Regulatory Reform Subcommittee

Thursday, December 2, 2021
11:00 AM - 12:30 PM
Webster Hall (212 Knott)

Meeting Packet

Chris Sprowls
Speaker

Bob Rommel
Chair

The Florida House of Representatives

Commerce Committee

Regulatory Reform Subcommittee

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Meeting Agenda

Thursday, December 2, 2021
11:00 AM – 12:30 PM
Webster Hall (212 Knott)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

HB 33 Electronic Dissemination of Commercial Recordings and Audiovisual Works by Busatta Cabrera

HB 87 Criminal History in Professional Licensing Applications by Chambliss, Plakon

HB 267 Swimming Pool Specialty Contracting Services by McClure

HB 423 Building Inspection Services by LaMarca

HB 6031 Individual Wine Containers by LaMarca

V. Closing Remarks

VI. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, FL 32399-1300
Phone Numbers

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 33 Electronic Dissemination of Commercial Recordings and Audiovisual Works
SPONSOR(S): Busatta Cabrera
TIED BILLS: **IDEN./SIM. BILLS:** SB 288

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee		Wright	Anstead
2) Civil Justice & Property Rights Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The True Origin of Digital Goods Act (Act) requires owners or operators of websites that electronically disseminate commercial recordings or audiovisual works to Florida consumers to clearly post on the website and make readily accessible to a consumer using or visiting the website the following identifying information:

- The true and correct name of the operator or owner;
- The operator or owner's physical address; and
- The operator or owner's telephone number or e-mail address.

Currently, "electronic dissemination" means initiating a transmission of, making available, or otherwise offering a commercial recording or audiovisual work for distribution through the Internet or other digital network, regardless of whether another person has previously electronically disseminated the same commercial recording or audiovisual work.

The Act gives owners, assignees, authorized agents, or licensees of a commercial recording or audio visual work whose work appears on a website that has not posted identifying information in violation of the Act the right to seek injunctive relief.

The bill amends the definition of "electronic dissemination" to read: "initiating a transmission of, making available, or otherwise offering a commercial recording or audiovisual work for distribution, **display, or performance** through the Internet or other digital network, regardless of whether another person has previously electronically disseminated the same commercial recording or audiovisual work."

Therefore, the bill requires a person who owns or operates a streaming service or other website dealing in substantial part in the display or performance of commercial recordings and audiovisual works, not subject to an exemption, to post their identifying information on the website.

The bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

True Origin of Digital Goods Act

The True Origin of Digital Goods Act (Act) requires owners or operators of websites that deal in substantial part to electronically disseminate commercial recordings or audiovisual works to Florida consumers to clearly post on the website and make readily accessible to a consumer using or visiting the website the following identifying information:[1]

- The true and correct name of the operator or owner;
- The operator or owner's physical address; and
- The operator or owner's telephone number or e-mail address.

"Electronic dissemination" under the Act means initiating a transmission of, making available, or otherwise offering a commercial recording or audiovisual work for distribution through the Internet or other digital network, regardless of whether another person has previously electronically disseminated the same commercial recording or audiovisual work.[2]

The Act does not protect copyrighted material, but rather governs "commercial recordings or audiovisual works," defined broadly to include a recording or audiovisual work whose owner, assignee, authorized agent, or licensee has disseminated or intends to disseminate such work for sale, rental, or performance or exhibition to the public, regardless of whether the person seeks commercial advantage or private financial gain from the dissemination. The Act applies to websites that disseminate copyrighted material as well as any disseminated recording or audiovisual work, regardless of the disseminator's intent to seek commercial advantage or financial gain from the work.[3]

The Act gives a right to injunctive relief for owners, assignees, authorized agents, or licensees of a commercial recording or audio visual work whose work appears on a website that has not posted identifying information in violation of the Act. Before initiating the civil action provided for in the Act, the aggrieved party must "make reasonable efforts" to place an individual alleged to be in violation of the section on notice that the owner or operator may be in violation of the Act, and that failure to cure the violation within 14 days may result in civil action. The prevailing party may also recover necessary expenses and reasonable attorney fees. These remedies are available as a supplement to other state and federal criminal and civil law provisions.[4]

The Act authorizes the court to make appropriate orders to compel compliance with the Act upon motion of the party instituting the action.[5]

The Act exempts:

- providers of interactive computer services, communication services, commercial mobile services, information services that provide transmission, storage, or caching of electronic communications or other related telecommunications service, and commercial mobile radio services;[6] and
- commercial recordings and audiovisual works that are video games, depictions of video game play, and streaming of video game activity.[7]

Streaming Services

[1] S. 501.155(4)(a), F.S.
[2] S. 501.155(3)(b), F.S.
[3] S. 501.155(3)(a), F.S.
[4] S. 501.155(5), F.S.
[5] *Id.*
[6] S. 501.155(2)(b), F.S.
[7] S. 501.155(3)(a), F.S.

Generally, a streaming service is an online provider of entertainment, including music and movies, that delivers the content via an Internet connection to a user or subscriber's computer, television, or mobile device.[8]

Federal Digital Millennium Copyright Act

The Digital Millennium Copyright Act (DMCA) updated federal copyright law to address the relationship between copyrighted material and the internet. The DMCA created the notice-and-takedown system,[9] which allows online service providers to expeditiously remove infringing content after receiving a notice from a copyright holder.[10] As the internet, related consumer activity, and specifically third party posting of copyrighted content continues to grow, so have takedown notices.[11] For example, Google received take down notices for approximately 3 million URLs in 2013, compared to approximately 5.3 billion as of October 21, 2021.[12]

The DMCA also requires online service providers to designate an agent to receive copyright owners' notices, and provide the agent's contact information on their websites.

Federal Protecting Lawful Streaming Act

The Consolidated Appropriations Act of 2021 created the Protecting Lawful Streaming Act (PLSA),[13] which increases the federal penalty for illegal streaming from a misdemeanor to a felony.[14] Specifically, the PLSA targets individuals who act (1) willfully, (2) for purposes of commercial advantage or private financial gain, and (3) offer or provide to the public a digital transmission service.

Effect of the Bill

The bill amends the definition of "electronic dissemination" to read: "initiating a transmission of, making available, or otherwise offering a commercial recording or audiovisual work for distribution, **display, or performance** through the Internet or other digital network, regardless of whether another person has previously electronically disseminated the same commercial recording or audiovisual work."

Therefore, the bill requires a person who owns or operates a streaming service or other website dealing in substantial part in the display or performance of commercial recordings and audiovisual works, not subject to an exemption, to post their identifying information on the website.

The bill provides an effective date of July 1, 2022.

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[8] PC Mag Digital Group, *Streaming Service*, https://www.pcmag.com/encyclopedia/term/streaming-service (last visited Nov. 23, 2021).

[9] 17 U.S.C. § 512 (2)(b)-(d). U.S. Copyright Office, *The Digital Millennium Copyright Act: Section 1202- Copyright Management Information Protection*, https://www.copyright.gov/dmca/ (last visited Nov. 23, 2021). *See also*, U.S. Copyright Office, *Section 512 Report*, pp. 1, 8 (May 2020), *available at* https://www.copyright.gov/policy/section512/section-512-full-report.pdf (last visited Nov. 23, 2021).

[10] U.S. Copyright Office, *Section 512 of Title 17: Resources on Online Service Provider Safe Harbors and Notice-and-Takedown System* (May 21, 2020), https://www.copyright.gov/512/ (last visited Nov. 23, 2021). *See also*, 17 U.S.C. §§512(b)-(d)

[11] *See also*, U.S. Copyright Office, *Section 512 Report*, pp. 10 (May 2020), *available at* https://www.copyright.gov/policy/section512/section-512-full-report.pdf (last visited Nov. 23, 2021).

[12] *Id*. at 31-32, *citing* Google, *How Google Fights Piracy* (2018), https://www.blog.google/documents/25/GO806_Google_FightsPiracy_eReader_final.pdf (last visited Nov. 23, 2021). *See also*, *Google Transparency Report*, available at https://transparencyreport.google.com/copyright/overview (last visited Nov. 23, 2021).

[13] 18 U.S.C. 2319C, "Illicit Digital Transmission Services."

[14] The act of offering copyrighted material for download without specific license or authorization is separately classified a felony under the No Electronic Theft (NET) Act, but this provision did not cover streaming copyrighted material. 17 U.S.C. 506. *See also*, Michael Antonucci, *New Legislation: CASE Act and Protecting Lawful Streaming Act* (Mar. 18, 2021), https://www.mondaq.com/unitedstates/trademark/1047506/new-legislation-case-act-and-protecting-lawful-streaming-act (last visited Nov. 23, 2021).

B. SECTION DIRECTORY:

Section 1: Amends s. 501.155, F.S.; requiring certain information be provided on certain websites.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may allow more owners, assignees, authorized agents, or licensees of a commercial recording or audio visual work to seek injunctive relief based on improper notice, and assist such parties in identifying illegal displays of their performances.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Although the Act allows owners, assignees, authorized agents, and licensees of commercial recordings and audio visual works to seek injunctive relief, it is uncertain whether they would be able to successfully bring such an action because Florida courts may not have jurisdiction over such bad actors or respondents.

For a court to exercise jurisdiction over a respondent, it must have subject matter jurisdiction and personal jurisdiction, which is determined by the court based on the respondent's contacts with the

state.[15] A non-resident respondent may have sufficient contacts with Florida if he or she commits acts expressly enumerated in Florida's long-arm statute.[16] Alternately, the non-resident respondent may be subject to a Florida court's personal jurisdiction because he or she has minimum contacts with the state that are otherwise unrelated to the matter that brings him or her into court.[17] Whether a non-resident Internet company that electronically disseminates commercial recordings or audiovisual works into Florida has sufficient minimum contacts with the state is a fact-specific question that would likely need to be addressed on a case-by-case basis by a court.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill captures a wide array of behaviors due to the broad definitions of the terms "commercial recording or audiovisual work," "electronic dissemination," "performance," and "display" used. As a result, many private individuals having a website may be required to disclose their true and correct name, physical address, and telephone number or e-mail address or be subject to the Act.

Also, the true target for the injunction and further consequences of the Act are likely those websites that do not provide the identifying information or that are located in another jurisdiction.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[15] *Caiazzo v. American Royal Arts Corp.*, 73 So. 3d 245, 250 (Fla. 4th DCA 2011).
[16] *Id*; S. 48.193, F.S.
[17] *Caiazzo v. American Royal Arts Corp.*, 73 So. 3d 245, 250 (Fla. 4th DCA 2011).

A bill to be entitled

An act relating to electronic dissemination of commercial recordings and audiovisual works; amending s. 501.155, F.S.; revising the definition of the term "electronic dissemination"; providing an effective date.

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

Section 1. Paragraph (b) of subsection (3) of section 501.155, Florida Statutes, is amended to read:

501.155 Electronic dissemination of commercial recordings or audiovisual works; required disclosures; injunctive relief.—

(3) DEFINITIONS.—As used in this section, the term:

(b) "Electronic dissemination" means initiating a transmission of, making available, or otherwise offering a commercial recording or audiovisual work for distribution, display, or performance through the Internet or other digital network, regardless of whether another person has previously electronically disseminated the same commercial recording or audiovisual work.

Section 2. This act shall take effect July 1, 2022.

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

HB 87

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 87 Criminal History in Professional Licensing Applications
SPONSOR(S): Chambliss and others
TIED BILLS: **IDEN./SIM. BILLS:** N/A

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee		Wright	Anstead
2) Criminal Justice & Public Safety Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The Department of Business and Professional Regulation (DBPR) regulates and licenses several Florida professions. Generally, DBPR, or a licensing board (board), may deny a license application if the applicant's criminal history:

- Relates to the practice of the applicant's profession, or
- Is an impairment to a finding of good moral character, if the profession's licensing standards specifically require "good moral character."

When reviewing an applicant's criminal history, most boards take the number of years that have passed into account before using it as grounds to deny a license. Certain listed professions under DBPR have a separate time-limited review process or look-back periods for considering criminal history. Those professions are:

- Construction trades contractors,
- Electrical contractors,
- Barbers, and
- Cosmetologists.

For these professions, the board may review criminal history and use it to make a decision related to licensing if the crime occurred in the past **five** years prior to application. However, boards may consider forcible felonies and sexual predator crimes regardless of how long ago the crime occurred if they relate to the practice of the profession.

As part of the requirements for licensure, construction and electrical contractor applicants are required to show "good moral character," but barber and cosmetology applicants are not. The contractor boards may consider a contractor applicant's complete criminal history regardless of how long ago the crime occurred if it relates to good moral character.

The bill shortens the look-back period or review period, from five years to **two** years prior to the application. However, boards may continue to consider forcible felonies and sexual predator crimes if they relate to the practice of the profession.

The bill prohibits the contractor boards from considering crimes which relate to "good moral character" as grounds to deny a license if the conviction occurred more than two years before the date of application.

The bill also requires certain boards to approve educational program credits earned by inmates in a correctional institution vocational training program or through an industry certification program for the purposes of satisfying training requirements for licensure.

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

The bill has an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Department of Business and Professional Regulation Umbrella Chapter

The Department of Business and Professional Regulation (DBPR) has 12 divisions that regulate several Florida professions and businesses.[1] Chapter 455, F.S., applies to the regulation of professions constituting "any activity, occupation, profession, or vocation regulated by DBPR in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation."[2] Chapter 455, F.S., also provides general DBPR powers and sets forth the procedural and administrative framework for all professional DBPR boards.[3]

Licensing Determinations and Criminal History

Generally, any state agency may deny an application for professional license, permit, or certification for a prior felony or first-degree misdemeanor conviction that is:

- Directly related to the profession's standards; and
- Reasonably related to the protection of the public health, safety, and welfare for the specific profession for which the license, permit, or certificate is sought.[4]

However, an agency may not deny an application for a license, permit, certificate, or employment based solely on the applicant's lack of civil rights.[5]

DBPR or a licensing board may deny a license application for a person who was convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, the applicant's profession,[6] or for other reasons listed in the applicable practice act. Some professions require applicants to be of good moral character, and boards may deny a license on such basis.

Applicants for a DBPR license may apply for licensure while they are still incarcerated or under some form of supervised release, and may not be charged an additional fee.[7] DBPR also currently allows some correctional training programs to be accepted for licensure purposes. [8]

Barbers

The Barbers' Board under DBPR governs the regulation and licensing of barbers and barbershops in the state. A barber license is required to perform barbering services.[9] Barbering services include hair services and limited skin care services when done for compensation, but not for medical purposes[10]

To be eligible for a barber license, an applicant must:[11]

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[1] Section 20.165, F.S, creates the divisions of Administration; Alcoholic Beverages and Tobacco; Certified Public Accounting; Drugs, Devices, and Cosmetics; Florida Condominiums, Timeshares, and Mobile Homes; Hotels and Restaurants; Pari-mutuel Wagering; Professions; Real Estate; Regulation; Service Operations; and Technology.
[2] S. 455.01(6), F.S.
[3] The DBPR must also provide legal counsel for boards within the DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing DBPR staff counsel. Ss. 455.203 and 455.221(1), F.S.
[4] S. 112.011(1)(b), F.S.
[5] S. 112.011(1)(c), F.S.
[6] S. 455.227(1)(c), F.S.
[7] S. 455.213(3)(c)1., F.S.
[8] DBPR, Agency Analysis of 2022 House Bill 87, p. 6 (Oct. 14, 2021).
[9] S. 476.144(1), F.S.
[10] S. 476.034(2), F.S.
[11] S. 476.114, F.S.

- Be at least 16 years old,
- Complete the required training,
- Pass the written examination, and
- Pay an application fee.

Criminal History of Barbers

The Barbers' Board may deny a barber license application for any person having been convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of, or the ability to practice barbering.[12] Barbers do not have a good moral character requirement.

Cosmetologists

The Board of Cosmetology under DBPR governs the licensing and regulation of cosmetologists, nail specialists, facial specialists, full specialists, and related salons in the state. A cosmetology license or a specialty registration is required to perform cosmetology services. Cosmetology services include hair services, nail services, and skin care services when done for compensation, but not for medical purposes.[13]

To be eligible for a cosmetology or specialty license, an applicant must:[14]
- Be at least age 16 or have a high school diploma,
- Complete the required training,
- Pass the licensure examination (if applicable), and
- Pay an application fee.

Criminal History of Cosmetologists

The Board of Cosmetology may deny a cosmetology license application for any person having been convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of, or the ability to practice, cosmetology.[15] Cosmetologists do not have a good moral character requirement.

DBPR Contracting Professionals

The Construction Industry Licensing Board (CILB) under DBPR is responsible for licensing and regulating professionals in the construction industry described in part I of ch. 489, F.S..[16]

A construction contractor is a person who, for compensation, takes on a job or submits a bid to construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure for others, or for resale to others,[17] including the attempted sale of contracting services and the negotiation or bid for a contract on these services.[18] This can also include receiving funds for the job from customers.[19]

The CILB is divided into two divisions with separate jurisdictions:
- Division I is comprised of the following types of contractors:
    - General,
    - Building, and
    - Residential.

[12] S. 455.227(1)(c), F.S.
[13] S. 477.013(4), F.S.
[14] S. 477.019(2), F.S.
[15] S. 455.227(1)(c), F.S.
[16] S. 489.107, F.S.
[17] S. 489.105(3), F.S.
[18] S. 489.105(6), F.S.
[19] *See* ss. 489.103(6), 489.126, F.S.

- Division II is comprised of the following types of contractors:
    - Sheet metal,
    - Roofing,
    - Classes A, B, and C air conditioning,
    - Mechanical,
    - Commercial pool and spa,
    - Residential pool and spa,
    - Swimming pool and spa servicing,
    - Plumbing,
    - Underground utility and excavation,
    - Solar, and
    - Pollutant storage systems.

A specialty contractor is one whose scope of work and responsibility is limited to a particular phase of construction as detailed in an administrative rule adopted by the CILB.[20]

The Electrical Contractors' Licensing Board (ECLB) within DBPR is responsible for licensing and regulating electrical contractors and alarm system contractors described in part II of ch. 489, F.S.[21]

An electrical contractor engages in business as a contractor or performs electrical or alarm work for compensation, including the attempted sale of contracting services and the negotiation or bid for a contract on these services.[22] This can also include receiving funds for the job from customers.[23]

All construction contractor and electrical contractor applicants must meet the following criteria:[24]

- Be at least 18 years of age;
- Submit an application and fee;
- Successfully pass the certification examination; and
- Meet eligibility requirements according to a combination of education and experience as approved by the CILB or ECLB.

Criminal History of Contractors

The CILB and ECLB may deny a license application for any person having been convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of, or the ability to practice, contracting.[25]

Construction and electrical contractors must be of **good moral character**.[26] In considering an applicant's good moral character, CILB and ECLB may consider any matter, including criminal background, that has a substantial connection to the good moral character of the applicant and the professional responsibilities of such a contractor by clear and convincing evidence.[27]

The CILB must consider the length of time since the commission of a crime and the applicant's rehabilitation in denying or approving licensure.[28] The CILB may not deny licensure based solely upon a felony conviction or the applicant's failure to provide proof of restoration of civil rights.[29]

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[20] For example, specialty swimming pool contractors have limited scopes of work for the construction of pools, spas, hot tub, and decorative or interactive water displays. R. 61G4-15.032 (2016), F.A.C.
[21] S. 489.507, F.S.
[22] S. 489.505(9), F.S.
[23] *See* s. 489.505(9), F.S.
[24] Ss. 489.111(2)(c)1.-3., 489.113, and 489.516, F.S.
[25] S. 455.227(2), F.S. See also ss. 489.129(1)(b) and 489.553(1)(d), F.S., providing the disciplinary grounds for construction contractors and electrical contractors, respectively.
[26] There is not a specific definition of "good moral character applicable to CILB contractors, but the definition applicable to ECLB contractors means having "a personal history of honesty, fairness, and respect for the rights of others and for laws of this state and nation." S. 489.511(3)(a), F.S.
[27] Ss. 489.111(2)(b), (3)(a) and 489.513(1)(b), (c), F.S.
[28] S. 489.115(6), F.S.

For licensing electrical contractors, the ECLB is not specifically required to consider the passage of time between the disqualifying criminal offense and the time of application before denying or granting a license or registration.

Criminal History Review Process – Current Situation

In 2019, the Legislature created a time-limited review process for considering the criminal history of applicants for certain listed professions.[30]

The time-limited review process applies to the following listed professions:[31]

- Barbers;
- Cosmetologists and cosmetology specialists;
- Air-conditioning contractors;
- Electrical contractors;
- Mechanical contractors;
- Plumbing contractors;
- Pollutant storage systems contractors;
- Roofing contractors;
- Sheet metal contractors;
- Solar contractors;
- Swimming pool and spa contractors;
- Underground utility and excavation contractors;
- Specialty contractors; and
- Any other profession for which the department issues a license, provided the profession is offered to inmates in any correctional facility as vocational training or through an industry certification program.

The process limits the period for which a board may consider criminal history as an impairment to licensure to **five years prior** to application for listed professions. However, boards may consider forcible felonies and sexual predator crimes if they relate to the practice of the profession, regardless of when it occurred.[32]

Additionally, the CILB and ECLB may still consider a contractor applicant's complete criminal history if it relates to good moral character, and regardless of when it occurred.

A person may apply for a license in a listed profession before being released from confinement or supervision, and may not be charged an additional fee. The applicable board may not deny an application for a license solely on the basis of the applicant's current confinement or supervision.[33]

The applicable board of a listed profession must permit an applicant under confinement or supervision to appear by teleconference or video conference, as appropriate, at any meeting of the applicable board or other hearing by the agency concerning their application, and the Department of Corrections (DOC) and the board must cooperate and coordinate to facilitate such appearance.[34] If a person who is under confinement or supervision is approved for a license for a listed profession, the applicable board must stay the issuance of the license until the applicant is lawfully released, and the applicant notifies the board of such release. The board must verify the applicant's release with the DOC before it issues such a license.[35]

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[29] *Id.*
[30] Ch. 2019-167, L.O.F.
[31] S. 455.213(3)(a), F.S.
[32] S. 455.213(3)(b)1., F.S.
[33] S. 455.213(3)(c)1., F.S.
[34] S. 455.213(3)(c)3.-4., F.S.
[35] S. 455.213(3)(c)2., F.S.

The boards of the listed professions must list on DBPR's website the crimes that have not impaired a person's qualifications for licensure, and update the list annually. Such boards must also identify the crimes on DBPR's website that have impaired a person's qualifications for licensure, and update the list quarterly.[36]

Criminal Offenses

Sexual predator[37] registration criteria are described in s. 775.21(4)1, F.S. Criminal offenses that require registration include:[38]

- A capital, life, or first degree felony for:
  - Kidnapping or false imprisonment, where the victim is a minor and there is a sexual component to the crime;
  - Sexual battery;
  - Lewd or lascivious battery or molestation;
  - Selling or buying minors to engage in sexually explicit conduct;
- An offense that would require registration as a sexual offender, other than transmission of child pornography by electronic device or transmission of material harmful to minors, by a person with a prior conviction for a sexual offense; or
- A conviction for a similar offense committed in another jurisdiction.[39]

Forcible felonies include:

- Murder;
- Manslaughter;
- Sexual battery;
- Carjacking;
- Home-invasion robbery;
- Robbery;
- Burglary;
- Kidnapping;
- Aggravated assault;
- Aggravated battery; and
- Aggravated stalking.[40]

Criminal History Review Process – Effect of the Bill

The bill reduces the time frame, from **five years to two** years before the date of application, that a board of a listed profession may look back and use certain criminal history as grounds to deny a license application. The boards may consider any criminal history if, at any time during the 2 year period, the applicant was an inmate in any correctional institution or correctional facility. Boards may also continue to consider forcible felonies and sexual predator crimes regardless of when they occurred if they relate to the practice of the profession.

In addition, the bill prohibits the CILB and ECLB from considering criminal history as grounds to deny a license as a listed contractor based on "good moral character" if the conviction occurred more than two years before the date of application.

The bill requires a board of a listed profession to approve educational program credits received from vocational training programs or industry certification programs offered to inmates in any correctional institution or facility to satisfy training requirements for licensure.

[36] S. 455.213(3)(e), F.S.

[37] A sexual predator is someone who has been convicted of a first-degree felony sex crime or has been convicted of two second-degree felony sex crimes within a ten-year period.

[38] S. 775.21(4), F.S.

[39] Ss. 787.01, 787.02, 847.0145, and 800.04, F.S.

[40] S. 776.08, F.S.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 455.213, F.S.; relating to certain licensing procedures for applicants with certain criminal history.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may allow more people to become licensed in their chosen profession.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

DBPR has identified concerns with the bill as it relates to construction and electrical contractors:

"Construction and electrical contractors enter into contracts, accept deposits before work is performed, and may have access to their customer's financial information. The bill does not grant specific authority for application denial based upon theft, financial crimes, or other crimes that may relate to the practice

of a profession and are more than two years old. Consequently, the bill may allow individuals who have committed such crimes at least two years prior to their application for licensure to obtain a license without consideration of the severity of the crime or the potential risk to the public. Also, the boards may be placed in the position of issuing licenses to some individuals to handle funds who have not yet completed their criminal sanctions, such as probation and restitution, which may put those funds at risk."[41]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[41] DBPR, *supra* note 8, at 6.

A bill to be entitled

An act relating to criminal history in professional licensing applications; amending s. 455.213, F.S.; revising the period of time when a conviction, or any other adjudication, for a crime may not be grounds for denial of licensure in specified professions; providing an exception; removing a provision requiring good moral character for licensure in such professions; requiring the applicable board to approve certain educational program credits offered to inmates in certain institutions or facilities for purposes of satisfying training requirements for licensure in specified professions; providing an effective date.

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

Section 1. Paragraph (b) of subsection (3) of section 455.213, Florida Statutes, is amended, and paragraph (f) is added to that subsection, to read:

455.213 General licensing provisions.—

(3)

(b)~~1.~~ A conviction, or any other adjudication, for a crime more than 2 ~~5~~ years before the date the application is received by the applicable board may not be grounds for denial of a license specified in paragraph (a), unless the applicant was an

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

inmate in any correctional institution or correctional facility at any point during such 2-year period. For purposes of this paragraph, the term "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld. This paragraph does not limit the applicable board from considering an applicant's criminal history that includes a crime listed in s. 775.21(4)(a)1. or s. 776.08 at any time, but only if such criminal history has been found to relate to the practice of the applicable profession.

~~2. The applicable board may consider the criminal history of an applicant for licensure under subparagraph (a)3. if such criminal history has been found to relate to good moral character.~~

(f) The applicable board shall approve educational program credits offered to inmates in any correctional institution or correctional facility as vocational training or through an industry certification program for purposes of satisfying applicable training requirements for licensure in a profession under paragraph (a).

Section 2. This act shall take effect July 1, 2022.

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

HB 267

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 267 Swimming Pool Specialty Contracting Services
SPONSOR(S): McClure
TIED BILLS: **IDEN./SIM. BILLS:** SB 222

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

SUMMARY ANALYSIS

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

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

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

The bill creates a new exemption to licensure requirements by allowing unlicensed persons to perform the work of specialty contractors for the construction, remodeling, repair, or improvement of commercial or residential swimming pools, interactive water features, hot tubs, and spas without obtaining a specialty contractor license or local license.

The bill only allows the unlicensed person to perform the work if:

- the unlicensed person is under the supervision of a licensed commercial or residential pool/spa contractor or swimming pool/spa servicing contractor;
- the work is within the scope of the supervising contractor's license;
- the supervising contractor is responsible for the work; and
- the work does not require licensure as a roofing, sheet metal, air-conditioning, mechanical, plumbing, solar, underground utility and excavation contractor, or electrical contractor.

The bill does not require a direct contract between the commercial or residential pool/spa contractor or swimming pool/spa servicing contractor and the unlicensed person, nor require the unlicensed person to be an employee of the supervising pool/spa contractor.

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

The bill provides for an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Contractors

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

Construction contractors are either certified or registered by the CILB. The CILB consists of 18 members who are appointed by the Governor and confirmed by the Senate. The CILB meets to approve or deny applications for licensure, review disciplinary cases, and conduct informal hearings relating to discipline.[1]

"Certified contractors" are individuals who pass the state competency examination and obtain a certificate of competency issued by DBPR. Certified contractors are able to obtain a certificate of competency for a specific license category and are permitted to practice in that category in any jurisdiction in the state.[2]

"Registered contractors" are individuals that have taken and passed a local competency examination and can practice the specific category of contracting for which he or she is approved, only in the local jurisdiction for which the license is issued. Registered contractors must register their license with the CILB after obtaining a local license.[3]

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

Swimming Pool/Spa Contractors

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

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

"Residential pool/spa contractors" are individuals who are certified or registered to construct repair, and service any residential swimming pool, hot tub, or spa. The scope of work is identical to the scope of

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

work for commercial pool/spa contractors; however, residential pool/spa contractors may only work on residential swimming pools, hot tubs, and spas.[7]

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

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

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

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

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

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

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

[7] S. 489.105(3)(k), F.S.
[8] S. 489.105(3)(l), F.S.
[9] S. 489.105, F.S.
[10] Ss. 489.103(6), and 489.105, F.S.; DBPR, *Trust but Verify*, http://www.myfloridalicense.com/dbpr/reg/documents/trustbutverify_000.pdf?x40199 (last visited Oct. 26, 2021).
[11] S. 489.113(3), F.S.
[12] Ss. 489.111, & 489.113, F.S.

Swimming Pool/Spa Specialty Contractors

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

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

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

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

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

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

[13] S. 489.105(3)(q), F.S.
[14] Rule 61G4-15.032, F.A.C.; Rule 61G4-15.040, F.A.C.
[15] *Id*.
[16] Rule 61G4-15.032, F.A.C.; Email from Cody McCloud, Legislative Affairs Director, DBPR, RE: Pool Contractor Information, (Oct. 26, 2021).

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

Exemptions from Licensure

An unlicensed person may perform work that falls under the scope of contracting if they fall under an exemption provided in current law. Currently, there are 24 exemptions provided in current law, including:[17]

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

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

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

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

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

Another exemption allows an unlicensed person to perform contracting if the person is under the supervision of licensed general, building, or residential contractor, and the work does not require licensure as a roofing, sheet metal, air-conditioning, mechanical, pool/spa, plumbing, solar, or underground utility and excavation contractor.

The work must be within the scope of the supervising contractor's license, and the supervising contractor must also be responsible for the work. The unlicensed person must have a direct contract with the contractor. However, this is an exemption from state licensure requirements and it does not affect the ability of local governments to impose licensing requirements on unlicensed persons.[18]

Effect of the Bill

The bill creates an additional exemption to contractor licensure. The bill provides that unlicensed persons may perform the work of specialty contractors for the construction, remodeling, repair, or improvement of commercial or residential swimming pools, interactive water features,[19] hot tubs, and spas without obtaining a specialty contractor license or local license.

[17] S. 489.103, F.S.

[18] S. 489.113(2), F.S.; *Florida Home Builders Association v. St. Johns County*, 914 So. 2d 1035 (Fla. 5th DCA 2005).

[19] The Florida Building Code defines "interactive water features" as structure designed to allow for recreational activities with recirculated, filtered, and treated water; but having minimal standing water. Water from the interactive fountain type features is collected by gravity below grade in a collector tank or sump. The water is filtered, disinfected and then pumped to the feature spray discharge heads. The collector tank and water filtration features required make this structure a type of public swimming pool. Section 454 of the Seventh edition of the Florida Building Code (Building).

The bill only allows the unlicensed person to perform the work if:

- the unlicensed person is under the supervision of a licensed commercial or residential pool/spa contractor or swimming pool/spa servicing contractor;
- the work is within the scope of the supervising contractor's license;
- the supervising contractor is responsible for the work; and
- the work does not require licensure as a roofing, sheet metal, air-conditioning, mechanical, plumbing, solar, underground utility and excavation contractor, or electrical contractor.

The bill does not require a direct contract between the commercial or residential pool/spa contractor or swimming pool/spa servicing contractor and the unlicensed person performing the specialty contracting services, or require the unlicensed person to be an employee of the supervising pool/spa contractor.

The bill provides that it does not limit other current exemptions to licensure. The bill also provides that it may not be construed to expand the scope of work allowed by a licensed commercial or residential pool/spa contractor or swimming pool/spa servicing contractor to provide plumbing or electrical services, which requires a separate contractor license.

B. SECTION DIRECTORY:

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

Section 2. Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive impact on the private sector by allowing persons, who are under the supervision of licensed pool/spa contractors, to perform work on pools, spas, hot tubs, and interactive water features without having to obtain a license. This may also result in certain projects being completed in less time and at a lower cost to consumers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

No.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

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

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

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

489.117 Registration; specialty contractors.—

(4)

(e) Any person who is not certified or registered may perform the work of a specialty contractor whose scope of practice is limited to the type of work specified under s. 489.105(3)(j), (k), or (l) for the construction, remodeling, repair, or improvement of commercial or residential swimming pools, interactive water features as defined in the Florida Building Code, hot tubs, and spas without obtaining a local license or certification as a specialty contractor if he or she

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

is supervised by a contractor who is certified or registered under s. 489.105(3)(j), (k), or (l); the work is within the scope of the supervising contractor's license; the supervising contractor is responsible for the work; and the work does not require certification or registration under s. 489.105(3)(d)-(i), (m)-(o), or s. 489.505. Such supervision does not require a direct contract between the contractor certified or registered under s. 489.105(3)(j), (k), or (l) and the person performing the work, or for the person performing the work to be an employee of the contractor certified or registered under s. 489.105(3)(j), (k), or (l). This paragraph does not limit the exemptions provided in s. 489.103 and may not be construed to expand the scope of a contractor certified or registered under s. 489.105(3)(j), (k), or (l) to provide plumbing or electrical services for which certification or registration is required by this part or part II.

Section 2. This act shall take effect July 1, 2022.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 423 Building Inspection Services
SPONSOR(S): LaMarca
TIED BILLS: **IDEN./SIM. BILLS:** SB 644

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee		Brackett	Anstead
2) Local Administration & Veterans Affairs Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The Florida Building Codes Act provides a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Florida Building Code (Building Code) must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction. Current law requires local governments to enforce the Building Code and issue building permits.

A building official, is a local government employee who supervises building code activities, including plans review and inspection. A building inspector inspects construction to determine compliance with the Building Code, and a plans examiner reviews plans to determine design compliance with the Building Code.

Building officials, building inspectors, and plans examiners are regulated by the Building Code Administrators and Inspectors Board (BCAIB) housed within the Department of Business and Professional Regulation (DBPR).

Current law also allows property owners and contractors to hire building officials, engineers, and architects, referred to as private providers, to review plans, perform inspections, and prepare certificates of completion.

Relating to building officials, building inspectors, and plans reviewers, the bill:

- Provides that a person may sit for the building inspector or plans examiner licensure test by completing a 4-year internship with a private entity and under the direct supervision of a licensed building official.
- Requires the BCAIB to create a rule establishing that partial completion of an internship program may be transferred between local governments or private entities.
- Prohibits the BCAIB from issuing a provisional license with a special condition or requirement that such licensee be employed by a municipality, county, or other local government agency.

Relating to private providers, the bill:

- Provides that if a person uses a private provider, the local government must provide equal access to all permitting and inspection documents and reports to the private provider, the owner, and the contractor.
- Defines “reasonable administrative fee.”
- Provides that if a notice of deficiency is not issued within two business days of receiving a request for a certificate of occupancy from a private provider:
  - A certificate is “automatically” granted, instead of “deemed” granted;
  - The building permit is closed; and
  - Local building officials must provide the permit applicant with a written certificate of occupancy within 10 days.

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

The bill provides for an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Florida Building Code

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida's minimum standards were met. Local governments could choose from four separate model codes. The state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.[1]

In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. The Governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Building Code), and that first edition replaced all local codes on March 1, 2002.[2] The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.[3]

Chapter 553, part IV, F.S., is known as the "Florida Building Codes Act" (Act). The purpose and intent of the Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction. [4]

The Florida Building Commission was statutorily created to implement the Building Code. The Commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code. The Commission reviews several International Codes published by the International Code Council,[5] the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every three years.[6]

Local Enforcement of the Florida Building Code

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare.[7]

Every local government must enforce the Building Code and issue building permits.[8] It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government enforcing agency or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.[9]

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[1] The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs,* p. 4, http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Nov. 11, 2021).
[2] *Id.*; DBPR, *Building Code Information System*, https://floridabuilding.org/c/default.aspx# (last visited on Nov. 11, 2021).
[3] *Id.*
[4] *See* s. 553.72(1), F.S.
[5] The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to "construct safe, sustainable, affordable and resilient structures." International Code Council, *About the ICC*, https://www.iccsafe.org/about/who-we-are/ (last visited Feb. 21, 2021).
[6] Ss. 553.73, and 553.74, F.S.
[7] S. 553.72, F.S.
[8] Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.
[9] *See* ss. 125.56(4)(a), 553.79(1), F.S.

Any construction work that requires a building permit also requires plans and inspections to ensure the work complies with the Building Code. The Building Code requires certain building, electrical, plumbing, mechanical, and gas inspections.[10] Construction work may not be done beyond a certain point until it passes an inspection. Generally speaking, a permit for construction work that passes the required inspections is considered completed or closed.[11]

Building Code Administrators and Inspectors and Plans Examiners – Current Situation

Building officials, inspectors, and plans examiners are regulated by the Florida Building Code Administrators and Inspectors Board (BCAIB) within DBPR. The BCAIB consists of nine members appointed by the Governor and subjected to confirmation by the Senate.[12]

A building code administrator, otherwise known as a building official, is a local government employee or a person contracted by a local government who supervises building code activities, including plans review, enforcement, and inspection.[13]

A building code inspector (inspector) inspects construction that requires permits to determine compliance with the Building Code and state accessibility laws. Inspectors are divided into several different categories. An inspector's ability to practice is limited to the category or categories the inspector has been licensed. The inspector categories are:[14]

- Building inspector
- Coastal construction inspector
- Commercial electrical inspector
- Residential electrical inspector
- Mechanical inspector
- Plumbing inspector
- **Residential inspector**
- Electrical inspector

During the 2020 Legislative Session, the Legislature renamed the **"one and two family dwelling inspector"** to the **"residential inspector"** and expanded the scope of practice to include inspecting one-family, two-family, or three-family residences, and accessory use structures in connection therewith, for compliance with the building, plumbing, mechanical, accessibility, and electrical codes.[15]

A plans examiner reviews plans submitted for building permits to determine design compliance with construction codes. The term includes a residential plans examiner who is qualified to determine that plans submitted for building permits comply with the applicable residential building, plumbing, mechanical, electrical, gas, energy, accessibility, and other applicable construction codes. A plan's examiners ability to practice is limited to the category or categories the plans examiner has been licensed. The plans examiner categories are:[16]

- Building plans examiner
- Plumbing plans examiner
- Mechanical plans examiner

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[10] S. 110 Seventh edition of the Florida Building Code (Building).
[11] Doug Wise, *Closing Inactive & Excluded Building Permits*, Palm Beach County Planning, Zoning & Building Department, Building Division, http://discover.pbcgov.org/pzb/building/BuildingCodes/PBO-126%20%E2%80%93%20Closing%20Inactive%20and%20Excluded%20Building%20Permits.pdf (last visited Nov. 11, 2021).
[12] S. 468.605, F.S.
[13] S. 468.603(2), F.S.
[14] *See* s. 468.603(5), F.S.
[15] *See* House Analysis of 2020 House Bill 1193 (Jul. 2, 2020).
[16] *See* s. 468.603(8), F.S.

- Electrical plans examiner

The BCAIB may also create voluntary certificates that licensed inspectors and plans examiners may obtain. A voluntary certificate is a limited certificate that allows a licensed inspector or plans examiner to inspect or examine plans for additional categories. Voluntary certificates are not available to people who are not licensed as an inspector, plans examiner, or construction contractor. The BCAIB has created the following voluntary certificates:[17]

- Residential pool inspector
- Commercial pool inspector
- Roofing inspector
- Modular inspector
- Modular plans examiner
- Residential plans examiner

In order to sit for the plans examiner or inspector exam a person must be at least 18 years of age, be of good moral character, and meet one of the following eligibility requirements:[18]

- Have 4 years of combined relevant experience;
- Have 3 years of combined postsecondary education and relevant experience;
- Have 3 years of combined technical education and relevant experience;
- Complete an approved cross-training program and have at least 2 years of experience;
- Hold a standard certificate issued by the BCAIB or a firesafety inspector license; and
    - have at least 4 years of relevant experience as an inspector or plans examiner;
    - have a minimum of 3 years of experience in firesafety inspection,or firesafety plan review and completed a training program of not less than 100 hours in the new category sought;
    - complete an approved training program of not less than 200 hours in inspection or plans review except for **one-family and two family dwelling training programs**,[19] which may not be less than 500 hours; or
- Complete a 4-year internship certification program.

Internship Programs

After the recession in 2008, Florida experienced a shortage of inspectors, plans examiners, and building officials on account of many of them being laid off. In at least one county, the shortage forced the local building board to rehire retired inspectors.[20]

[17] *See* s. 468.609(10), F.S.; R. 61G19-6.016, F.A.C.
[18] S. 468.609(2), F.S.
[19] "One-family and two family dwelling" may need to be renamed to "residential" since the Legislature renamed the one-family and two- family dwelling inspector license to the residential inspector license during the 2020 Legislative Session.
[20] *See* James Sullivan, Charles Kibert, Andriel Fenner, & Shirley Morque, *Florida Construction Workforce Taskforce: Address training issues among building code inspectors to increase the number qualified inspectors*,(March 9, 2017) http://www.cce.ufl.edu/wp-content/uploads/2016/12/6-Florida-Construction-Workforce-Taskforce-Address-training-issues-among-building-code-inspectors-to-increase-the-number-qualified-1.pdf (last visited Nov. 23, 2021).

In response to the shortage, during the 2017 Legislative Session, the Legislature created the 4-year internship program as an additional way to obtain licensure as a plans examiner or inspector.[21] A person may sit for the plans examiner or inspector exam in all categories if the person is at least 18 years of age, is of good moral character, and completes an internship program. The requirements of the internship program are:[22]

- Completing a 4-year internship as an inspector or plans examiner while **employed full-time by a local government**, under the direct supervision of a building official. Proof of graduation with a related vocational degree or college degree or of verifiable work experience may be exchanged for the internship experience requirement year-for-year, but may reduce the requirement to no less than 1 year;
- Passing an ICC administered examination in the license category sought;
- Passing the principles and practice examination before completing the internship program;
- Passing a BCAIB-approved 40-hour code training course in the license category sought before completing the internship; and
- Obtaining a favorable recommendation from the supervising building official after completion of the internship.

Current law requires the BCAIB to establish by rule that partial completion of the internship program may be **transferred between jurisdictions**.[23]

Currently, the 4-year internship program only applies to a person employed full-time by a local government, and **does not apply** if the person is employed full-time with a private entity that provides building inspection and/or plans review services.

Provisional Licenses

A person who is qualified to sit for the building official, plans examiner, or inspector exam but has not taken the exam may be granted a provisional license by the BCAIB. A provisional license allows a person to engage in the duties of a building official, inspector, or plans examiner. Provisional licenses are valid for two years, but may be renewed by the BCAIB for just cause. A provisional license is not valid for more than three years. However, an applicant who is obtaining licensure as an inspector or plans examiner through an internship may apply to the BCAIB for a provisional license that is valid for the duration of the internship.[24]

The BCAIB may issue provisional licenses with special conditions or requirements including conditions or requirements **relating to the place of employment of the applicant**, the supervision of the applicant on a consulting or advisory basis, or any other conditions the BCAIB deem necessary to protect the public safety and health.[25]

[21] *See* House Analysis of 2020 House Bill 1021 (Jul. 5, 2017).
[22] S. 468.609(2), F.S.
[23] S. 468.609(10), F.S.
[24] S. 468.609, F.S.; R. 61G19-6.012, F.A.C.
[25] *Id.*

Certifications of Conformity with the Americans with Disabilities Act (ADA) and Remediation Plans

In 2017, section 553.5141, F.S., was created to allow places of public accommodation to register remediation plans and certifications of conformity by certain experts in the ADA Standards for Accessible Design for Title III of the ADA, and to establish a website with a registry of remediation plans and certificates of conformity from businesses that have been inspected by an ADA expert, at DBPR.

The filing of the remediation plan or certification of conformity with DBPR puts the public on notice that businesses that filed a remediation plan or certificate of conformity with DBPR are in compliance with Title III of the ADA or are making reasonable efforts to come into compliance with Title III of the ADA.

"Private entity" is defined as any nongovernmental entity, such as a corporation, partnership, company or nonprofit organization, any other legal entity, or any natural person.

Building Code Administrators and Inspectors and Plans Examiners – Effect of the Bill

The bill corrects a scrivenor's error and renames the "one-family and two-family dwelling" training program to the "residential" training program in order to conform with the Legislature renaming the "one and two family dwelling inspector" to the "residential inspector" during the 2020 Legislative Session.

The bill provides that a person may also complete the 4-year internship as an inspector or plans examiner while **employed full-time with a private entity** that conducts the same or similar services as a local government, as long as the person is under the direct supervision of a licensed building official.

The bill also provides that the BCAIB must create a rule establishing that partial completion of an internship program may be transferred between jurisdictions **or private entities**.

The bill provides that "private entity" has the same meaning as provided in s. 553.5141(1)(f), F.S.

The bill removes "the supervision of the licensee on a consulting or advisory basis" from the list of examples of specifically identified "special conditions or requirements" to be used by the BCAIB when issuing provisional licenses.

The BCAIB may still issue a provisional license with a special condition or requirement that the BCAIB deems necessary to protect the public safety and health. However, the bill prohibits the BCAIB from issuing a provisional license with a special condition or requirement with respect to the requirement of employment by a municipality, county, or other local government agency.

Private Providers – Current Situation

In 2002, section 553.791, F.S., was created to allow property owners and contractors to hire licensed building code officials, engineers, and architects, referred to as private providers, to review building plans, perform building inspections, and prepare certificates of completion.

Private providers are able to approve building plans and perform building code inspections as long as the plans approval and building inspections are within the scope of the provider's license. Licensed building inspectors and plans examiners may perform inspections for additions and alterations that are limited to 1,000 square feet or less in residential buildings.[26]

If an owner or contractor opts to use a private provider, the local government must calculate the cost savings to its building department and reduce the building permit fees accordingly.[27]

[26] S. 553.791(1)(n) and (3), F.S.
[27] S. 553.791(2)(b), F.S.

A local government may not charge a fee for building inspections when an owner or contractor uses a private provider, but it may charge a **"reasonable administrative fee."**[28] However, current law does not specify what a "reasonable administrative" fee is.

A building official may audit a private provider to ensure the private provider has reviewed the building plans and is performing the required inspections. A building official may deny a building permit or a request for a certificate of completion if the building construction or plans do not comply with the Building Code. A building official may also issue a stop work order at any time if he or she determines any condition of the construction poses an immediate threat to public safety and welfare.[29]

When a property owner or a contractor elects to use a private provider, he or she must notify the building official, on a form adopted by the Florida Building Commission, at the time of the permit application or no less than two business days before the first or next scheduled inspection.[30]

A private provider who approves building plans must sign a sworn affidavit that the plans comply with the Building Code and the private provider is authorized to review the plans.[31] Upon receipt of a building permit application from a private provider, a building official has 20 business days to grant or deny the permit. Denying a permit automatically tolls the remaining 20 business days.[32]

Before a private provider performs building inspections, he or she must notify the building official of each inspection the business day before the inspection. A local building official may visit a building site as often as necessary to ensure the private provider is performing the required inspections. Construction work on a building may continue as long as the private provider passes each inspection and the private provider gives proper notice of each inspection to the building official.[33]

A private provider must post records of every inspection, including the results of the inspections, electronically or on the jobsite and provide the records to the local building official within two business days of posting the records.[34]

Upon completion of all required inspections, a private provider must give the building official a record of all the inspections, **a request for a certificate of occupancy**, and a sworn statement indicating compliance with the Building Code. Upon receipt, the building official has **two business days** to issue the certificate of completion or provide the permit applicant a notice of deficiencies.[35]

If the local building official does not provide a notice of the deficiencies within two business days, the request for a certificate of occupancy is **deemed granted**, and the local building official **must issue the certificate of occupancy the next business day**.[36]

Private Providers – Effect of the Bill

The bill provides that if an owner or contractor retains a private provider for plans review or inspection services, the local government must provide equal access to all permitting and inspection documents and reports to the private provider, the owner, and the contractor.

A "reasonable administrative fee" must be based on the cost that is actually incurred by the local government, including the labor cost of the personnel providing the service, or the cost attributable to the local government for the clerical and supervisory assistance required, or both.

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[28] *Id.*
[29] S. 553.791(1), (14), and (19), F.S.
[30] S. 553.791(4)-(5), F.S.
[31] S. 553.791(6), F.S.
[32] S. 553.791(7), F.S.
[33] S. 553.791(9) and (18), F.S.
[34] S. 553.791(11), F.S.
[35] S. 553.791(11)-(13), F.S.
[36] *Id.*

The bill provides that if a local building official does not provide a notice of deficiencies within two business days, the request for a certificate of occupancy is **"automatically"** granted and **considered issued** the next business day, instead of **"deemed"** granted and required to be issued by the local building official on the next business day.

The bill also provides that if a local building official does not provide a notice of deficiencies within two business days, the building permit is closed and the local building official must provide the permit applicant with the written certificate of occupancy or certificate of completion within 10 days after it has been automatically granted and considered issued.

B. SECTION DIRECTORY:

Section 1. Amends s. 468.603, F.S., relating to definitions.

Section 2. Amends s. 468.609, F.S., relating to standards for certification; additional categories of certification.

Section 3. Amends s. 553.791, F.S., relating to alternative plans review and inspection.

Section 4. Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may increase the number of people who qualify for licensure as a building inspector or plans examiner, which may lead to a decrease in the cost of construction because of a decrease in the time needed for inspections and plans review.

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 authorizes nor requires administrative rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to building inspection services; amending s. 468.603, F.S.; providing a definition; amending s. 468.609, F.S.; revising eligibility requirements for a person applying to become certified as a building code inspector or plans examiner; revising the special conditions or requirements that the Florida Building Code Administrators and Inspectors Board may impose on provisional certificates; authorizing a person to perform certain duties under certain conditions if the person is under the direct supervision of a person licensed as a building code administrator; authorizing that partial completion of an internship program be transferred between jurisdictions and private entities; amending s. 553.791, F.S.; limiting the administrative fee that a local jurisdiction can charge when an owner or contractor hires a private provider for inspection services; requiring the local jurisdiction to provide access to certain documents to a private provider, contractor, and owner; providing that a certificate of occupancy or certificate of completion is automatically granted and issued, and the permit application closed, under certain circumstances; requiring the local building official to provide a

written certificate of occupancy or certificate of completion within a specified time; providing an effective date.

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

Section 1. Subsection (9) is added to section 468.603, Florida Statutes, to read:

468.603 Definitions.—As used in this part:

(9) "Private entity" has the same meaning as in s. 553.5141(1)(f).

Section 2. Paragraph (c) of subsection (2), paragraphs (c) and (d) of subsection (7), and paragraph (b) of subsection (10) of section 468.609, Florida Statutes, are amended to read:

468.609 Administration of this part; standards for certification; additional categories of certification.—

(2) A person may take the examination for certification as a building code inspector or plans examiner pursuant to this part if the person:

(c) Meets eligibility requirements according to one of the following criteria:

1. Demonstrates 4 years' combined experience in the field of construction or a related field, building code inspection, or plans review corresponding to the certification category sought;

2. Demonstrates a combination of postsecondary education

in the field of construction or a related field and experience which totals 3 years, with at least 1 year of such total being experience in construction, building code inspection, or plans review;

3. Demonstrates a combination of technical education in the field of construction or a related field and experience which totals 3 years, with at least 1 year of such total being experience in construction, building code inspection, or plans review;

4. Currently holds a standard certificate issued by the board or a firesafety inspector license issued under ~~pursuant to~~ chapter 633, with a minimum of 3 years' verifiable full-time experience in firesafety inspection or firesafety plan review, and has satisfactorily completed a building code inspector or plans examiner training program that provides at least 100 hours but not more than 200 hours of cross-training in the certification category sought. The board shall establish by rule criteria for the development and implementation of the training programs. The board must ~~shall~~ accept all classroom training offered by an approved provider if the content substantially meets the intent of the classroom component of the training program;

5. Demonstrates a combination of the completion of an approved training program in the field of building code inspection or plan review and a minimum of 2 years' experience

in the field of building code inspection, plan review, fire code inspections and fire plans review of new buildings as a firesafety inspector certified under s. 633.216, or construction. The approved training portion of this requirement must ~~shall~~ include proof of satisfactory completion of a training program that provides at least 200 hours but not more than 300 hours of cross-training that is approved by the board in the chosen category of building code inspection or plan review in the certification category sought with at least 20 hours but not more than 30 hours of instruction in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificateholder. The board shall coordinate with the Building Officials Association of Florida, Inc., to establish by rule the development and implementation of the training program. However, the board must ~~shall~~ accept all classroom training offered by an approved provider if the content substantially meets the intent of the classroom component of the training program;

6. Currently holds a standard certificate issued by the board or a firesafety inspector license issued under ~~pursuant to~~ chapter 633 and:

a. Has at least 4 years' verifiable full-time experience as an inspector or plans examiner in a standard certification category currently held or has a minimum of 4 years' verifiable full-time experience as a firesafety inspector licensed under

~~pursuant to~~ chapter 633.

b. Has satisfactorily completed a building code inspector or plans examiner classroom training course or program that provides at least 200 but not more than 300 hours in the certification category sought, except for residential ~~one-family and two-family dwelling~~ training programs, which must provide at least 500 but not more than 800 hours of training as prescribed by the board. The board shall establish by rule criteria for the development and implementation of classroom training courses and programs in each certification category; or

7.a. Has completed a 4-year internship certification program as a building code inspector or plans examiner while also employed full-time by a municipality, county, or other governmental jurisdiction, under the direct supervision of a certified building official, or by a private entity that conducts the same or similar services as a municipality, county, or other governmental jurisdiction, while under the direct supervision of a person licensed as a building code administrator under this part. Proof of graduation with a related vocational degree or college degree or of verifiable work experience may be exchanged for the internship experience requirement year-for-year, but may reduce the requirement to no less than 1 year.

b. Has passed an examination administered by the International Code Council in the certification category sought.

Such examination must be passed before beginning the internship certification program.

c. Has passed the principles and practice examination before completing the internship certification program.

d. Has passed a board-approved 40-hour code training course in the certification category sought before completing the internship certification program.

e. Has obtained a favorable recommendation from the supervising building official after completion of the internship certification program.

(7)

(c) The board shall provide for appropriate levels of provisional certificates and may issue these certificates with such special conditions or requirements ~~relating to the place of employment of the person holding the certificate, the supervision of such person on a consulting or advisory basis, or other matters~~ as the board deems ~~may deem~~ necessary to protect the public safety and health. The board may not place a special condition or requirement on a provisional certificate with respect to the requirement of employment by a municipality, county, or other local government agency.

(d) A person may perform the duties of a plans examiner or building code inspector for 120 days if a provisional certificate application has been submitted if such person is under the direct supervision of a person licensed as a ~~certified~~

building code administrator under this part ~~who holds a standard certification~~ and who has found such person qualified for a provisional certificate. Direct supervision and the determination of qualifications may also be provided by a building code administrator who holds a limited or provisional certificate in a county having a population of fewer than 75,000 and in a municipality located within such county.

(10)

(b) The board shall by rule establish:

1. Reciprocity of certification with any other state that requires an examination administered by the International Code Council.

2. That an applicant for certification as a building code inspector or plans examiner may apply for a provisional certificate valid for the duration of the internship period.

3. That partial completion of an internship program may be transferred between jurisdictions or private entities on a form prescribed by the board.

4. That an applicant may apply for a standard certificate on a form prescribed by the board upon successful completion of an internship certification program.

5. That an applicant may apply for a standard certificate at least 30 days but ~~and~~ no more than 60 days before completing the internship certification program.

6. That a building code inspector or plans examiner who

has standard certification may seek an additional certification in another category by completing an additional nonconcurrent 1-year internship program in the certification category sought and passing an examination administered by the International Code Council and a board-approved 40-hour code training course.

Section 3. Paragraph (b) of subsection (2) and subsection (13) of section 553.791, Florida Statutes, are amended, and paragraph (c) is added to subsection (2) of that section, to read:

553.791 Alternative plans review and inspection.—

(2)

(b) If an owner or contractor retains a private provider for purposes of plans review or building inspection services, the local jurisdiction must reduce the permit fee by the amount of cost savings realized by the local enforcement agency for not having to perform such services. Such reduction may be calculated on a flat fee or percentage basis, or any other reasonable means by which a local enforcement agency assesses the cost for its plans review or inspection services. The local jurisdiction may not charge fees for building inspections if the fee owner or contractor hires a private provider to perform such services; however, the local jurisdiction may charge a reasonable administrative fee, which shall be based on the cost that is actually incurred, including the labor cost of the personnel providing the service, by the local jurisdiction or

attributable to the local jurisdiction for the clerical and supervisory assistance required, or both.

(c) If an owner or contractor retains a private provider for purposes of plans review or building inspection services, the local jurisdiction must provide equal access to all permitting and inspection documents and reports to the private provider, owner, and contractor.

(13) No more than 2 business days after receipt of a request for a certificate of occupancy or certificate of completion and the applicant's presentation of a certificate of compliance and approval of all other government approvals required by law, the local building official shall issue the certificate of occupancy or certificate of completion or provide a notice to the applicant identifying the specific deficiencies, as well as the specific code chapters and sections. If the local building official does not provide notice of the deficiencies within the prescribed 2-day period, the request for a certificate of occupancy or certificate of completion is automatically ~~shall be deemed~~ granted and considered ~~the certificate of occupancy or certificate of completion shall be~~ issued as of ~~by the local building official on~~ the next business day, and the permit is closed. The local building official must provide the applicant with the written certificate of occupancy or certificate of completion within 10 days after it is automatically granted and issued. To resolve any identified

deficiencies, the applicant may elect to dispute the deficiencies pursuant to subsection (14) or to submit a corrected request for a certificate of occupancy or certificate of completion.

Section 4. This act shall take effect July 1, 2022.

REGULATORY REFORM SUBCOMMITTEE

HB 423 by Rep. LaMarca
Building Inspection Services

AMENDMENT SUMMARY
December 2, 2021

Amendment 1 by Rep. LaMarca (strike):

- Provides that a person may complete the 4-year building inspector or plans examiner internship with a "private provider" or a "private provider's firm," while under the direct supervision of a licensed building official, engineer, or architect.
- All other provisions of the bill are unchanged.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Regulatory Reform Subcommittee

Representative LaMarca offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (9) is added to section 468.603, Florida Statutes, to read:

468.603 Definitions.—As used in this part:

(9) "Private provider" has the same meaning as in s. 553.791(1)(n).

Section 2. Paragraph (c) of subsection (2), paragraphs (c) and (d) of subsection (7), and paragraph (b) of subsection (10) of section 468.609, Florida Statutes, are amended to read:

468.609 Administration of this part; standards for certification; additional categories of certification.—

(2) A person may take the examination for certification as a building code inspector or plans examiner pursuant to this part if the person:

(c) Meets eligibility requirements according to one of the following criteria:

1. Demonstrates 4 years' combined experience in the field of construction or a related field, building code inspection, or plans review corresponding to the certification category sought;

2. Demonstrates a combination of postsecondary education in the field of construction or a related field and experience which totals 3 years, with at least 1 year of such total being experience in construction, building code inspection, or plans review;

3. Demonstrates a combination of technical education in the field of construction or a related field and experience which totals 3 years, with at least 1 year of such total being experience in construction, building code inspection, or plans review;

4. Currently holds a standard certificate issued by the board or a firesafety inspector license issued under ~~pursuant to~~ chapter 633, with a minimum of 3 years' verifiable full-time experience in firesafety inspection or firesafety plan review, and has satisfactorily completed a building code inspector or plans examiner training program that provides at least 100 hours but not more than 200 hours of cross-training in the

certification category sought. The board shall establish by rule criteria for the development and implementation of the training programs. The board must ~~shall~~ accept all classroom training offered by an approved provider if the content substantially meets the intent of the classroom component of the training program;

5. Demonstrates a combination of the completion of an approved training program in the field of building code inspection or plan review and a minimum of 2 years' experience in the field of building code inspection, plan review, fire code inspections and fire plans review of new buildings as a firesafety inspector certified under s. 633.216, or construction. The approved training portion of this requirement must ~~shall~~ include proof of satisfactory completion of a training program that provides at least 200 hours but not more than 300 hours of cross-training that is approved by the board in the chosen category of building code inspection or plan review in the certification category sought with at least 20 hours but not more than 30 hours of instruction in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificateholder. The board shall coordinate with the Building Officials Association of Florida, Inc., to establish by rule the development and implementation of the training program. However, the board must ~~shall~~ accept all classroom training offered by an

approved provider if the content substantially meets the intent of the classroom component of the training program;

6. Currently holds a standard certificate issued by the board or a firesafety inspector license issued under ~~pursuant to~~ chapter 633 and:

a. Has at least 4 years' verifiable full-time experience as an inspector or plans examiner in a standard certification category currently held or has a minimum of 4 years' verifiable full-time experience as a firesafety inspector licensed under ~~pursuant to~~ chapter 633.

b. Has satisfactorily completed a building code inspector or plans examiner classroom training course or program that provides at least 200 but not more than 300 hours in the certification category sought, except for residential ~~one-family and two-family dwelling~~ training programs, which must provide at least 500 but not more than 800 hours of training as prescribed by the board. The board shall establish by rule criteria for the development and implementation of classroom training courses and programs in each certification category; or

7.a. Has completed a 4-year internship certification program as a building code inspector or plans examiner while employed full-time by a municipality, county, or other governmental jurisdiction, under the direct supervision of a certified building official. A person may also complete the internship certification program while employed full-time by a

private provider or a private provider's firm that performs the services of a building code inspector or plans examiner, while under the direct supervision of the private provider who must be a certified building official or a person licensed as an engineer under chapter 471 or an architect under chapter 481. Proof of graduation with a related vocational degree or college degree or of verifiable work experience may be exchanged for the internship experience requirement year-for-year, but may reduce the requirement to no less than 1 year.

b. Has passed an examination administered by the International Code Council in the certification category sought. Such examination must be passed before beginning the internship certification program.

c. Has passed the principles and practice examination before completing the internship certification program.

d. Has passed a board-approved 40-hour code training course in the certification category sought before completing the internship certification program.

e. Has obtained a favorable recommendation from the supervising building official, engineer, or architect after completion of the internship certification program.

(7)

(c) The board shall provide for appropriate levels of provisional certificates and may issue these certificates with such special conditions or requirements ~~relating to the place of~~

~~employment of the person holding the certificate, the supervision of such person on a consulting or advisory basis, or other matters~~ as the board deems ~~may deem~~ necessary to protect the public safety and health. The board may not place a special condition or requirement on a provisional certificate with respect to the requirement of employment by a municipality, county, or other local government agency.

(d) A person may perform the duties of a plans examiner or building code inspector for 120 days if a provisional certificate application has been submitted if such person is under the direct supervision of a person licensed as a ~~certified~~ building code administrator under this part ~~who holds a standard certification~~ and who has found such person qualified for a provisional certificate. Direct supervision and the determination of qualifications may also be provided by a building code administrator who holds a limited or provisional certificate in a county having a population of fewer than 75,000 and in a municipality located within such county.

(10)

(b) The board shall by rule establish:

1. Reciprocity of certification with any other state that requires an examination administered by the International Code Council.

2. That an applicant for certification as a building code inspector or plans examiner may apply for a provisional

certificate valid for the duration of the internship period.

3. That partial completion of an internship program may be transferred between jurisdictions or private providers, or a private provider's firm, on a form prescribed by the board.

4. That an applicant may apply for a standard certificate on a form prescribed by the board upon successful completion of an internship certification program.

5. That an applicant may apply for a standard certificate at least 30 days but ~~and~~ no more than 60 days before completing the internship certification program.

6. That a building code inspector or plans examiner who has standard certification may seek an additional certification in another category by completing an additional nonconcurrent 1-year internship program in the certification category sought and passing an examination administered by the International Code Council and a board-approved 40-hour code training course.

Section 3. Paragraph (b) of subsection (2) and subsection (13) of section 553.791, Florida Statutes, are amended, and paragraph (c) is added to subsection (2) of that section, to read:

553.791 Alternative plans review and inspection.—

(2)

(b) If an owner or contractor retains a private provider for purposes of plans review or building inspection services, the local jurisdiction must reduce the permit fee by the amount

of cost savings realized by the local enforcement agency for not having to perform such services. Such reduction may be calculated on a flat fee or percentage basis, or any other reasonable means by which a local enforcement agency assesses the cost for its plans review or inspection services. The local jurisdiction may not charge fees for building inspections if the fee owner or contractor hires a private provider to perform such services; however, the local jurisdiction may charge a reasonable administrative fee, which shall be based on the cost that is actually incurred, including the labor cost of the personnel providing the service, by the local jurisdiction or attributable to the local jurisdiction for the clerical and supervisory assistance required, or both.

(c) If an owner or contractor retains a private provider for purposes of plans review or building inspection services, the local jurisdiction must provide equal access to all permitting and inspection documents and reports to the private provider, owner, and contractor.

(13) No more than 2 business days after receipt of a request for a certificate of occupancy or certificate of completion and the applicant's presentation of a certificate of compliance and approval of all other government approvals required by law, the local building official shall issue the certificate of occupancy or certificate of completion or provide a notice to the applicant identifying the specific deficiencies,

as well as the specific code chapters and sections. If the local building official does not provide notice of the deficiencies within the prescribed 2-day period, the request for a certificate of occupancy or certificate of completion is automatically ~~shall be deemed~~ granted and considered ~~the certificate of occupancy or certificate of completion shall be~~ issued as of ~~by the local building official on~~ the next business day, and the permit is closed. The local building official must provide the applicant with the written certificate of occupancy or certificate of completion within 10 days after it is automatically granted and issued. To resolve any identified deficiencies, the applicant may elect to dispute the deficiencies pursuant to subsection (14) or to submit a corrected request for a certificate of occupancy or certificate of completion.

Section 4. This act shall take effect July 1, 2022.

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

Remove everything before the enacting clause and insert:

An act relating to building inspection services; amending s. 468.603, F.S.; providing a definition; amending s. 468.609, F.S.; revising eligibility requirements for a person applying to become certified as a building code inspector or plans examiner;

revising the special conditions or requirements that the Florida Building Code Administrators and Inspectors Board may impose on provisional certificates; authorizing a person to perform certain duties under certain conditions if the person is under the direct supervision of a person licensed as a building code administrator, engineer, or architect; authorizing that partial completion of an internship program be transferred between jurisdictions or private providers, or a private provider's firm; amending s. 553.791, F.S.; limiting the administrative fee that a local jurisdiction can charge when an owner or contractor hires a private provider for inspection services; requiring the local jurisdiction to provide access to certain documents to a private provider, contractor, and owner; providing that a certificate of occupancy or certificate of completion is automatically granted and issued, and the permit application closed, under certain circumstances; requiring the local building official to provide a written certificate of occupancy or certificate of completion within a specified time; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 6031 Individual Wine Containers
SPONSOR(S): LaMarca
TIED BILLS: **IDEN./SIM. BILLS:** SB 384

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

SUMMARY ANALYSIS

In Florida, the Beverage Law regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors. The Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation administers and enforces the Beverage Law.

Current law addressing limitations on the size of individual wine containers provides the following:

- The sale of wine in an individual container that holds more than one gallon of wine is prohibited.
- Wine may be sold in a reusable container of 5.16 gallons.
- Distributors and manufacturers are allowed to sell wine to other distributors and manufacturers in containers of any size.
- Except for restaurants in certain situations, wine sold or offered for sale by a licensed vendor to be consumed off the premises must be in the unopened original container.
- Violations are a second-degree misdemeanor.

The bill repeals the law relating to limitations on the size of individual wine containers.

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

The bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Beverage Law

In Florida, the Beverage Law[1] regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.[2] The Division of Alcoholic Beverages and Tobacco (Division) in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.[3]

"Alcoholic beverages" are defined as "distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume." "Malt beverages" are brewed alcoholic beverages containing malt.[4]

The license and registration classifications used in the Beverage Law include the following:

- "Manufacturers" are those "licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and to no one else within the state, unless authorized by statute."
- "Distributors" are those "licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages."
- "Importers" are those licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else in this state.[5]
- "Vendors" are those "licensed to sell alcoholic beverages at retail only" and may not "purchase or acquire in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law."[6]

Wine Container Limitations

"Wine" is defined as all beverages made from fresh fruits, berries, or grapes, either by natural fermentation or by natural fermentation with brandy added, in the manner required by the laws and regulations of the United States, and includes all sparkling wines, champagnes, combination of the aforesaid beverages, sake, vermouths, and like products. Sugar, flavors, and coloring materials may be added to wine to make it conform to the consumer's taste, except that the ultimate flavor or the color of the product may not be altered to imitate a beverage other than wine or to change the character of the wine.[7]

Current law governing limitations of the size of wine containers:[8]

- Prohibits the sale of wine in an individual container that holds more than one gallon. However, allows wine to be sold in a reusable container of 5.16 gallons.
- Authorizes qualified distributors and manufacturers to sell wine to other qualified distributors and manufacturers in any size container.[9]
- Except for restaurants in certain situations,[10] requires wine sold or offered for sale by a licensed vendor to be consumed off-premises to be in the unopened original container.

[1] Section 561.01(6), F.S., provides that the "The Beverage Law" includes chs. 561, 562, 563, 564, 565, 567, and 568, F.S.
[2] *See* s. 561.14, F.S.
[3] S. 561.02, F.S.
[4] S. 563.01, F.S.
[5] S. 561.01(5), F.S.
[6] S. 561.14, F.S.
[7] S. 564.01(1), F.S.
[8] S. 564.05, F.S.
[9] *Id*.

- Provides that violations are a second-degree misdemeanor, punishable by a maximum $500 fine[11] and 60 days in prison.[12]

Effect of the Bill

The bill repeals s. 564.05, F.S., relating to limitations on the size of individual wine containers.

B. SECTION DIRECTORY:

Section 1 Repeals s. 564.05, F.S., relating to limitations on the size of individual wine containers.

Section 2 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will allow the sale of wine in an individual container of any size. This may have a positive fiscal impact on businesses that sell wine.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

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[10] S. 564.09, F.S. The exception allows restaurant patrons to leave the premises with "one unsealed bottle of wine for consumption off the premises," provided certain conditions are met. The wine bottle must be partially consumed with a full course meal, securely resealed by the licensee or one of its employees, secured in a bag or container, wrapped in a way that shows it was previously opened, attached to a dated receipt indicating the full course meal, and transported in a locked vehicle glove compartment, locked trunk, or behind the last upright seat of a motor vehicle that is not equipped with a trunk.

[11] S. 775.083(1)(e), F.S.

[12] S. 775.082(4)(b), F.S.

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

A bill to be entitled

An act relating to individual wine containers; repealing s. 564.05, F.S., relating to the limitation of size of individual wine containers; providing an effective date.

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

Section 1. Section 564.05, Florida Statutes, is repealed.

Section 2. This act shall take effect July 1, 2022.

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