~a power of attorney~~ to

file a claim for unclaimed property owned by another, or a contract or agreement to purchase unclaimed property, unless such person is registered with the department under ~~pursuant to~~ this chapter and an attorney licensed to practice law in this state in the regular practice of her or his profession, a Florida-certified public accountant who is acting within the scope of the practice of public accounting as defined in chapter 473, or a private investigator licensed under chapter 493. This paragraph ~~subsection~~ does not apply to a person who has been granted a durable power of attorney to convey and receive all of the real and personal property of the owner, is the court-appointed guardian of the owner, has been employed as an attorney or qualified representative to contest the department's denial of a claim, or has been employed as an attorney to probate the estate of the owner or an heir or legatee of the owner.

Section 5. Section 717.135, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 717.135, F.S., for present text.)

717.135 Recovery agreements and purchase agreements for claims filed by a claimant's representative; fees and costs.—

(1) In order to protect the interests of owners of unclaimed property, the department shall adopt by rule a form entitled "Uniform Unclaimed Property Recovery Agreement" and a

form entitled "Uniform Unclaimed Property Purchase Agreement."

(2) The Uniform Unclaimed Property Recovery Agreement and the Uniform Unclaimed Property Purchase Agreement must include and disclose all of the following:

(a) The total dollar amount of unclaimed property accounts claimed or sold.

(b) The total percentage of all authorized fees and costs to be paid to the claimant's representative or the percentage of the value of the property to be paid as net gain to the purchasing claimant's representative.

(c) The total dollar amount to be deducted and received from the claimant as fees and costs by the claimant's representative or the total net dollar amount to be received by the purchasing claimant's representative.

(d) The net dollar amount to be received by the claimant or the seller.

(e) For each account claimed, the unclaimed property account number and name of the apparent owner, as listed in the department's database. For agreements in which multiple accounts bear identically listed apparent owner names in the department's database, the identically listed name of that apparent owner may be listed on the agreement one time for that identical name, but the agreement must include all of the account numbers claimed for that identically listed name of the apparent owner.

(f) For the Uniform Unclaimed Property Purchase Agreement,

a statement that the amount of the purchase price will be remitted to the seller by the purchaser within 30 days after the execution of the agreement by the seller.

(g) The name, address, e-mail address, phone number, and license number of the claimant's representative.

(h)1. The manual signature of the claimant or seller and the date signed, affixed on the agreement by the claimant or seller.

2. Notwithstanding any other provision of this chapter to the contrary, the department may allow an apparent owner, who is also the claimant, to sign the agreement electronically for claims of $2,000 or less. All electronic signatures on the Uniform Unclaimed Property Recovery Agreement and the Uniform Unclaimed Property Purchase Agreement must be affixed on the agreement by the claimant or seller using the specific, exclusive eSignature product and protocol authorized by the department.

(i) The social security number or taxpayer identification number of the claimant or seller, if a number has been issued to the claimant or seller.

(j) The total fees and costs, or the total discount in the case of a purchase agreement, may not exceed 25 percent of the claimed amount. If the total fees and costs exceeds 25 percent, the fee shall be reduced to 25 percent and the net balance shall be remitted directly by the department to the claimant.

(3) For a Uniform Unclaimed Property Purchase Agreement form, proof that the seller has received payment must be filed with the department along with the claim. If proof of payment is not provided, the claim is void.

(4) A claimant's representative must use the Uniform Unclaimed Property Recovery Agreement or the Uniform Unclaimed Property Purchase Agreement as the exclusive means of engaging with a claimant or seller to file a claim with the department.

(5) Fees and costs may be owed or paid to, or received by, a claimant's representative only after a filed claim has been approved and if the claimant's representative used an agreement authorized by this section.

(6) A claimant's representative may not use or distribute any other agreement, form, or other media with respect to the claimant or seller which relates, directly or indirectly, to unclaimed property accounts held by the department or the Chief Financial Officer other than the agreements authorized by this section. Any engagement, authorization, recovery, or fee agreement that is not authorized by this section is void. A claimant's representative is subject to administrative and civil enforcement under s. 717.1322 if he or she uses an agreement that is not authorized by this section.

(7) The Uniform Unclaimed Property Recovery Agreement and Uniform Unclaimed Property Purchase Agreement may not contain language that makes the agreement irrevocable or that creates an

assignment of any portion of unclaimed property held by the department.

(8) When a claim is approved, the department may pay any additional account that is owned by the claimant but has not been claimed at the time of approval, provided that a subsequent claim has not been filed or is not pending for the claimant at the time of approval.

(9) This section does not supersede s. 717.1241.

Section 6. Section 717.1351, Florida Statutes, is repealed.

Section 7. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 487 Small Scale Development Amendments
SPONSOR(S): Duggan
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration & Veterans Affairs Subcommittee	17 Y, 1 N	Darden	Miller
2) Commerce Committee		Brackett	Hamon
3) State Affairs Committee			

SUMMARY ANALYSIS

The Community Planning Act requires each local government to adopt a comprehensive plan to provide for "orderly and balanced future economic, social, physical, environmental, and fiscal development" while taking into account projected population growth, public facility needs, development over a 5-year and 10-year period, comprehensive plans of adjacent local governments, and future land use.

A comprehensive plan amendment may be classified as a small-scale amendment if the amendment involves less than 10 acres of land, does not impact land located in an area of critical state concern, preserves the internal consistency of the overall local comprehensive plan, and does not require substantive changes to the text of the plan. Small-scale plan amendments may be approved with a single hearing before the governing body of the local government and do not require review by the Department of Economic Opportunity.

The bill increases the maximum acreage of a small-scale comprehensive plan amendment from 10 acres to 50 acres and increases the maximum acreage for a small-scale comprehensive plan amendment within a rural area of opportunity from 20 acres to 100 acres.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Community Planning Act

The Community Planning Act provides counties and municipalities the power to plan for future development by the adoption of comprehensive plans.[1] Each county and municipality must maintain a comprehensive plan.[2] Municipal comprehensive plans cover the total area of the municipality's jurisdiction as well as any unincorporated areas adjacent to the municipality that the municipality and the county agree should be covered by the municipality's plan.[3] County comprehensive plans cover the total unincorporated area of the county but plans for charter counties may include municipalities within their jurisdictions.[4] Counties and municipalities may also enter into interlocal agreements with other counties and/or municipalities to exercise their planning powers.[5]

Each county and municipality must establish a local planning agency.[6] The local planning agency is responsible for managing the comprehensive planning program.[7] The duties of the local planning agency include:[8]

- Preparing the comprehensive plan and plan amendments;
- Monitoring the effectiveness and status of the comprehensive plan and recommending changes to the local governing body, including periodic evaluation and appraisal of the plan as required by law;[9]
- Reviewing proposed land development regulations and land development codes for consistency with the adopted comprehensive plans; and
- Performing any other functions, duties, and responsibilities assigned by the local governing body, general law, or special law.

The local governing body may designate itself as the local planning agency or assign the powers to a local planning commission, a planning department, or another body.[10]

The Department of Economic Opportunity (DEO) serves as the state land planning agency.[11]

Comprehensive Plans and Plan Amendments

Comprehensive plans are intended to provide for "orderly and balanced future economic, social, physical, environmental, and fiscal development" in a county or municipality.[12] A comprehensive plan must take into account:[13]

- Projected seasonal and permanent population growth;
- Current and existing public facility needs;
- Coordination with the local comprehensive plans of adjacent municipalities and counties;

[1] S. 163.3167(1), F.S.
[2] S. 163.3167(2), F.S. The Ready Creek Improvement District, an independent special district created by ch. 67-764, Laws of Fla., may exercise the powers of the act as if it were a municipality. S. 163.3167(6), F.S.
[3] S. 163.3171(1), F.S.
[4] S. 163.3171(2), F.S.
[5] S. 163.3171(3), F.S.
[6] S. 163.3174(1), F.S. If a county or municipality has entered into an interlocal agreement under s. 163.3171, F.S., to exercise its planning powers under the Community Planning Act, those counties and municipalities may establish a joint local planning agency.
[7] S. 163.3174(4), F.S.
[8] S. 163.3174(4)(a)-(d), F.S.
[9] S. 163.3191, F.S.
[10] S. 163.3174(1), F.S.
[11] S. 163.3164(44), F.S.
[12] S. 163.3177(1), F.S.
[13] S. 163.3177(1), (3)-(6), F.S.

- Consideration of two planning periods, one covering at least 5 years and another covering at least 10 years; and
- A future land use plan element.

Comprehensive plan amendments fit into one of three categories based on both the size and nature of the area impacted by the proposed amendment. These categories include:[14]

- General amendments subject to the expedited state review process;
- Small-scale development amendments subject to the small-scale review process; and
- Amendments subject to the state coordinated review process.[15]

Expedited State Review Process

The expedited state review process is the default method for the consideration of local comprehensive plan amendments.[16] The process begins with a public hearing conducted by the governing body of a county or municipality to approve of transmitting the proposed amendment for review.[17] Within 10 working days after the public hearing, the county or municipality must transmit the amendment, as well any supporting documentation, to the following agencies for review:[18]

- DEO;
- The appropriate regional planning council;
- The appropriate water management district;
- Department of Environmental Protection;
- Department of State;
- Department of Transportation;
- The commanding officer of any affected military installation listed in s. 163.3175, F.S.;
- Department of Education (if the plan amendment relates to public schools);
- The Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services (if the plan amendment is to a county comprehensive plan), and
- The county in which the municipality is located (if the plan amendment is to a municipal comprehensive plan).

The county or municipality also must transmit the amendment and supporting documentation to any other local government or government agency that made a written request with the governing body.[19] State agencies review the proposed amendment for any adverse impacts on important state resources and facilities that fall within their respective jurisdictions.[20] Regional planning councils consider any adverse impacts of the amendment on regional resources or facilities identified in the strategic regional policy plan as well as any extra-jurisdictional impacts that would be inconsistent with the comprehensive plan of any affected local government within the region.[21] Comments from counties and municipalities are limited to the impact of the proposed amendment on that local government's comprehensive plan.[22]

After receiving comments from the reviewing agencies and local governments, the governing body of the county or municipality conducts a second public hearing to consider adoption of the proposed

[14] S. 163.3184(2), F.S.
[15] S. 163.3184(2)(c), F.S. These amendments include amendments in areas of critical state concern pursuant to s. 380.05, F.S., propose a rural land stewardship area pursuant to s. 163.3248, F.S., propose or amend a sector plan pursuant to s .163.3245, F.S., update a comprehensive plan based on evaluation and appraisal pursuant to s. 163.3191, F.S., propose a development that is subject to state coordinated review pursuant to s. 380.06, F.S., and plans for newly incorporated municipalities adopted pursuant to s. 163.3167, F.S.
[16] *See* s. 163.3184(2)(a), F.S.
[17] S. 163.3184(3)(a), (11)(a), F.S.
[18] S. 163.3184(1)(c), (3)(b)1., F.S.
[19] S. 163.3184(3)(b)1., F.S.
[20] Ss. 163.3184(3)(b)2., (3)(b)4., F.S. DEO, as the state land planning agency, provides comments on the impacts of any important state resources and facilities outside of the jurisdiction of other commenting agencies.
[21] S. 163.3184(3)(b)3.a., F.S.
[22] S. 163.3184(3)(b)3.b.-c., F.S.

amendment.[23] If the proposed amendment is adopted, the governing body of the county or municipality must submit the amendment, as well as any supporting documentation, to DEO and other agency or local government that provided timely comments within 10 working days after the hearing.[24] DEO must review the amendment for any deficiencies and inform the county or municipality within 5 working days.[25] The amendment becomes effective 31 days after DEO notifies the local government that the plan amendment package is complete, unless the amendment has been timely challenged, in which case the amendment does not become effective until DEO or the Administration Commission enters a final order determining the adopted amendment is in compliance.[26]

Small-Scale Comprehensive Plan Amendments

A small-scale comprehensive plan amendment must meet four criteria:[27]

- The proposed amendment involves a use of 10 or fewer acres of land (20 acres in a rural area of opportunity);[28]
- The changes are limited to Future Land Use Map (FLUM) changes, with no text changes to the comprehensive plan except those that related directly to and adopted with the small scale FLUM change;
- The property is not located in an area of critical state concern, unless the project involves the construction of affordable housing units meeting statutory criteria;[29] and
- The amendment must preserve the internal consistency of the overall local comprehensive plan.

Small-scale comprehensive plan amendments require only a single hearing before the governing body of the county or municipality for approval.[30] Small-scale comprehensive plan amendments do not require review by DEO or other state agencies.[31]

Any affected person may challenge the amendment by filing a petition with the Division of Administrative Hearings.[32] The challenge must be filed within 30 days of the local government's adoption of the amendment. The challenge is heard in the affected jurisdiction by an administrative law judge (ALJ) between 30 to 60 days after the petition is filed. The local government's determination that the small-scale amendment complies with the overall comprehensive plan is subject to the "fairly debatable" standard of review.[33]

If the ALJ finds that the amendment is in compliance with the comprehensive plan, the ALJ sends a recommended order to DEO. Upon receipt of the recommended order, DEO may issue a final order within 30 days or send the matter to the Administration Commission if the department determines the amendment is not in compliance.[34] If the ALJ does not find that the amendment is in compliance, the ALJ must send the recommended order directly to the Administration Commission, which has 90 days to issue a final order upon receipt.

A small-scale comprehensive plan amendment may not become effective until 31 days after adoption by the governing body of the county or municipality.[35] If the amendment is challenged, the amendment

[23] S. 163.3184(3)(c)1., F.S. Except for amendments concerning developments of regional impact, an amendment is considered withdrawn if the public hearing is not conducted within 180 days after receiving agency comments.
[24] S. 163.3184(3)(c)2., F.S.
[25] S. 163.3184(3)(c)3., F.S.
[26] S 163.3184(3)(c)4., F.S. The Administration Commission is composed of the Governor and Cabinet. S. 14.202, F.S.
[27] S. 163.3187(1)(a)-(d), (4), F.S., *see also* Dept. of Economic Opportunity, *Small Scale Amendments Defined; Adoption; Challenge: Effective Date*, http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/small-scale-amendments-defined-adoption-challenge-effective-date (last visited Feb. 17, 2021).
[28] S. 163.3187(3), F.S.
[29] *See* s. 420.0004(3), F.S.
[30] S. 163.3187(2), F.S.
[31] *Compare* s. 163.3187, F.S. (small-scale plan amendments are only reviewed by DEO if the plan is challenged) *with* s. 163.3184(3)-(4), F.S. (expedited state review process and state coordinated review process for comprehensive plan amendments require review by DEO and other state agencies).
[32] S. 163.3187(5)(a), F.S.
[33] *Id*.
[34] S. 163.3187(5)(b), F.S.
[35] S. 163.3187(5)(c), F.S.

may not become effective until DEO or the Administration Commission issues a final order determining the amendment complies with the overall comprehensive plan.

Rural Area of Opportunity

A Rural Area of Opportunity (RAO) is a rural community, or a region comprised of rural communities, designated by the Governor, that has been adversely affected by an extraordinary economic event, a natural disaster, or severe or chronic distress.[36] The area may also be classified as a RAO if it presents a unique economic development opportunity for the impact.

The Governor may designate up to three RAO areas for five-year periods upon recommendation by the Rural and Economic Development Initiative (REDI).[37] These areas receive priority assignments for REDI, and the designation allows the Governor, acting through REDI, to waive certain criteria or requirements of any economic development incentives. Currently, there are three designated RAO areas:[38]

- Northwest RAO, consisting of Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington Counties, as well the area within the city limits of Freeport and in Walton County north of the Choctawhatchee Bay and the intercoastal waterway;
- South Central RAO, consisting of DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee Counties, as well as the municipalities of Pahokee, Belle Glade, and South Bay in Palm Beach County and Immokalee in Collier County; and
- North Central RAO, consisting of Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union Counties.

Effect of Proposed Changes

The bill increases that maximum acreage of a small-scale comprehensive plan amendment from 10 acres to 50 acres generally and increases the maximum acreage for a small-scale comprehensive plan amendment within a rural area of opportunity from 20 acres to 100 acres.

B. SECTION DIRECTORY:

Section 1: Amends s. 163.3187, F.S., to increase the maximum acreage for small-scale comprehensive plan amendments.

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:

   The bill may reduce state government expenditures to the extent that agencies will no longer be required to review certain amendments that would previously have been subject to the expedited state review process.

[36] S. 288.0656(2)(d), F.S. A "rural community" is defined as any county with a population of 75,000 or fewer; any county with a population of 125,000 or fewer that is contiguous to a county with a population of 75,000 or fewer; any municipality in a county that meets the aforementioned criteria; or any municipality or "unincorporated federal enterprise community" with a population of 25,000 or fewer and an employment base focused on traditional agriculture or resource-based industries located in a county not defined as rural and which suffers from three or more economic distress factors. S. 288.0656(2)(e), F.S.
[37] S. 288.0656(7)(a), F.S.
[38] Dept. of Economic Opportunity, *Rural Areas of Opportunity*, https://floridajobs.org/community-planning-and-development/rural-community-programs/rural-areas-of-opportunity (last visited Feb. 17, 2021).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may reduce local government expenditures to the extent that amendments that would previously have been subject to the expedited state review process would be eligible for review as small-scale development amendments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to small scale development amendments; amending s. 163.3187, F.S.; revising the required acreage thresholds for adopting an amendment using a small scale development amendment; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) and subsection (3) of section 163.3187, Florida Statutes, are amended to read:

163.3187 Process for adoption of small-scale comprehensive plan amendment.—

(1) A small scale development amendment may be adopted under the following conditions:

(a) The proposed amendment involves a use of 50 ~~10~~ acres or fewer and:

(3) If the small scale development amendment involves a site within a rural area of opportunity as defined under s. 288.0656(2)(d) for the duration of such designation, the acreage ~~10-acre~~ limit listed in subsection (1) shall be increased by 100 percent ~~to 20 acres~~. The local government approving the small scale plan amendment shall certify to the state land planning agency that the plan amendment furthers the economic objectives set forth in the executive order issued under s. 288.0656(7),

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

and the property subject to the plan amendment shall undergo public review to ensure that all concurrency requirements and federal, state, and local environmental permit requirements are met.

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 #: CS/HB 515 Duties of the Attorney General
SPONSOR(S): Judiciary Committee, Mariano
TIED BILLS: **IDEN./SIM. BILLS:** SB 1040

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Judiciary Committee	19 Y, 0 N, As CS	Mawn	Kramer
2) Commerce Committee		Thompson	Hamon
3) Health & Human Services Committee			
4) Appropriations Committee			

SUMMARY ANALYSIS

Under current law:

- The Florida Attorney General ("AG") is the official Florida Supreme Court reporter, even though Florida Supreme Court opinions are now published online.
- The Safe Neighborhoods Program ("SNP"), administered by the Department of Legal Affairs ("DLA"), provides planning grants to local governments developing Neighborhood Improvement Districts. However, SNP funding was eliminated in 1992.
- Service charges are levied on various state trust funds which receive "income of a revenue nature," including the Crimes Compensation Trust Fund ("CCTF"), which funds the Victims Compensation Program. Service charges are paid into the General Revenue Fund.
- DLA oversees the State Institutions Claims Program ("SICP"), which pays restitution for damage caused by persons supervised by specified agencies. However, DLA receives no funding to pay the claims, which instead are paid directly by each responsible agency.
- During a declared state of emergency, no person may offer any essential commodity or rent a dwelling or self-service storage unit for an unconscionable price. A price gouging prohibition lasts for 60 days and must be renewed through emergency declaration renewal.
- DLA enforces the Convenience Business Security Act ("CBSA"), which is intended to prevent violent crime at late-night convenience businesses. The Department of Business and Professional Regulation ("DBPR") inspects most convenience businesses under other statutory authority.
- The AG is authorized to use de-identified patient information from the Prescription Drug Monitoring Database ("PDMP") in opioid litigation through June 30, 2021, at which time the authorization sunsets.

CS/HB 515:

- Deletes obsolete provisions making the AG the Florida Supreme Court reporter and authorizing local governments to apply to the AG for non-existent SNP grant funding.
- Removes the AG from involvement in SNP registration and operation.
- Exempts the CCTF from a statutory service charge.
- Changes the agency responsible for SICP restitution claims from DLA to other specified agencies.
- Puts price-gouging prohibition renewal in the Governor's discretion and provides that price gouging for rent of a dwelling unit or self-storage facility is only prohibited if the rental was necessary for inhabitation or use as a direct result of the declared emergency.
- Changes the entity responsible for overseeing the CBSA from the DLA to DBPR.
- Extends the AG's authorization to use PDMP information in her opioid litigation to June 30, 2023.

On February 19, 2021, the Revenue Estimating Conference considered HB 515 and determined it would increase funds in the CCTF by about $1.2 million in FY 2021-22 but decrease funds deposited into the General Revenue Fund by the same amount. The bill provides an effective date of June 30, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Supreme Court Reporter

Since 1881, the Florida Supreme Court Clerk has been required to deliver to the Attorney General ("AG") a copy of each volume of Florida Supreme Court opinions in the Clerk's care or custody which the AG's Office may be without.[1] The AG must keep the copies at her office at the capitol and has been, by law, the official Supreme Court reporter since 1885.[2] However, Florida Supreme Court opinions are now published online[3] and in other reporters[4] available in the AG's law library.[5]

Safe Neighborhoods Act

A Neighborhood Improvement District ("NID") is a district located in an area in which more than 75 percent of the land is used for residential purposes or for commercial, office, business, or industrial purposes and where there is a plan to reduce crime through environmental design, environmental security, defensible space techniques, or community policing innovations.[6] Unless preempted by ordinance, an NID has powers as authorized in s. 163.514, F.S., including the power to improve street lighting, parks, streets, drainage, utilities, swales, and open areas and to provide safe access to mass transportation facilities.

The Safe Neighborhood Act of 1987 ("SNA") authorized the governing body of a county or a municipality to approve NID formation[7] by adopting a planning ordinance[8] and required NIDs to register and file certain documents with both DLA and the Florida Department of Economic Opportunity ("DEO").[9] The SNA also directed local governments to cooperate with and seek the involvement of community organizations such as churches, chambers of commerce, community development corporations, civic associations, neighborhood housing services, urban leagues, and other not-for-profit organizations to create NIDs.[10] There are currently 27 active NIDS in the state.[11]

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[1] Ch. 3264, Laws of Fla. 1881; s. 16.10, F.S.
[2] Art. IV, s. 22, Fla. Const. of 1885 (converted to statutory law in 1968); ss. 16.10 and 16.101, F.S.
[3] Florida Supreme Court opinions are available online at https://www.floridasupremecourt.org/Opinions?sort=opinion/disposition_date%20desc,%20opinion/type%20desc,%20opinion/case_number%20asc&type=written&view=embed_custom&searchtype=opinions&recent_only=1&hide_search=1&hide_filters=1&limit=25&offset=0 (last visited Mar. 1, 2021).
[4] Court opinions are gathered and published in chronological order in print volumes called "reporters." Reporters may be official, i.e., government-approved reporters publishing cases within a given jurisdiction, or unofficial, i.e., published by a commercial publisher. Northern Illinois University College of Law, *Basic Legal Research: What is a Reporter*, https://libguides.niu.edu/c.php?g=425200&p=4976573 (last visited Mar. 1, 2021).
[5] Email from Daniel Olson, Director of Government Relations, Office of the Attorney General, Untitled (Feb. 11, 2021).
[6] S. 163.517, F.S.
[7] A county or municipality may create one of four types of NIDs: a local government NID; a property owners' association NID; a special NID; or a community redevelopment NID.
[8] An ordinance approving NID formation must specify the NID's name, size, and boundaries. Ss. 163.506(1)(a), 163.508(1)(b), 163.511(1)(d), 163.512(1)(a), and 163.517, F.S.
[9] S. 163.5055(1), F.S.
[10] A local government working with community organizations for NID creation may enter into agreements with and compensate such organizations to undertake any activities authorized under the SNA, except the preparation of safe neighborhood improvement plans. S. 163.523, F.S.
[11] Florida Department of Economic Opportunity, Division of Community Development, *Official List of Special Districts Online*, http://specialdistrictreports.floridajobs.org/webreports/functionsdetail.aspx (last visited Mar. 1, 2021).

Safe Neighborhood Improvement Plan

Each NID must have a safe neighborhood improvement plan ("SNIP"), which must be submitted to the Department of Legal Affairs ("DLA") for review and approval.[12] A SNIP must be consistent with the local government's comprehensive plan,[13] provide some method and measurement of crime reduction within the NID, and contain:

- District demographics;
- Crime activity data and analysis;
- Land use, zoning, housing, and traffic analysis;
- A determination of the problems of the crime-to-environment relationship and the NID's stability;
- A statement of the NID's goal's and objectives;
- An assessment of crime prevention tactics;
- Cost estimates and the methods of financing;
- An outline of program participants and their functions and responsibilities; and
- A schedule for executing program activities.[14]

Each SNIP must also:

- Identify property intended for specified public uses;
- Identify publicly funded capital improvement projects to be undertaken in the NID;
- Contain adequate assurances that the improvements will be carried out under the plan;
- Provide for control retention and the establishment of any necessary restrictions or covenants;
- Identify projected improvement costs;
- Promote advertising programs to be undertaken by the NID or NID businesses;
- Suggest physical improvements necessary for NID resident or visitor safety; and
- Include law enforcement and security plans for the NID.[15]

Safe Neighborhoods Program

The SNA also created the now defunct Safe Neighborhoods Trust Fund ("SNTF"), which was administered by the DLA to "provide planning grants and technical assistance on a 100-percent matching basis to [authorized NIDs]."[16] Under the SNTF, a local governing body was eligible for a planning grant when it passed an ordinance creating an NID and verified its commitment to providing matching funds for NID planning purposes.[17] DLA reviewed, evaluated, and ranked eligible grant applications based on:

- Evidence of commitment to participate in NID activities from neighborhood organizations, homeowners, property owners, businesses or merchant associations, or concerned individuals;
- The community's need for an NID to reduce crime; and
- The community's need for state planning funds for successful NID implementation.[18]

DLA also considered the population distribution of Florida's cities and counties to give communities of all sizes an opportunity to benefit from planning grants and could not award a planning grant to more than one NID within a local government's boundaries in any given funding cycle.[19]

However, SNTF funding was eliminated in 1992. In 1993, the SNTF was converted to the Safe Neighborhood Program ("SNP") and DLA's SNTF-related rulemaking authority was eliminated in

[12] Ss. 163.3177 and 163.519(11), F.S.
[13] A local government must create a comprehensive plan, which includes principles, guidelines, standards, and strategies for orderly and balanced future land development within its territorial jurisdiction. S. 163.3177, F.S.
[14] S. 163.516(1) and (3), F.S.
[15] S. 163.516(2), F.S.
[16] Under the SNP, property owners' association NIDs could receive up to $20,000; local government NIDs could receive up to $100,000; special neighborhood improvement districts could receive up to $50,000; and community redevelopment NIDs could receive up to $50,000. S. 163.517(1), F.S.
[17] S. 163.517(2), F.S.
[18] S. 163.517(3), F.S.
[19] S. 163.517(4), F.S.

2012.[20] Despite the SNTF's elimination, current law still authorizes DLA to award non-existent planning grant funding under the SNP, and DLA still receives planning grant applications.[21]

NIDs in Enterprise Zones

An "enterprise zone," created under the Florida Enterprise Zone Act ("FEZA"), was a specific geographic area targeted for economic revitalization.[22] The SNA authorized the governing body of any municipality or county in which the boundaries of an enterprise zone included a NID, in whole or part, to ask DLA to submit with its legislative budget request provisions to fund capital improvements relating to crime prevention.[23] Such requests could be made for 100 percent of the capital improvement costs for 25 percent of the area in the enterprise zone overlapping the NID.[24] The governing body could also request a 100 percent matching grant for capital improvement costs for the remaining 75 percent of the area in the enterprise zone overlapping the NID.[25] To be eligible for funding, the local government had to show that it could implement the project within two years after the funding date, and such funds could not be expended until after completion and approval of a SNIP.[26] Further, the SNA directed any county or municipality with a designated enterprise zone or which had authorized the creation of a community redevelopment area[27] to consider creating a NID within the zone or area. However, FEZA was repealed on December 31, 2015, by operation of a sunset provision.[28]

DLA Duties

The SNA requires DLA to perform the following duties:

- Develop SNP design and criteria for funding NIDs;
- Develop, promulgate, and revise rules required for SNP operation, the capital improvements provisions, and any other duties assigned under the SNA;
- Develop SNP planning grant application and review procedures;
- Provide advice and technical assistance to local governments, property owners' association's, and boards of directors of certain NIDS in their efforts to promote SNA goals and apply for SNP planning grants;
- Review and evaluate applications for planning and technical assistance;
- Provide for contract management;
- Evaluate SNP performance in light of state objectives and future trends and prepare legislative recommendations;
- Act as the repository of crime prevention through community policing innovations; environmental design strategies, principles, and tactics, environmental security plans and procedures; defensible space techniques; and SNIPs;
- Provide crime prevention through community policing innovations, environmental design and security, and defensible space training;
- Provide for consultant contracts for statewide safe neighborhood development training; and
- Review and approve a SNIP prior to its adoption by a local government.[29]

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[20] *Id*; *see also* email from Daniel Olson, *supra* note 5.
[21] *See* email from Daniel Olson, *supra* note 5*; see also* s. 163.517, F.S.
[22] *See* ss. 290.001-290.016, F.S.
[23] S. 163.521, F.S.
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] A community redevelopment area is a slum area, blighted area, or an area in which there is a shortage of affordable housing, or a coastal and tourist area that is deteriorating and economically distressed due to outdated building density patterns, inadequate transportation and parking facilities, faulty lot or inadequate street layout, or a combination thereof which the governing body designates as appropriate for community redevelopment. S. 163.340(10), F.S.
[28] *See* ch. 2005-287, Laws of Fla.; Florida Department of Revenue, *Florida Enterprise Zone Program 2015 Legislative Changes*, https://floridarevenue.com/taxes/tips/documents/TIP-120138_TIP%2015ADM-04%20FL%20Enterprise%20Zone%20Program%202015%20Legislative%20Changes%20-%20TIP%20FINAL.pdf (last visited Mar. 1, 2021).
[29] S. 163.519, F.S.

However, although it continues to support local governments and existing NIDs through technical assistance with crime prevention, DLA currently lacks the staff and funding necessary to perform most of its duties under the SNA.[30]

Crimes Compensation Trust Fund

DLA administers the Crimes Compensation Trust Fund ("CCTF"), which funds the Victim's Compensation Program ("VCP").[31] The VCP provides financial assistance to eligible persons for specified crime-related[32] economic losses, including wage loss, certain violence-related relocation costs, funeral expenses, and medical and mental health treatment costs, if such persons are unable to obtain compensation for their losses from any other source.[33] A person is generally eligible[34] for VCP funding if he or she is:

- A victim;
- An intervenor;[35]
- A surviving spouse, parent, guardian, sibling, or child of a deceased victim or intervenor; or
- Any other person who is dependent for his or her principal support upon a deceased victim or intervenor.[36]

The CCTF is funded by:

- Legislative appropriations to compensate victims; and
- Moneys:
  - Recovered on behalf of DLA by subrogation or other action;
  - Recovered through restitution;
  - Received from the federal government;
  - Received from court costs and fines; or
  - Received from any other public or private source.[37]

Florida law levies an eight percent service charge on various state trust funds which receive "income of a revenue nature," including the CCTF.[38] These service charges are deposited into the General Revenue Fund[39] as a reimbursement of the estimated pro rata share of the "cost of general government" paid from the General Revenue Fund.[40] For fiscal year 2019-20, the CCTF's cash balance was the lowest it has been in at least eleven years, due in part to diminishing revenues.[41] DLA estimates that exempting the CCTF from the service charge would increase the CCTF's balance by about $1.2 million per year, allowing increased VCP funding.[42] However, the exemption would also

[30] *See* email from Daniel Olson, *supra* note 5.
[31] S. 960.21, F.S.
[32] The crime must have directly resulted in personal injury to, psychiatric or psychological injury to, or the death of the victim or intervenor and have been promptly reported to the proper authorities. S. 960.13, F.S.
[33] Ss. 960.16 and 960.196-199, F.S.; Office of the State Attorney Office of the Attorney General, Bureau of Victim Compensation, *Victims Brochure*, http://myfloridalegal.com/webfiles.nsf/WF/MRAY-8CVP5T/$file/BVCVictimCompensationBrochure.pdf (last visited Mar. 1, 2021).
[34] A person is ineligible for VCP funds if the person committed or aided in the crime's commission; was engaged in other unlawful activity at the time of the crime; was in custody or confined in a county or municipal detention facility, a state or federal correctional facility, or a juvenile detention or commitment facility at the time of the crime; has been adjudicated as a habitual felony offender, habitual violent offender, or violent career criminal; or has been adjudicated guilty of any forcible felony offense. S. 960.065(2), F.S.
[35] An intervenor is any person who goes to the aide of another and suffers bodily injury or death as a result of acting, not recklessly, to prevent a crime's commission, to lawfully apprehend a person reasonably suspected of having committed a crime, or to aid a crime victim. S. 960.03(9), F.S.
[36] S. 960.065(1), F.S.
[37] S. 960.21(2), F.S.
[38] S. 215.20(1), F.S.
[39] The General Revenue Fund is the state's primary operating fund, used to fund education, transportation, environmental and natural resources programs, and other state interests. Florida Department of Financial Services, *Florida Financials Glossary of Terms*, https://fs.fldfs.com/dispub2/glossary.htm (last visited Mar. 1, 2021).
[40] S. 215.20(1), F.S.
[41] *See* email from Daniel Olson, *supra* note 5.
[42] *Id.*

decrease funds deposited into the General Revenue Fund by the same amount.

State Institutions Claims Program

The State Institutions Claims Program ("SICP") provides restitution[43] for property damage and direct medical expenses for injuries caused by shelter or foster children or escapees, inmates, or patients of state institutions or developmental disabilities centers under the Department of Children and Families ("DCF"), the Department of Health ("DOH"), the Department of Juvenile Justice ("DJJ"), the Department of Corrections ("DOC"), or the Agency for Persons with Disabilities ("APD").[44] Restitution claims are filed with DLA, which has the power to hear[45] and investigate claims, determine claim eligibility, and pay eligible claims.[46] DLA must also work with DCF, DOH, DJJ, DOC, and APD to streamline claim investigations, hearings, and eligibility determinations to ensure that eligible claimants receive timely restitution.[47] However, DLA receives no funding to pay eligible claims but instead sends those claims to the state agency responsible for payment.[48]

Price Gouging

During a declared state of emergency, it is unlawful[49] to offer to rent or sell any essential commodity[50] at an unconscionable price within the area for which the state of emergency is declared.[51] The price-gouging prohibition is effective for 60 days from the initial declaration and must be renewed by any subsequent emergency declaration renewal.[52] It is also unlawful for any person to impose unconscionable prices for the rental or lease of any dwelling unit or self-service storage facility during a declared state of emergency.[53] Florida does not set a specific benchmark for what constitutes price gouging, but a price is presumed to be unconscionable if:

- There is a gross disparity between the price charged during the state of emergency and the average price charged during the 30 days before the state of emergency; or
- It grossly exceeds the average price for which the same or similar commodity was readily obtainable in the trade area during the 30 days before the state of emergency declaration.[54]

However, Florida exempts from the price gouging prohibition a price increase approved by an appropriate government agency or "attributable to additional costs incurred in connection with the rental or sale of the commodity or rental or lease of any dwelling unit or self-storage facility, or regional, national, or international market trends."[55] Further, the price gouging prohibition does not apply to sales by raw or processed food product growers, producers, or processors, except for retail sales of such products directly to the consumer within the area of the declared state of emergency.[56]

Price gouging may be reported to the AG through the AG's Price Gouging Hotline, through the No Scam app, online, or by mail, and the AG investigates each allegation.[57] Florida has no private cause of

[43] Restitution payments are capped at $1,000, except in the case of foster children and their families, when payments are capped at $1,500. S. 402.181(2), F.S.
[44] S. 402.181(1), F.S.
[45] Hearings are held in accordance with ch. 120, F.S. S. 402.181(3)(a), F.S.
[46] S. 402.181(2), F.S.
[47] S. 402.181(3)(b), F.S.
[48] *See* email from Daniel Olson, *supra* note 5.
[49] Price gouging is considered a violation of the Florida Deceptive and Unfair Trade Practices Act under s. 501.204, F.S.
[50] "Commodity" means any goods, services, materials, merchandise, supplies, equipment, resources, or other article of commerce and includes, without limitation, water, food, ice, chemicals, petroleum products, and lumber necessary for consumption or use as a direct result of the emergency. S. 501.160(1)(a), F.S.
[51] S. 501.160(2), F.S.
[52] *Id.*
[53] S. 501.160(3), F.S.
[54] S. 501.160(1)(b), F.S.
[55] S. 501.160(1)(b) and (4), F.S.
[56] S. 501.160(5), F.S.
[57] Office of the Attorney General, *Price Gouging Frequently Asked Questions*, https://myfloridalegal.com/pages.nsf/Main/5D2710E379EAD6BC85256F03006AA2C5?OpenDocument (last visited Mar. 1, 2021).

action for price gouging, so cases must be brought by the office of the state attorney or the AG.[58] Violating the price gouging prohibition carries a civil penalty of up to $1,000 per violation, or up to $25,000 per 24-hour period, which must be paid to the enforcing authority.[59]

Convenience Businesses

The Convenience Business Security Act ("CBSA"), meant to prevent violent crimes at late-night convenience businesses,[60] provides uniform security standards for such businesses.[61] These standards include the mandatory use of security devices and silent alarms, prohibitions against specified window tinting levels, and the implementation of additional security procedures if a violent crime arising out of the convenience business' operation has occurred at the business at any time since July 1, 1989.[62] Additionally, the CBSA requires the owner or operator of a convenience business to provide robbery defense and safety training under an AG-approved curriculum to each retail employee within 60 days of employment and to resubmit the curriculum to the AG for approval biennially.[63]

The AG trains law enforcement officers and others on inspecting convenience businesses for CBSA violations through the Florida Crime Prevention Training Institute.[64] A CBSA violation results in a notice of violation from the AG.[65] Violators have 30 days from notice receipt to prove CBSA compliance to the AG's office, and if a violation continues after that time, the AG may impose a civil fine of up to $5,000.[66] The AG may also petition for an injunction if she determines that public health, safety, or welfare is threatened by a convenience business's continued operation in violation of the CBSA and may seek attorney fees and costs and a civil penalty of up to $5,000 per violation.[67] The AG typically receives less than ten complaints each year about non-compliant convenience businesses and can usually bring such businesses into compliance without resorting to enforcement activity or fines.[68]

Under other authority, the Division of Alcoholic Beverages and Tobacco ("ABT") within the Department of Business and Professional Regulation ("DBPR") licenses and regulates the retail sale of alcoholic beverages and tobacco, including sales at convenience stores.[69] ABT's Bureau of Law Enforcement also inspects retail locations selling alcoholic beverages and tobacco for legal violations.[70] However, DBPR does not license or regulate convenience store operation.

De-Identified Prescription Drug Monitoring Program Database Patient Information

[58] S. 501.160(7) and (8), F.S.
[59] S. 501.164, F.S.
[60] "Convenience business" under the CBSA means any business primarily engaged in the retail sale of groceries, or both groceries and gasoline, that is open for business at any time between 11:00 p.m. and 5:00 a.m. The term does not include a business that is solely or primarily a restaurant, a business that always has at least five employees on the premises after 11:00 p.m. and before 5:00 a.m., a business with at least 10,000 square feet of retail floor space, or any business in which the owner or members of the owner's family work between 11:00 p.m. and 5:00 a.m. S. 812.171, F.S.
[61] Ss. 812.172 and 812.173, F.S.
[62] S. 812.173, F.S.
[63] A proposed curriculum must be submitted to the AG in writing with an administrative fee of no more than $100. The curriculum must train and familiarize retail employees with security principles, devices, and measures required by the CBSA. S. 812.174, F.S.
[64] The Florida Crime Prevention Training Institute, established in 1982 under the Office of the AG, provides statewide public education and training programs for law enforcement personnel, school resource officers, victim advocates, and other interested persons on crime prevention initiatives, school-based officer programs, victim advocacy, and related criminal justice topics. S. 16.54, F.S.; *See* Office of the Attorney General, *Florida Crime Prevention Training Institute: About Us*, http://www.fcpti.com/fcpti.nsf/pages/AboutUs (last visited Mar. 1, 2021); *see also* email from Daniel Olson, *supra* note 5.
[65] S. 812.175(1), F.S.
[66] CBSA fines are deposited in to the General Revenue Fund. S. 812.175(1) and (2), F.S.
[67] S. 812.175(3), F.S.
[68] *See* email from Daniel Olson, *supra* note 5.
[69] Valerie L. Haber, *Alcohol Regulation (FL): Overview*, 19 Practical Law Commercial Transactions (2009), https://www.gray-robinson.com/uploads/files/Alcohol%20Regulation%20(FL)%20Overview%20(w-020-0266)(1).pdf (last visited Mar. 1, 2021).
[70] *Id.*

The Prescription Drug Monitoring Program ("PDMP") database tracks controlled substance[71] prescriptions written and filled in the state, including opioid prescriptions.[72] Florida law allows the AG, upon authorization by a trial court, to use de-identified patient information from the PDMP database in an active investigation or pending civil or criminal litigation involving prescribed controlled substances, subject to confidentiality restrictions.[73] The authorization expires by way of a sunset provision on June 30, 2021. However, the AG is currently litigating a civil matter against some of the nation's largest opioid manufacturers and distributors for their role in the opioid crisis ("opioid litigation"), and trial in the matter is set for April of 2022.[74] Without a sunset provision extension, the AG will not be able to use de-identified patient information from the PDMP database in her opioid litigation.[75]

Effect of Proposed Changes

Florida Supreme Court Reporter

CS/HB 515 repeals ss. 16.10 and 16.101, F.S., thereby removing the AG from the position of official Florida Supreme Court reporter and deleting the requirement that the Florida Supreme Court Clerk provide the AG with copies of Florida Supreme Court opinion volumes to be kept in the AG's office at the capitol. Florida Supreme Court opinions would still be available online and in reporters maintained in the AG's law library.

Safe Neighborhoods Act

The bill repeals sections:

- 163.517, F.S., creating the SNP and allowing a local government to submit an SNP planning grant application to DLA.
- 163.519, F.S., establishing DLA's duties relating to NID funding and SNP operation.
- 163.521, F.S., allowing an NID in an enterprise zone to ask DLA to include provisions to fund capital improvements in its annual budget request and request grant funding.
- 163.5215, F.S., specifying how the provisions of the SNA should be construed.
- 163.522, F.S., directing a local government with a designated enterprise zone or which has authorized a community redevelopment area to consider creating an NID in said zone or area.
- 163.523, F.S., authorizing local governments to seek community organization cooperation and involvement in NID creation and to compensate such organizations.

The bill also deletes provisions requiring NIDs to register with and submit documents to DLA and makes conforming changes. NIDs would still:

- Have to register with and submit requisite documents to DEO.
- Be able to apply for available federal grants.

Crimes Compensation Trust Fund

The bill exempts the CCTF from the eight percent statutory service charge, allowing those funds to remain in the CCTF. However, this exemption would decrease general revenue funds to the same extent.

State Institutions Claims Program

[71] "Controlled substance" means a controlled substance listed in Schedule II, Schedule III, Schedule IV, or Schedule V of s. 893.03, F.S., or 21 U.S.C. s. 812. S. 893.055(1)(C), F.S.
[72] S. 893.055, F.S.; Centers for Disease Control and Prevention, *Prescription Drug Monitoring Programs*, https://www.cdc.gov/drugoverdose/pdmp/states.html (last visited Mar. 1, 2021).
[73] Ss. 893.055(5)(b)2. and 893.0551, F.S.
[74] *See* email from Daniel Olson, *supra* note 5; Office of the Attorney General, *Combating the National Opioid Crisis*, http://myfloridalegal.com/pages.nsf/Main/D0263EB06FDFD00F8525828E0064EE0F#:~:text=On%20Tuesday%2C%20May%2015%2C%202018,role%20in%20the%20opioid%20crisis (last visited Mar. 1, 2021); *see* Case No. 2018-CA-001438 (Fla. 6th Judicial Circuit).
[75] *See* email from Daniel Olson, *supra* note 5.

The bill removes DLA as the entity responsible for SICP restitution claims. Under the bill, such claims must instead be filed with and evaluated and paid by the state agency supervising the person responsible for the damage or injury forming the basis of the claim. The bill also authorizes DCF, DOH, DJJ, DOC, and APD to adopt rules to process SICP claims and to ensure that eligible claimants receive timely restitution.

Price Gouging

The bill leaves the renewal of the price gouging prohibitions to the Governor's discretion, allowing the Governor to choose to whether to extend such prohibitions an additional 60 days by issuing an executive order. The bill also provides that price gouging for rent of a dwelling unit or self-storage facility is only prohibited if the rental was necessary for inhabitation or use as a direct result of the declared emergency.

Convenience Businesses

The bill changes the entity responsible for overseeing and enforcing the CBSA from DLA to DBPR. The bill also authorizes DBPR to adopt rules to implement the CBSA.

De-Identified Prescription Drug Monitoring Program Database Patient Information

The bill extends the AG's authority to use de-identified patient information from the PDMP database to June 30, 2023, giving the AG time to use such information in her opioid litigation.

The bill provides an effective date of June 30, 2021.

B. SECTION DIRECTORY:

Section 1: Repeals s. 16.10, F.S., relating to receipt of Supreme Court reports for office.

Section 2: Repeals s. 16.101, F.S., relating to Supreme Court reporter.

Section 3: Amends s. 163.503, F.S., relating to definitions.

Section 4: Amends s. 163.504, F.S., relating to safe neighborhood improvement districts; planning funds.

Section 5: Amends s. 163.5055, F.S., relating to registration of district establishment; notice of dissolution.

Section 6: Amends s. 163.506, F.S., relating to local government neighborhood improvement districts; creation; advisory council; dissolution.

Section 7: Amends s. 163.508, F.S., property owners' association neighborhood improvement districts; creation; powers and duties; duration.

Section 8: Amends 163.511, F.S., relating to special neighborhood improvement districts; creation; referendum; board of directors; duration; extension.

Section 9: Repeals s. 163.517, F.S., relating to Safe Neighborhood Program.

Section 10: Repeals s. 163.519, F.S., relating to duties of Department of Legal Affairs.

Section 11: Repeals s. 163.521, F.S., relating to neighborhood improvement district inside enterprise Zone; funding.

Section 12: Repeals s. 163.5215, F.S., relating to effect.

Section 13: Repeals s. 163.522, F.S., relating to state redevelopment programs.

Section 14: Repeals s. 163.523, F.S., relating to safe neighborhood districts; cooperation and involvement of community organizations.

Section 15: Amends s. 163.524, F.S., relating to neighborhood preservation and enhancement program; participation; creation of neighborhood preservation and enhancement districts; creation of neighborhood councils and neighborhood enhancement plans.

Section 16: Amends s. 215.22, F.S., relating to certain income and certain trust funds exempt.

Section 17: Amends s. 376.84, F.S., relating to brownfield redevelopment economic incentives.
Section 18: Amends s. 402.181, F.S., relating to state institutions claims program.

Section 19: Amends s. 501.160, F.S., relating to rental or sale of essential commodities during a declared state of emergency; prohibition against unconscionable prices.

Section 20: Amends s. 775.083, F.S., relating to fines.

Section 21: Amends s. 812.173, F.S., relating to convenience business security.

Section 22: Amends s. 812.174, F.S., relating to training of employees.

Section 23: Amends s. 812.175, F.S., relating to enforcement; civil fine.

Section 24: Amends s. 812.176, F.S., relating to rulemaking authority.

Section 25: Amends s. 3 of chapter 2019-127, Laws. of Fla.

Section 26: Provides an effective date of June 30, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   On February 19, 2021, the Revenue Estimating Conference ("REC") considered section 16 of the bill. The REC determined that exempting the CCTF from the eight percent service charge would result in an increase in funds in the CCTF of approximately $1.2 million annually for FY 2021-22 through FY 2025-26 but a decrease in funds in the General Revenue Fund by the same amount during the same period.[76]

2. Expenditures:

   The bill may have an indeterminate fiscal impact on DBPR, DCF, DOH, DJJ, DOC, and APD, as these agencies would be responsible for duties currently performed by DLA. DLA would consequently experience a reduced workload.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

[76] Revenue Estimating Conference, Revenue Impact Results (Feb. 19, 2021), http://www.edr.state.fl.us/content/conferences/revenueimpact/archives/2021/_pdf/Impact0219.pdf (last visited Mar. 5, 2021).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would eliminate price gouging protections relating to rent of a dwelling unit or a self-service storage facility during a declared state of emergency, which could subject Florida consumers to higher rent prices during a state of emergency.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill:

- Authorizes DCF, DOH, DJJ, DOC, and APD to adopt rules to process SICP claims and to ensure that eligible claimants receive restitution within a reasonable time.
- Removes DLA's authority to adopt rules required for SNP operation, the capital improvements provisions, and any other duties assigned under the SNA.
- Authorizes DBPR to adopt rules to implement the CBSA.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 1, 2021, the Judiciary Committee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Provided that price gouging for rent of a dwelling unit or self-storage facility during a declared state of emergency is only prohibited if the rental was necessary for inhabitation or use as a direct result of the emergency.
- Made a technical change by deleting a reference to the service charge in the CCTF statute.

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

A bill to be entitled

An act relating to duties of the Attorney General; repealing s. 16.10, F.S., relating to the receipt of Supreme Court decisions by the Attorney General; repealing s. 16.101, F.S., relating to the Supreme Court reporter; amending s. 163.503, F.S.; revising the definition of "department" to conform to changes made by the act; amending s. 163.504, F.S.; deleting provisions relating to the Safe Neighborhoods Program; amending ss. 163.5055, 163.506, 163.508, and 163.511, F.S.; relieving the Department of Legal Affairs from certain duties associated with specified neighborhood improvement districts; repealing s. 163.517, F.S., relating to the Safe Neighborhoods Program; repealing s. 163.519, F.S., defining the duties of the Department of Legal Affairs; repealing s. 163.521, F.S., relating to funding of neighborhood improvement districts inside enterprise zones; repealing s. 163.5215, F.S., relating to the construction of the Safe Neighborhoods Act; repealing s. 163.522, F.S., relating to state redevelopment programs; repealing s. 163.523, F.S., relating to the cooperation and involvement of community organizations to create safe neighborhood districts; amending s. 163.524, F.S.; conforming a provision to changes made by the act;

amending s. 215.22, F.S.; specifying that the Crimes Compensation Trust Fund is exempt from the service charge into the General Revenue Fund; amending s. 376.84, F.S.; conforming a cross-reference; amending s. 402.181, F.S.; requiring certain claims for restitution to be filed with specified entities; removing the Department of Legal Affairs as an entity for such filings; requiring the Department of Children and Families, the Department of Health, the Department of Juvenile Justice, the Department of Corrections, and the Agency for Persons with Disabilities to adopt rules to process specified claims; amending s. 501.160, F.S.; authorizing certain declarations during a state of emergency to be extended for specified days by executive order; amending ss. 775.083 and 812.173, F.S.; conforming a provision to changes made by the act; amending ss. 812.174, 812.175, and 812.176, F.S.; revising provisions to require the Department of Business and Professional Regulation and not the Attorney General to regulate convenience businesses; amending ch. 2019-127, Laws of Florida; extending the timeframe for the Attorney General to have access to records when ordered by a court under specified provisions; postponing the scheduled repeal of amendments until a specified date unless reviewed and

saved from repeal through reenactment by the Legislature; amending s. 960.21, F.S.; deleting the requirement that a service charge be paid out of moneys deposited in the Crimes Compensation Trust Fund; providing an effective date.

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

Section 1. Section 16.10, Florida Statutes, is repealed.

Section 2. Section 16.101, Florida Statutes, is repealed.

Section 3. Subsection (3) of section 163.503, Florida Statutes, is amended to read:

163.503 Definitions.—

(3) "Department" means the Department of Economic Opportunity ~~Legal Affairs~~.

Section 4. Section 163.504, Florida Statutes, is amended to read:

163.504 Safe neighborhood improvement districts~~; planning funds~~.—

~~(1)~~ The governing body of any municipality or county may authorize the formation of safe neighborhood improvement districts through the adoption of a planning ordinance which specifies that such districts may be created by one or more of the methods established in ss. 163.506, 163.508, 163.511, and 163.512. No district may overlap the jurisdictional boundaries

of a municipality and the unincorporated area of a county, except by interlocal agreement.

~~(2) If the governing body of a municipality or county elects to create a safe neighborhood improvement district, it shall be eligible to request a grant from the Safe Neighborhoods Program, created pursuant to s. 163.517 and administered by the Department of Legal Affairs, to prepare a safe neighborhood improvement plan for the district.~~

~~(3) Municipalities and counties may implement the provisions of this section without planning funds from the Department of Legal Affairs. However, nothing in this section shall be construed to exempt any district from the requirements of providing a safe neighborhood improvement plan pursuant to s. 163.516.~~

Section 5. Subsection (1) of section 163.5055, Florida Statutes, is amended to read:

163.5055 Registration of district establishment; notice of dissolution.—

(1)(a) Each neighborhood improvement district authorized and established under this part shall within 30 days thereof register with ~~both~~ the Department of Economic Opportunity ~~and the Department of Legal Affairs~~ by providing the department ~~these departments~~ with the district's name, location, size, and type, and such other information as the department ~~departments~~ may require.

(b) Each local governing body that authorizes the dissolution of a district shall notify ~~both~~ the Department of Economic Opportunity ~~and the Department of Legal Affairs~~ within 30 days after the dissolution of the district.

Section 6. Paragraph (h) of subsection (1) of section 163.506, Florida Statutes, is amended to read:

163.506 Local government neighborhood improvement districts; creation; advisory council; dissolution.—

(1) After a local planning ordinance has been adopted authorizing the creation of local government neighborhood improvement districts, the local governing body of a municipality or county may create local government neighborhood improvement districts by the enactment of a separate ordinance for each district, which ordinance:

(h) Requires the district to notify the ~~Department of Legal Affairs and the~~ Department of Economic Opportunity in writing of its establishment within 30 days thereof pursuant to s. 163.5055.

Section 7. Paragraph (g) of subsection (1) of section 163.508, Florida Statutes, is amended to read:

163.508 Property owners' association neighborhood improvement districts; creation; powers and duties; duration.—

(1) After a local planning ordinance has been adopted authorizing the creation of property owners' association neighborhood improvement districts, the local governing body of

a municipality or county may create property owners' association neighborhood improvement districts by the enactment of a separate ordinance for each district, which ordinance:

(g) Requires the district to notify the ~~Department of Legal Affairs and the~~ Department of Economic Opportunity in writing of its establishment within 30 days thereof pursuant to s. 163.5055.

Section 8. Paragraph (i) of subsection (1) of section 163.511, Florida Statutes, is amended to read:

163.511 Special neighborhood improvement districts; creation; referendum; board of directors; duration; extension.—

(1) After a local planning ordinance has been adopted authorizing the creation of special neighborhood improvement districts, the governing body of a municipality or county may declare the need for and create special residential or business neighborhood improvement districts by the enactment of a separate ordinance for each district, which ordinance:

(i) Requires the district to notify the ~~Department of Legal Affairs and the~~ Department of Economic Opportunity in writing of its establishment within 30 days thereof pursuant to s. 163.5055.

Section 9. Section 163.517, Florida Statutes, is repealed.

Section 10. Section 163.519, Florida Statutes, is repealed.

Section 11. Section 163.521, Florida Statutes, is

repealed.

Section 12. Section 163.5215, Florida Statutes, is repealed.

Section 13. Section 163.522, Florida Statutes, is repealed.

Section 14. Section 163.523, Florida Statutes, is repealed.

Section 15. Subsection (5) of section 163.524, Florida Statutes, is amended to read:

163.524 Neighborhood Preservation and Enhancement Program; participation; creation of Neighborhood Preservation and Enhancement Districts; creation of Neighborhood Councils and Neighborhood Enhancement Plans.—

(5) The Neighborhood Council and local government planning agency shall be eligible to receive grants ~~from the Safe Neighborhoods Program as provided in s. 163.517~~.

Section 16. Paragraph (w) is added to subsection (1) of section 215.22, Florida Statutes, to read:

215.22 Certain income and certain trust funds exempt.—

(1) The following income of a revenue nature or the following trust funds shall be exempt from the appropriation required by s. 215.20(1):

(w) The Crimes Compensation Trust Fund.

Section 17. Paragraph (c) of subsection (1) of section 376.84, Florida Statutes, is amended to read:

376.84 Brownfield redevelopment economic incentives.—It is the intent of the Legislature that brownfield redevelopment activities be viewed as opportunities to significantly improve the utilization, general condition, and appearance of these sites. Different standards than those in place for new development, as allowed under current state and local laws, should be used to the fullest extent to encourage the redevelopment of a brownfield. State and local governments are encouraged to offer redevelopment incentives for this purpose, as an ongoing public investment in infrastructure and services, to help eliminate the public health and environmental hazards, and to promote the creation of jobs in these areas. Such incentives may include financial, regulatory, and technical assistance to persons and businesses involved in the redevelopment of the brownfield pursuant to this act.

(1) Financial incentives and local incentives for redevelopment may include, but not be limited to:

(c) Safe neighborhood improvement districts as provided in ss. 163.501-163.516 ~~ss. 163.501-163.523~~.

Section 18. Subsections (2) and (3) of section 402.181, Florida Statutes, are amended to read:

402.181 State Institutions Claims Program.—

(2) Claims for restitution may be filed with the Department of Children and Families, the Department of Health, the Department of Juvenile Justice, the Department of

Corrections, or the Agency for Persons with Disabilities. The claim must be filed with the department or agency responsible for monitoring the person that caused the medical injury or the property damage ~~Legal Affairs at its office in accordance with regulations prescribed by the Department of Legal Affairs~~. The departments and agencies ~~Department of Legal Affairs shall~~ have the full power and authority to approve or deny ~~hear, investigate, and determine all questions in respect to such~~ claims and may ~~is authorized~~, within the limits of current appropriations, ~~to~~ pay individual claims up to $1,000 or, with respect to children in foster care and their families, individual claims up to $1,500. Claims in excess of these amounts shall continue to require legislative approval.

(3)~~(a)~~ The Department of Children and Families, the Department of Health, the Department of Juvenile Justice, the Department of Corrections, and the Agency for Persons with Disabilities shall adopt rules to process claims and to ensure that eligible claimants receive restitution within a reasonable time. ~~The Department of Legal Affairs shall make or cause to be made such investigations as it considers necessary in respect to such claims. Hearings shall be held in accordance with chapter 120.~~

~~(b) The Department of Legal Affairs shall work with the Department of Children and Families, the Department of Health, the Department of Juvenile Justice, the Department of~~

~~Corrections, and the Agency for Persons with Disabilities to streamline the process of investigations, hearings, and determinations with respect to claims under this section, to ensure that eligible claimants receive restitution within a reasonable time.~~

Section 19. Subsections (4) through (9) of section 501.160, Florida Statutes, are renumbered as subsections (3) through (8), respectively, and subsection (2) and present subsection (3) of that section are amended to read:

501.160 Rental or sale of essential commodities during a declared state of emergency; prohibition against unconscionable prices.—

(2) Upon a declaration of a state of emergency by the Governor, it is unlawful and a violation of s. 501.204 for a person or her or his agent or employee to rent or sell or offer to rent or sell at an unconscionable price within the area for which the state of emergency is declared:~~,~~

(a) Any essential commodity including, but not limited to, supplies, services, provisions, or equipment that is necessary for consumption or use as a direct result of the emergency.

(b) Any dwelling unit or self-storage facility that is necessary for inhabitation or use as a direct result of the emergency.

This prohibition is effective not to exceed 60 days under the

initial declared state of emergency as defined in s. 252.36(2) and may be extended an additional 60 days, by an executive order issued by the Governor specifically referencing this section ~~shall be renewed by statement in any subsequent renewals of the declared state of emergency by the Governor~~.

~~(3) It is unlawful and a violation of s. 501.204 for any person to impose unconscionable prices for the rental or lease of any dwelling unit or self-storage facility during a period of declared state of emergency.~~

Section 20. Subsection (2) of section 775.083, Florida Statutes, is amended to read:

775.083 Fines.—

(2) In addition to the fines set forth in subsection (1), court costs shall be assessed and collected in each instance a defendant pleads nolo contendere to, or is convicted of, or adjudicated delinquent for, a felony, a misdemeanor, or a criminal traffic offense under state law, or a violation of any municipal or county ordinance if the violation constitutes a misdemeanor under state law. The court costs imposed by this section shall be $50 for a felony and $20 for any other offense and shall be deposited by the clerk of the court into an appropriate county account for disbursement for the purposes provided in this subsection. A county shall account for the funds separately from other county funds as crime prevention funds. The county, in consultation with the sheriff, must expend

such funds for crime prevention programs in the county~~,~~ ~~including safe neighborhood programs under ss. 163.501-163.523~~.

Section 21. Subsections (3) and (5) of section 812.173, Florida Statutes, are amended to read:

812.173 Convenience business security.—

(3) Every convenience business shall be equipped with a silent alarm to law enforcement or a private security agency, unless application for an exemption is made to and granted by the Department of Business and Professional Regulation ~~Attorney General~~. An application for exemption must be in writing and must be accompanied by an administrative fee of $25 for each store for which an exemption would apply.

(5) For purposes of this section, any convenience business that by law implemented any of the security measures set forth in paragraphs (4)(a)-(e) and has maintained said measures as required by the Department of Business and Professional Regulation ~~Legal Affairs~~ without any occurrence or incidence of the crimes identified by subsection (4) for a period of no less than 24 months immediately preceding the filing of a notice of exemption, may file with the department a notice of exemption from these enhanced security measures. In no event shall this exemption be interpreted to preclude full compliance with the security measures set forth in subsection (4) should any occurrence or incidence of the crimes identified by subsection (4) cause subsection (4) to be statutorily applicable. As of

July 1, 2021 ~~the date this act becomes law~~, the Department of Business and Professional Regulation ~~Legal Affairs~~ will provide notice to any convenience business to which a subsection (4) incident has previously occurred. In no event shall the state or the Department of Business and Professional Regulation ~~Legal Affairs~~ incur any liability for the regulation and enforcement of this act.

Section 22. Section 812.174, Florida Statutes, is amended to read:

812.174 Training of employees.—The owner or principal operator of a convenience business or convenience businesses shall provide proper robbery deterrence and safety training by an approved curriculum to its retail employees within 60 days of employment. ~~Existing retail employees shall receive training within 6 months of April 8, 1992.~~ A proposed curriculum shall be submitted in writing to the Department of Business and Professional Regulation ~~Attorney General~~ with an administrative fee not to exceed $100. The Department of Business and Professional Regulation ~~Attorney General~~ shall review and approve or disapprove the curriculum in writing within 60 days after receipt. The state shall have no liability for approving or disapproving a training curriculum under this section. Approval shall be given to a curriculum which trains and familiarizes retail employees with the security principles, devices, and measures required by s. 812.173. Disapproval of a

curriculum shall be subject to the provisions of chapter 120. No person shall be liable for ordinary negligence due to implementing an approved curriculum if the training was actually provided. A curriculum shall be submitted for reapproval biennially with an administrative fee not to exceed $100. Any curriculum approved by the Attorney General between ~~since~~ September 1990 and June 30, 2021, and any curriculum approved on or after July 1, 2021, by the Department of Business and Professional Regulation shall be subject to reapproval 2 years from the anniversary of initial approval and biennially thereafter.

Section 23. Section 812.175, Florida Statutes, is amended to read:

812.175 Enforcement; civil fine.—

(1) The violation of any provision of this act by any owner or principal operator of a convenience business shall result in a notice of violation from the Department of Business and Professional Regulation ~~Attorney General~~. Violators shall have 30 days after receipt of the notice to provide proof of compliance to the Department of Business and Professional Regulation ~~Attorney General's office~~. If the violation continues after the 30-day period, the Department of Business and Professional Regulation ~~Attorney General~~ may impose a civil fine not to exceed $5,000. The Department of Business and Professional Regulation ~~Attorney General~~ has the authority to

investigate any alleged violation and may compromise any alleged violation by accepting from the owner or principal operator an amount not to exceed $5,000. The Department of Business and Professional Regulation ~~Attorney General~~ may suspend the imposition of any fine conditioned upon terms the Department of Business and Professional Regulation ~~Attorney General's office~~ in its discretion deems appropriate. Notices of violation and civil fines shall be subject to the provisions of chapter 120.

(2) Moneys received by the Department of Business and Professional Regulation ~~Attorney General~~ pursuant to this act shall be deposited in the General Revenue Fund.

(3) The Department of Business and Professional Regulation ~~Attorney General~~ is given full power and authority to petition for an injunction when it is determined that the health, safety, and public welfare is threatened by continued operation of a convenience business in violation of this act. In any action for injunction, the Department of Business and Professional Regulation ~~Attorney General~~ may seek a civil penalty not to exceed $5,000 per violation, plus attorney's fees and costs.

(4) The Department of Business and Professional Regulation ~~Attorney General~~ may enter into agreements with local governments to assist in the enforcement of ss. 812.1701-812.175. Such agreements may include provision for reimbursement of investigative and enforcement costs incurred by such local governments.

Section 24. Section 812.176, Florida Statutes, is amended to read:

812.176 Rulemaking authority.—The Department of Business and Professional Regulation may ~~Legal Affairs shall have the power to~~ adopt rules pursuant to chapter 120 as necessary to implement the provisions of the Convenience Business Security Act. The security measures and training provisions of ss. 812.173 and 812.174 shall meet the requirements of the department as set forth by rule.

Section 25. Section 3 of chapter 2019-127, Laws of Florida, is amended to read:

Section 3. The amendments to ss. 893.055 and 893.0551, Florida Statutes, made by this act shall stand repealed on June 30, 2023 ~~June 30, 2021~~, unless reviewed and saved from repeal through reenactment by the Legislature. If such amendments are not saved from repeal, the text of ss. 893.055 and 893.0551, Florida Statutes, shall revert to that in existence on June 30, 2019, except that any amendments to such text other than by this act shall be preserved and continue to operate to the extent that such amendments are not dependent upon the portions of text which expire pursuant to this section.

Section 26. Subsection (3) of section 960.21, Florida Statutes, is amended to read:

960.21 Crimes Compensation Trust Fund.—

(3) All administrative costs of this chapter ~~and the~~

~~service charge provided for in chapter 215~~ shall be paid out of moneys collected under ~~pursuant to~~ this chapter and deposited in the Crimes Compensation Trust Fund.

Section 27. This act shall take effect June 30, 2021.

COMMERCE COMMITTEE

CS/HB 515 by Rep. Mariano
Duties of the Attorney General

AMENDMENT SUMMARY
March 9, 2021

Amendment 1 by Rep. Mariano (lines 278-384):
Revises the Convenience Business Security Act, as follows:

- Specifies that the entity responsible for overseeing and enforcing the Act is the Division of Alcoholic Beverages and Tobacco (Division), and conforms all references.
- Revises the definition of "convenience business" to specify that the definition includes businesses that are licensed by the Division, pursuant to:
    - Chapter 210, F.S., relating to tobacco products;
    - Chapter 561, F.S., relating to the beverage law;
    - Chapter 562, F.S., relating to the beverage law;
    - Chapter 563, F.S., relating to beer and malt beverages;
    - Chapter 564, F.S., relating to wine;
    - Chapter 565, F.S., relating to liquor; and
    - Chapter 569, F.S., relating to tobacco products.
- Revises procedures that a convenience business must follow when a violent crime has occurred by:
    - Requiring the business to notify the Division in writing; and
    - Placing a timeframe within which the written notice and the required security measures must be implemented to be within 30 days of judicial determination that one or more of the violent crimes occurred.
- Specifies that the Division has the authority to investigate the premises and records of any licensee in order to determine whether the licensee is a convenience business and subject to the provisions of the Act.
- Revises the biennial requirement that a convenience business must submit proposed robbery deterrence safety training to the Division for approval, by requiring the Division to establish a specific biennial submittal date by rule.

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: Commerce Committee
Representative Mariano offered the following:

Amendment

Remove lines 278-384 and insert:

Section 21. Subsections (4) and (5) are added to section 812.171, Florida Statutes, to read:

812.171 Definition.—As used in this act, the term "convenience business" means any place of business that is primarily engaged in the retail sale of groceries, or both groceries and gasoline, ~~and~~ that is open for business at any time between the hours of 11 p.m. and 5 a.m., and is licensed by the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation pursuant to Chapters 210, 561, 562, 563, 564, 565 or 569. The term "convenience business" does not include:

(4) A

~~The term "convenience business" does not include any~~ business in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m.

Section 22. Subsections (3), (4), and (5) of section 812.173, Florida Statutes, is amended, and subsection (6) is added to that section, to read:

812.173 Convenience business security.—

(3) Every convenience business shall be equipped with a silent alarm to law enforcement or a private security agency, unless an application for an exemption, adopted by rule by the Division of Alcoholic Beverages and Tobacco, is made to and granted by the Division of Alcoholic Beverages and Tobacco ~~Attorney General~~. An application for exemption must be in writing and must be accompanied by an administrative fee of $25 for each store for which an exemption would apply.

(4) If a murder, robbery, sexual battery, aggravated assault, aggravated battery, or kidnapping or false imprisonment, as those crimes are identified and defined by Florida Statutes, occurs or has occurred at a convenience business since July 1, 1989, and arises out of the operation of the convenience business, that convenience business shall notify the Division of Alcoholic Beverages and Tobacco in writing and shall implement at least one of the following security measures

within 30 days of a judicial determination that one or more of the aforementioned identified crimes occurred at the convenience business:

(a) Provide at least two employees on the premises at all times after 11 p.m. and before 5 a.m.;

(b) Install for use by employees at all times after 11 p.m. and before 5 a.m. a secured safety enclosure of transparent polycarbonate or other material that meets at least one of the following minimum standards:

1. American Society for Testing and Materials Standard D3935 (classification PC110 B 3 0800700) and that has a thickness of at least 0.375 inches and has an impact strength of at least 200 foot pounds; or

2. Underwriters Laboratory Standard UL 752 for medium power small arms (level one), Bullet Resisting Equipment;

(c) Provide a security guard on the premises at all times after 11 p.m. and before 5 a.m.;

(d) Lock the business premises throughout the hours of 11 p.m. to 5 a.m., and only transact business through an indirect pass-through trough, trapdoor, or window; or

(e) Close the business at all times after 11 p.m. and before 5 a.m.

(5) For purposes of this section, any convenience business that by law implemented any of the security measures set forth in paragraphs (4)(a)-(e) and has maintained said measures as

required by the Division of Alcoholic Beverages and Tobacco ~~Department of Legal Affairs~~ without any occurrence or incidence of the crimes identified by subsection (4) for a period of no less than 24 months immediately preceding the filing of a notice of exemption, may file with the department a notice of exemption from these enhanced security measures. In no event shall this exemption be interpreted to preclude full compliance with the security measures set forth in subsection (4) should any occurrence or incidence of the crimes identified by subsection (4) cause subsection (4) to be statutorily applicable. As of July 1, 2021, the Division of Alcoholic Beverages and Tobacco ~~the date this act becomes law, the Department of Legal Affairs~~ will provide notice to any convenience business to which a subsection (4) incident ~~has previously~~ occurred between July 1, 2019 and July 1, 2021. In no event shall the state or the Division of Alcoholic Beverages and Tobacco ~~Department of Legal Affairs~~ incur any liability for the regulation and enforcement of this act.

(6) The Division of Alcoholic Beverages and Tobacco has the authority to investigate the premises and records of any licensee in order to determine whether the licensee is a convenience business and subject to the provisions of this act.

Section 23. Section 812.174, Florida Statutes, is amended to read:

812.174 Training of employees.—The owner or principal

operator of a convenience business or convenience businesses shall provide proper robbery deterrence and safety training by an approved curriculum to its retail employees within 60 days of employment. ~~Existing retail employees shall receive training within 6 months of April 8, 1992.~~ A proposed curriculum shall be submitted in writing to the Division of Alcoholic Beverages and Tobacco ~~Attorney General~~ with an administrative fee not to exceed $100. The Division of Alcoholic Beverages and Tobacco ~~Attorney General~~ shall review and approve or disapprove the curriculum in writing within 60 days after receipt. The state shall have no liability for approving or disapproving a training curriculum under this section. Approval shall be given to a curriculum which trains and familiarizes retail employees with the security principles, devices, and measures required by s. 812.173. Disapproval of a curriculum shall be subject to the provisions of chapter 120. No person shall be liable for ordinary negligence due to implementing an approved curriculum if the training was actually provided. A curriculum shall be submitted for reapproval biennially on or before the date established by rule by the Division of Alcoholic Beverages and Tobacco and shall be accompanied with an administrative fee not to exceed $100. ~~Any curriculum approved by the Attorney General since September 1990 shall be subject to reapproval 2 years from the anniversary of initial approval and biennially thereafter.~~

Section 24. Section 812.175, Florida Statutes, is amended

to read:

812.175 Enforcement; civil fine.—

(1) The violation of any provision of this act by any owner or principal operator of a convenience business shall result in a notice of violation from the Division of Alcoholic Beverages and Tobacco ~~Attorney General~~. Violators shall have 30 days after receipt of the notice to provide proof of compliance to the Division of Alcoholic Beverages and Tobacco ~~Attorney General's office~~. If the violation continues after the 30-day period, the Division of Alcoholic Beverages and Tobacco ~~Attorney General~~ may impose a civil fine not to exceed $5,000. The Division of Alcoholic Beverages and Tobacco ~~Attorney General~~ has the authority to investigate any alleged violation and may compromise any alleged violation by accepting from the owner or principal operator an amount not to exceed $5,000. The Division of Alcoholic Beverages and Tobacco ~~Attorney General~~ may suspend the imposition of any fine conditioned upon terms the Division of Alcoholic Beverages and Tobacco ~~Attorney General's office~~ in its discretion deems appropriate. Notices of violation and civil fines shall be subject to the provisions of chapter 120.

(2) Moneys received by the Division of Alcoholic Beverages and Tobacco ~~Attorney General~~ pursuant to this act shall be deposited in the General Revenue Fund.

(3) The Division of Alcoholic Beverages and Tobacco ~~Attorney General~~ is given full power and authority to petition

for an injunction when it is determined that the health, safety, and public welfare is threatened by continued operation of a convenience business in violation of this act. In any action for injunction, the Division of Alcoholic Beverages and Tobacco ~~Attorney General~~ may seek a civil penalty not to exceed $5,000 per violation, plus attorney's fees and costs.

(4) The Division of Alcoholic Beverages and Tobacco ~~Attorney General~~ may enter into agreements with local governments to assist in the enforcement of ss. 812.1701-812.175. Such agreements may include provision for reimbursement of investigative and enforcement costs incurred by such local governments.

Section 25. Section 812.176, Florida Statutes, is amended to read:

812.176 Rulemaking authority.—The Division of Alcoholic Beverages and Tobacco ~~Department of Legal Affairs~~ shall have the power to adopt rules pursuant to chapter 120 as necessary to implement the provisions of the Convenience Business Security Act. The security measures and training provisions of ss. 812.173 and 812.174 shall meet the requirements of the department as set forth by rule.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 663 Cottage Food Operations
SPONSOR(S): Regulatory Reform Subcommittee, Salzman
TIED BILLS: **IDEN./SIM. BILLS:** SB 1294

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	15 Y, 2 N, As CS	Thompson	Anstead
2) Commerce Committee		Thompson	Hamon

SUMMARY ANALYSIS

Cottage foods are certain food products which have been determined by the Department of Agriculture and Consumer Services (DACS) to be safe for production at a person's residence. Examples of permissible cottage foods are breads, honey, cakes, and popcorn. Food products containing meats and fresh fruits and vegetables or those that require temperature control are generally prohibited cottage foods.

Current law allows a cottage food operation to sell cottage foods without conforming to state food and building permitting requirements if the annual gross sales of such products do not exceed $50,000. Certain local, state and federal operating standards must be followed, including those governing methods of sale, delivery, labeling, and storage.

DACS is authorized to investigate complaints regarding food safety violations involving cottage foods.

The "Home Sweet Home Act":

- Allows the sale and delivery of cottage food products by United States Postal Service or commercial mail delivery service.
- Increases the gross annual sales threshold from $50,000 to $250,000.
- Revises the definition of a "cottage food operation" to clarify that an operator is allowed to have business partners.
- Preempts the regulation of cottage food operations to the state, and prohibits local laws, ordinances, or regulations that prohibit a cottage food operation or regulate the preparation, processing, storage or sale of cottage food products.

The bill may have a positive fiscal impact on the private sector.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Cottage Foods

The Department of Agriculture and Consumer Services (DACS) is responsible for the administration and enforcement of the Florida Food Safety Act.[1] The act is intended to:

- Safeguard the public health and promote the public welfare by protecting the consuming public from injury from intrastate commerce in food.
- Provide legislation conforming with the Federal Food, Drug, and Cosmetic Act, the Agriculture Marketing Act of 1946, and Federal Trade Commission Act, to the extent that it expressly prohibits the false advertisement of food; and
- Promote uniformity of state and federal laws and their administration and enforcement throughout the United States (U.S.) and in the states.[2]

State and local governments have primary authority over food production. Therefore, states, and not the federal government, have the ability to decide whether or not in-home food productions are allowed in that state and what foods qualify for such in-home production.[3] The act allows such operations under certain circumstances.[4]

Current law defines "cottage food products" (cottage foods), as not a potentially hazardous food as defined by DACS rule, and which are sold in accordance with cottage food operating requirements.[5] Like many other states, DACS adopts the U.S. Food & Drug Administration (FDA) food code.[6] The food code/DACS rule defines "Potentially Hazardous Food/Time/Temperature Control for Safety Food" (PHF/TCS) as food that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation.[7]

Although DACS has not adopted a rule on cottage food operations, DACS has published guidance defining foods that are, and those that are not, considered cottage food products. These examples include the following:[8]

Permitted Cottage Foods:

- Loaf breads, rolls, and biscuits;
- Cakes, pastries, and cookies;
- Candies and confections;
- Honey;
- Jams, jellies, and preserves;
- Fruit pies and dried fruits;
- Dry herbs, seasonings, and mixtures;
- Homemade pasta;

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[1] See ch. 500, F.S.
[2] S. 500.02, F.S.
[3] Christina Rice, Emily Broad Leib, *Cottage Food Laws in the United States*, Harvard Law School Food Law and Policy Clinic (FLPC) (August 2018), https://www.chlpi.org/wp-content/uploads/2013/12/FLPC_Cottage-Foods-Report_August-2018.pdf (last visited Feb. 19, 2021).
[4] S. 500.80, F.S.
[5] S. 500.03(1)(k), F.S.
[6] U.S. Food & Drug Administration, *2017 Food Code*, https://www.fda.gov/media/110822/download (last visited Feb. 21, 2021).
[7] R. 5K-4.0010(9), F.A.C.
[8] DACS Division of Food Safety, *Cottage Food Operations*, https://www.fdacs.gov/Business-Services/Food/Food-Establishments/Cottage-Foods (last visited Feb. 19, 2021). The United States Food and Drug Administration (FDA) model food code includes a definition for such foods; DACS formed a definition that is similar. FDA Food Code §1-201.10 (2017).

- Cereals, trail mixes, and granola;
- Coated or uncoated nuts;
- Vinegar and flavored vinegars; and
- Popcorn and popcorn balls.

Prohibited Cottage Foods:
- Fresh or dried meat or meat products including jerky;
- Canned fruits and vegetables, chutneys, vegetable butters and jellies, flavored oils, hummus, garlic dip, salsas, etc.;
- Fish or shellfish products;
- Canned pickled products such as corn relish, pickles, and sauerkraut;
- Raw seed sprouts;
- Bakery goods which require any type of refrigeration, such as cream, custard, or meringue pies and cakes or pastries with cream cheese icings or fillings;
- Milk and dairy products including hard, soft, and cottage cheeses and yogurt;
- Cut fresh fruits and/or vegetables;
- Juices made from fresh fruits or vegetables;
- Ice and/or ice products;
- Barbeque sauces, ketchups, and/or mustards; and
- Focaccia-style breads with vegetables and/or cheeses.

Cottage Food Operating Requirements

In Florida, a "cottage food operation" is defined as a natural person who produces or packages cottage foods at his or her residence and is exempt from food and building permitting requirements[9] if he or she sells such products in accordance with the cottage food operating requirements.[10]

A cottage food operation must comply with the following requirements in order to operate:
- Sales Limit: Annual gross sales of cottage foods may not exceed $50,000;[11]
- Internet Sales: In order to sell, offer for sale, and accept payment for cottage food products over the Internet, such products must be delivered in person directly to the consumer or to a specific event venue.
- Delivery: A cottage food operation is prohibited from offering for sale or delivering cottage food products by mail order.
- Wholesale Sales: A cottage food operation is prohibited from offering cottage food products at wholesale.
- Labeling: Cottage foods must be sold prepackaged with a label affixed containing the following information:
    - Name and address of the cottage food operation;
    - Name of the cottage food;
    - Ingredients of the cottage food, in descending order of predominance by weight;
    - Net weight or net volume of the cottage food;
    - Allergen information as specified by federal labeling requirements;
    - If any nutritional claim is made, appropriate nutritional information as specified by federal labeling requirements; and
    - A statement printed in at least 10-point font and in a color that provides clear contrast to the background of the label which reads "Made in a cottage food operation that is not subject to Florida's food safety regulations;"[12]
- Storage: Only cottage foods that are stored on the premises of the cottage food operation may be sold;

[9] *See* s. 500.12, F.S.
[10] S. 500.03(1)(j), F.S.
[11] S. 500.80(1)(b), F.S. This includes all sales of products from any location, regardless of the types of products sold or number of persons involved in any operation. Documentation of sales must be available to DACS for verification.
[12] Cottage food products must be labeled in accordance with the requirements as outlined in s. 500.80(3), F.S., and U.S. Code of Federal Regulations Title 21, Part 101.

- State and Federal: A cottage food operation must comply with applicable state or federal tax laws, rules, regulations, or certificates;
- Local Government: A cottage food operation must comply with applicable county and municipal laws and ordinances regulating the preparation, processing, storage, and sale of cottage foods by a cottage food operation or from a person's residence.[13]

Some local governments throughout the state place additional requirements on cottage food operations. For example, many counties and cities require a cottage food operation, like any other business endeavor, to obtain a business tax receipt[14] prior to commencing his or her production.[15]

Enforcement

DACS may enter and inspect the premises of a cottage food operation to determine compliance with the cottage food operations requirements only upon receipt of a complaint, which alleges that a cottage food operation has violated any of the cottage food operating requirements. If a cottage food operation refuses to permit DACS to enter the premises or to conduct the inspection, he or she is subject to disciplinary action.[16]

Recent Trends

Sales Limits

A study conducted by the Harvard Law School Food Law and Policy Clinic provides the following data regarding annual gross sales limits for cottage food operations in other states:

- Sales limits differ among the states, ranging from $10,000 to no limit at all.
- About half of the states place a limitation on the amount of income a cottage food operation can earn in a year.
- In those states, once a cottage food operation exceeds the cap, typical food establishment requirements and permitting rules kick in.
- South Carolina only allows $15,000 in annual gross sales.
- Other states like Texas limit the sale of cottage foods to $50,000 per year.
- More than half of states, including Georgia, Massachusetts, New York, North Carolina, and Tennessee, do not place a sales limit on cottage food operations or have no limit on at least some types of cottage food operations.[17]

According to the study, sales limits "limit the scale of operations that are allowed to sell without full food safety precautions in place… sales limits also prevent cottage food operators from scaling up and generating a livable income from their business."[18]

According to an Institute for Justice article on cottage food laws, "the national trend line is moving toward more food freedom. More laws pass every year, expanding the right to sell homemade food."[19]

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[13] S. 500.80(1)-(6), F.S.
[14] Chapter 205, F.S., allows counties and cities to impose taxes for the privilege of engaging in or managing any business, occupation, or profession within its jurisdiction. This tax is administered through the issuance of a local business tax receipt. In order to impose this tax, the local government entity must adopt an ordinance, which outlines the amount of the tax, method of computation, and other requirements.
[15] Examples include City of Miramar and St. John's County. City of Miramar, *Business Tax (Occupational Licenses)*, http://www.miramarfl.gov/201/Business-Tax-Occupational-Licenses (last visited Feb. 19, 2021); and County of St. John's Tax Collector, *Business Tax FAQs*, http://www.sjctax.us/BusinessTaxFAQ.aspx (last visited Feb. 19, 2021).
[16] S. 500.08(7)(a)-(b), F.S.
[17] Christina Rice, Emily Broad Leib, *Cottage Food Laws in the United States*, Harvard Law School Food Law and Policy Clinic (FLPC) (August 2018), https://www.chlpi.org/wp-content/uploads/2013/12/FLPC_Cottage-Foods-Report_August-2018.pdf (last visited Feb. 19, 2021).
[18] Rice, Leib, *Supra* note 17, at 14.
[19] Institute for Justice, *Defending Your Right to Sell Homemade Food*, https://ij.org/issues/economic-liberty/homemade-food-seller/ (last visited Feb. 22, 2021).

Florida's gross annual sales limit is $50,000.[20] It was raised from $15,000 to $50,000 in 2017.[21]

Business Partnerships

According to the Internal Revenue Service (IRS) Partnerships webpage, "a partnership is the relationship between two or more people to do trade or business. Each person contributes money, property, labor or skill, and shares in the profits and losses of the business."[22]

Florida partnership law is governed by ch. 620, F.S. The law sets forth requirements for anyone wanting to establish a new partnership in the state of Florida. Under these rules are specific requirements regarding all types of partnerships, including the following:

- Limited partnerships;
- General partnerships;
- Limited Liability partnerships; and
- Foreign limited partnerships.

All partnerships must be registered with the Florida Department of State and follow all requirements found within ch. 620, F.S., which include the creation of the business, the paperwork and fees associated with creation, and the ongoing upkeep and maintenance of such partnerships.[23]

According to an American Express online article on advantages and disadvantages of business partnerships, for those considering a business partnership as a way to grow a company, a partnership can offer the following benefits:

- Bridging the Gap in Expertise and Knowledge: access to a wider range of expertise, additional knowledge and experience, and complementary skills.
- More Cash: infusion of cash into the business, more strategic connections, and enhanced borrowing ability to finance growth.
- Cost Savings: shared financial burden for expenses and capital expenditures needed to run the business, and more substantial savings.
- Better Work/Life Balance: shared labor, lightened workload, allowing time off when needed, knowing that there's a trusted person in charge, and positive impact on personal life.
- Moral Support: ability to brainstorm or debrief on important issues, support when setbacks are encountered, and help coping with everyday frustrations.
- Potential Tax Benefits: does not pay income tax, instead, "passes through" profits or losses to its partners. Each partner reports their share of the partnership's income or loss on their personal tax return. This may allow partners to deduct any business losses from their individual tax return.[24]

Some disadvantages include liabilities, loss of autonomy, personal conflicts, future selling issues, and lack of stability. However, in analyzing advantages and disadvantages of a partnership, the advantages may outweigh the disadvantages, and some of the disadvantages of a partnership may be overcome with due diligence.[25]

Current law does not appear to specifically allow cottage food operators to participate in partnerships. The law defines a "cottage food operation" as a natural person who produces or packages cottage food products at his or her residence and sells such products in accordance with s. 500.80, F.S.[26] The

[20] S. 500.80(1)(a), F.S.
[21] Ch. 2017-32, Laws of Fla.
[22] Internal Revenue Service, *Tax Information for Partnerships*, https://www.irs.gov/businesses/partnerships (last visited Feb. 22, 2021).
[23] Ch. 620, F.S.
[24] American Express Trends and Insights, *What Are the Advantages and Disadvantages of a Partnership?*, https://www.americanexpress.com/en-us/business/trends-and-insights/articles/what-are-the-advantages-and-disadvantages-of-a-partnership/ (last visited Feb. 22, 2021).
[25] American Express, s*upra* note 23.
[26] S. 500.03(1)(j), F.S.

definition appears to limit the operation to one person.[27] In addition, DACS guidance on cottage food operations provides that a cottage food operation must be a single-family domestic residence in order to qualify as a cottage food business.[28]

Mail Orders

There are many laws that provide the basic framework for ensuring safety of foods in the U.S., including mail order foods. These laws include, but are not limited to, the Food Drug and Cosmetic Act (FDCA),[29] the Federal Meat Inspection Act (FMIA),[30] and the Poultry Products Inspection Act (PPIA).[31] These laws prohibit the sale or distribution of adulterated foods. Foods can be deemed adulterated for many reasons including if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

The FMIA specifically prohibits adulteration during transportation, where adulteration means any act while being transported in commerce or held for sale after such transportation, which is intended to cause or has the effect of causing such articles to be adulterated or misbranded.[32]

The U.S. Postal Service (USPS) classifies most nonperishable food items as mailable domestically if properly packaged. The USPS defines "Perishable Matter" as anything that can deteriorate in the mail and thereby lose value, create a health hazard, or cause an obnoxious odor, nuisance, or disturbance, under ordinary mailing conditions. USPS allows mailable Perishable Matter to be sent at the mailer's own risk when it is packaged as required and when it can be delivered within appropriate and reasonable time limits to prevent deterioration. USPS provides guidelines for shipping perishable matter, including specific instructions and listings for hazardous materials, restricted matter, perishable matter, international mail, and air transportation requirements.[33]

According to the National Mail Order Association (NMOA), "Mail Order Selling" and "Direct Marketing" are terms that encompass many different methods and mediums of soliciting and/or selling products or services at a distance where the potential customer is not physically present at a store or other location to see the product or to place an order.[34]

Twenty eight states allow cottage food businesses to sell online to buyers within state limits, 18 states allow sales through retail outlets, and several states allow delivery by mail order.[35] In New Hampshire, "homestead food operations" (cottage food operators) can sell to "restaurants or other retail food establishments, over the Internet, by mail order, or to wholesalers, brokers, or other food distributors who will resell the product," if they obtain a Homestead License.[36]

In Florida, sales by cottage food operations must be person-to-person, which means from the producer to the actual consumer. Cottage food products must be delivered and distributed directly to the

[27] Email from Carlos Nathan, Deputy Legislative Affairs Director, DACS, RE: Cottage Foods, (Dec. 18, 2021). According to DACS, the "definition itself seems to imply that a 'cottage food operation' is a single, natural person rather than a business entity that multiple people can own."
[28] DACS Division of Food Safety, *Cottage Food Operations*, https://www.fdacs.gov/Business-Services/Food/Food-Establishments/Cottage-Foods (last visited Feb. 19, 2021).
[29] 21 U.S.C. ch. 9.
[30] 21 U.S.C. ch. 12.
[31] 21 U.S.C. ch. 10.
[32] 21 U.S.C. § 610(d).
[33] U.S. Postal Service, *Publication 52, Hazardous, Restricted, and Perishable Mail*, https://pe.usps.com/text/pub52/welcome.htm (last visited Feb. 21, 2021).
[34] The National Mail Order Association, About the NMOA, http://www.nmoa.org/Membership/membinf.htm (last visited Feb. 22, 2021).
[35] Rice, Leib, *supra* note 17, at 26-59.
[36] Rice, Leib, *supra* note 17, at 11.

consumer or the consumer's private event venue by the cottage food operator.[37] A cottage food operation is prohibited from selling, offering for sale, or delivering cottage food products by mail order.[38]

Local Regulations

Cottage food operations in Florida are required to comply with all applicable county and municipal laws and ordinances regulating the preparation, processing, storage, and sale of cottage food products.[39] Local governments throughout the state have created regulations for cottage food operations. Several of these regulate cottage food operations via home occupation ordinances. For example, the City of Orlando prohibits home occupations from "food processing and handling,"[40] which appears to prohibit cottage food operations.

Other local governments restrict the amount of space in the home that can be used for a cottage food business. Suwannee County prohibits the use of more than twenty percent of the first floor area of the residence.[41] The City of Jacksonville prohibits the use of more than 250 square feet or ten percent of the gross floor area of the dwelling unit.[42] According to the Miami-Dade County home occupation webpage, it restricts the use of a cottage food operation to the kitchen area only.[43]

Other local ordinances prohibit the sale of cottage food products from the residence directly to consumers. Miami-Dade County prohibits sales of products or goods on premises.[44] The City of Jacksonville also prohibits retail sales on the premises of a home occupation.[45] These ordinances appear to conflict with state guidance and regulations that indicate cottage food operators are allowed to sell cottage food products from their residence directly to the consumer.[46]

Effect of the Bill

The bill allows for the sale and delivery of cottage food products by United States Postal Service or commercial mail delivery service.

The bill increases the maximum annual gross sales threshold from $50,000 to $250,000.

The bill revises the definition of "cottage food operation" to allow a person or an entity to have an ownership interest in a cottage food operation, clarifying that an operator is allowed to have business partners.

The bill preempts the regulation of cottage food operations to the state, and prohibits local laws, ordinances, or regulations that prohibit a cottage food operation or regulate the preparation, processing, storage or sale of cottage food products.

B. SECTION DIRECTORY:

[37] DACS Division of Food Safety, *Cottage Food Operations*, https://www.fdacs.gov/Business-Services/Food/Food-Establishments/Cottage-Foods (last visited Feb. 19, 2021).
[38] S. 500.80(2), F.S.
[39] S. 500.80(1)-(6), F.S.
[40] Sec. 58.939., City of Orlando City Code.
[41] S. 4.19.31(5.), Suwannee County Land Development Regulations.
[42] City of Jacksonville Municipal Code § 656.401(n)(1)(ix).
[43] Miami-Dade County, *Regulatory & Economic Resources, Home Occupation*, https://www.miamidade.gov/zoning/district-home-office.asp#:~:text=Cottage%20food%20operation%20must%20be,square%20feet%20of%20the%20home (last visited Feb. 21, 2021).
[44] Sec. 33-25.1.(A)7., Miami-Dade County Code of Ordinances.
[45] S. 656.401(n)(1)(iv), City of Jacksonville Municipal Code.
[46] DACS Division of Food Safety, *Cottage Food Operations*, https://www.fdacs.gov/Business-Services/Food/Food-Establishments/Cottage-Foods (last visited Feb. 19, 2021).

Section 1: Provides a short title the “Home Sweet Home Act.”

Section 2: Amends s. 500.03, F.S., revising the definition of “cottage food operation.”

Section 3: Amends s. 500.80, F.S., revising cottage food operating requirements.

Section 4: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill may have an insignificant impact on local governments.

2. Expenditures:

   To the extent that local governments are incurring regulatory costs under current law, the bill should eliminate those costs through the preemption of local regulations.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will allow for the expansion and growth of locally produced food sales, and provide a more predictable and uniform regulatory framework for cottage food operations in Florida. The bill will also allow more people to work from home in their chosen profession.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 2, 2021, the Regulatory Reform Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Revises the authority for cottage food operators to deliver products by “mail” to instead specify delivery by “United States Postal Service or commercial mail delivery service.”
- Makes a grammatical change to the provision in current law delineating the individual types of preempted local laws.

This analysis is drafted to the committee substitute as passed by the Regulatory Reform Subcommittee.

A bill to be entitled

An act relating to cottage food operations; providing a short title; amending s. 500.03, F.S.; revising the definition of "cottage food operation"; amending s. 500.80, F.S.; increasing the annual gross sales limitation for exempting cottage food operations from certain food and building permitting requirements; authorizing the sale, offer for sale, and delivery of cottage food products by mail; preempting the regulation of cottage food operations to the state; prohibiting local governments from prohibiting or regulating cottage food operations; providing an effective date.

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

Section 1. This act may be cited as the "Home Sweet Home Act."

Section 2. Paragraph (j) of subsection (1) of section 500.03, Florida Statutes, is amended to read:

500.03 Definitions; construction; applicability.—

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

(j) "Cottage food operation" means a natural person or an entity that ~~who~~ produces or packages cottage food products at the ~~his or her~~ residence of the natural person or at the

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

residence of a natural person who has an ownership interest in the entity, and sells such products in accordance with s. 500.80.

Section 3. Paragraph (a) of subsection (1) and subsections (2) and (6) of section 500.80, Florida Statutes, are amended to read:

500.80 Cottage food operations.—

(1)(a) A cottage food operation must comply with the applicable requirements of this chapter but is exempt from the permitting requirements of s. 500.12 if the cottage food operation complies with this section and has annual gross sales of cottage food products that do not exceed $250,000 ~~$50,000~~.

(2) A cottage food operation may sell, offer for sale, and accept payment for cottage food products over the Internet or by mail order. Such~~, but such~~ products may ~~must~~ be delivered in person directly to the consumer, ~~or~~ to a specific event venue, or by United States Postal Service or commercial mail delivery service. A cottage food operation may not sell, offer for sale, or deliver cottage food products ~~by mail order or~~ at wholesale.

(6) The regulation of cottage food operations is preempted to the state. A local law, ordinance, or regulation may not prohibit a cottage food operation or regulate ~~must comply with all applicable county and municipal laws and ordinances regulating~~ the preparation, processing, storage, or ~~and~~ sale of cottage food products by a cottage food operation or from a

person's residence.

Section 4. This act shall take effect July 1, 2021.

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