

Regulatory Reform Subcommittee

Thursday, January 20, 2022
1:00 PM - 3:00 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, January 20, 2022
1:00 PM – 3:00 PM
Webster Hall (212 Knott)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

CS/HB 519 Rights of Third Parties Under the Uniform Commercial Code by Civil Justice & Property Rights Subcommittee, Leek

CS/HB 545 Service of Process by Civil Justice & Property Rights Subcommittee, Beltran

HB 667 Department of Business and Professional Regulation by McClain

HB 831 Licensure Requirements for Land Surveyors and Mappers by Mariano

HB 1033 Homeowners' Associations by Beltran

HB 1095 Telephone Solicitation by Beltran

HB 1185 Legislative Review of Proposed Regulation of Unregulated Functions by Plakon

Consideration of the following proposed committee substitute(s):

PCS for HB 635 -- Building Permits

V. Closing Remarks

VI. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 519 Rights of Third Parties Under the Uniform Commercial Code
SPONSOR(S): Civil Justice & Property Rights Subcommittee, Leek
TIED BILLS: **IDEN./SIM. BILLS:** SB 336

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Property Rights Subcommittee	16 Y, 0 N, As CS	Mawn	Jones
2) Regulatory Reform Subcommittee		Wright	Anstead
3) Judiciary Committee			

SUMMARY ANALYSIS

The Uniform Commercial Code ("UCC") is a set of laws, adopted by all fifty states, governing and providing uniformity in commercial transactions in the United States. Florida's UCC provisions are codified in chs. 670–680, Florida Statutes.

Article 9 of the UCC (codified in ch. 679, F.S.) governs secured transactions, meaning transactions involving the granting of credit secured by personal property ("collateral"), where the creditor may take possession of the collateral if the debtor defaults on the loan. In 2001, to promote the free assignability of personal property, including intangible property rights, the UCC was amended to include a general restriction on contract provisions which prohibit or restrict the creation of a security interest in certain types of collateral ("Article 9 override"), including:

- General intangibles, meaning any personal property, including things in action other than certain defined collateral types (codified in s. 9-408 of the UCC and s. 679.4081, F.S.); and
- Payment intangibles, meaning general intangibles under which the account debtor's principal obligation is a monetary obligation (codified in s. 9-406 of the UCC and s. 679.4061, F.S.).

The Article 9 override may apply where an owner in a partnership or a limited liability company ("LLC") creates a security interest in his or her ownership interest in the business, even where the business's operating agreement prohibits the owner from doing so, because such interest is generally classified as either a general intangible or a payment intangible. However, applying the Article 9 override in such instances potentially conflicts with the "pick your partner principle," which recognizes that an owner in such a business has a substantial stake in determining co-owners and should not generally be forced into doing business with someone the owner did not intend.

In 2018, ss. 9-406 and 9-408 of the UCC were amended to eliminate the potential conflict with the "pick your partner principle." Specifically, the amendments provided that the Article 9 override does not apply to a security interest in an ownership interest in a general or limited partnership or an LLC. To date, at least 10 states have adopted some form of these amendments.

CS/HB 519 amends ss. 679.4061 and 679.4081, F.S., to incorporate the 2018 UCC amendments. Specifically, the bill provides that the override provisions set out in those sections do not apply to a security interest in an ownership interest in a general partnership, a limited partnership, or an LLC. This removes any potential conflict between these sections and the "pick your partner principle" and promotes the freedom of the owners in a partnership or LLC to contract.

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

The bill provides an effective date of January 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Uniform Commercial Code ("UCC"), a set of laws governing and providing uniformity in commercial transactions in the United States, is a joint project between the Uniform Law Commission ("ULC") and the American Law Institute ("ALI").[1] The UCC has been adopted by all fifty states.[2] The UCC includes both general provisions and specific provisions governing sales, leases, negotiable instruments, bank deposits and collections, letters of credit, documents of title, investment securities, secured transactions, and leases.[3] Florida's UCC provisions are codified in chs. 670–680, Florida Statutes.

Article 9's Anti-Assignment Override

Article 9 of the UCC (codified in ch. 679, F.S.) governs secured transactions, which are transactions involving the granting of credit secured by personal property ("collateral"), where the creditor may take possession of the collateral if the debtor defaults on the loan.[4] In 2001, to promote the free assignability of personal property, including intangible property rights, and the ability of a debtor to obtain credit, the UCC was amended to include a general restriction against contract provisions prohibiting the creation of a security interest in certain types of collateral ("Article 9 override"),[5] including:

- General intangibles, meaning any personal property, including things in action other than certain defined collateral types (codified in s. 9-408 of the UCC and s. 679.4081, F.S.);[6] and
- Payment intangibles, meaning general intangibles under which the account debtor's[7] principal obligation is a monetary obligation (codified in s. 9-406 of the UCC and s. 679.4061, F.S.).[8]

In other words, the Article 9 override renders ineffective restrictions between an account debtor and a debtor preventing the assignment of general intangibles or payment intangibles as collateral for a debt. The Article 9 override also applies to an ordinary security interest in a complete ownership interest or in economic rights alone and to the outright sale of a payment intangible.[9]

In the context of an ownership interest in a business, the "account debtor" is the business while the "debtor" is the person holding the ownership interest. Thus, the Article 9 override would not apply to an anti-assignment clause in a contract between a business's owners themselves; it would only apply to such a clause in a contract between a business's owners and the business.

Potential Conflict with the "Pick Your Partner Principle"

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[1] Chs. 670-680, F.S.; Uniform Law Commission, Uniform Commercial Code, https://www.uniformlaws.org/acts/ucc (last visited Jan. 13, 2022).
[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] Sara T. Toner and R. Parker Havis, *Lessons From Delaware: Navigating the 2018 Amendments to Sections 9-406 and 9-408 of Article 9 of the Uniform Commercial Code*, https://cdn.ymaws.com/acrel.site-ym.com/resource/resmgr/news_and_notes/february_2020/2020-02_toner_-_lessons_from.pdf (last visited Jan. 13, 2022); Florida Bar Business Law Section, *Exclusion of LLC and Partnership Interests from UCC Article 9 Override: Executive Summary*, http://www.flabizlaw.org/files/Summary%20and%20Materials%20-%20UCC%209-406%20and%209-408%20Amendments%20%28v2%29.pdf (last visited Jan. 13, 2022).
[6] General intangibles do not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. S. 9-102, UCC; S. 679.1021(1)(pp), F.S.
[7] "Account debtor" means a person obligated on an account, chattel paper, or general intangible, but does not include a person obligated to pay a negotiable instrument. S. 9-102, UCC; s. 679.1021(1)(c), F.S.
[8] Article 9 does not apply to the outright sale of a complete ownership interest or of governance rights alone.
[9] Carl S. Bjerre, Daniel S. Kleinberger, Edwin E. Smith, and Steven O. Weise, *LLC and Partnership Transfer Restrictions Excluded from UCC Article 9 Overrides*, https://businesslawtoday.org/2019/02/llc-partnership-transfer-restrictions-excluded-ucc-article-9-overrides/ (last visited Jan. 13, 2022).

A partnership is an association of two or more persons carrying on as co-owners of a business for profit formed under s. 620.8202, F.S., or another jurisdiction's comparable law.[10] A limited liability company ("LLC") is a business formed or existing under ch. 605, F.S., or a business that becomes subject to that chapter by operation of law, formed to protect its members from personal liability for the business's debts or other obligations.[11] An interest in a partnership or LLC is typically categorized as a general intangible as the business owes the interested party rights associated with partnership or membership rather than a defined debt.[12] However, an interest in a partnership or LLC involving economic rights may be categorized as a payment intangible.[13]

The Article 9 override may apply where an owner in a partnership or an LLC creates a security interest in his or her ownership interest in the business, or some component thereof, even where the business's operating agreement prohibits the owner from doing so.[14] However, applying the Article 9 override in such instances potentially conflicts with the "pick your partner principle" reflected in partnership and LLC law, which generally recognizes that an owner in such a business has a substantial stake in determining who the co-owners are and should not be forced into doing business with someone the owner did not intend to do business with.[15] The Florida Bar's Business Law Section illustrates the conflict as follows:

> Two individuals go into business together and form an LLC. Each owner is a 50/50 member in the LLC. Their operating agreement (like most operating agreements) restricts the ability of one member to convey or encumber his or her membership interest without the consent of the other member, in keeping with the "pick your partner principle" engrained in LLC and partnership law. If one partner unilaterally encumbered his or her 50% membership interest to secure a personal loan from a bank (in violation of the operating agreement), then arguably, Section 9-406 and 9-408 would "override" the restriction in the operating agreement. If the member defaulted on the loan, the lender could foreclose on its security interest and take ownership of the membership interest. The other member would now be saddled with a bank as its new business partner, a result not contemplated or permitted by the members' contract (the operating agreement).[16]

To avoid this conflict, some partnerships and LLCs may attempt to categorize an ownership interest in the business as a security, classified by the UCC as "investment property" rather than a general intangible or a payment intangible.[17] This allows the business to opt in to Article 8 of the UCC, governing securities, and bypass Article 9 and its override altogether. However, by opting into Article 8, the business faces the potential for increased transaction costs and the restructuring of its organization documents.[18]

2018 UCC Amendments

In 2018, the ULC and the ALI approved amendments to ss. 9-406 and 9-408 of the UCC to eliminate the potential conflict with the "pick your partner principle" ("2018 UCC Amendments").[19] Specifically, the amendments provide that the Article 9 override does not apply to a security interest in an ownership interest in a general or limited partnership or an LLC.[20] Several states have adopted these amendments in their UCC codification statutes, amended their partnership and LLC statutes to achieve a similar result, or employed a combination of the two, as follows:[21]

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[10] S. 620.8101(7), F.S.
[11] Ss. 605.0102(36) and 605.0304(1), F.S.
[12] Toner and Havis, *supra* note 4; Florida Bar Business Law Section, *supra* note 4.
[13] *Id.*
[14] Bjerre, et al., *supra* note 8.
[15] *Id.*; Florida Bar Business Law Section, *supra* note 4.
[16] Florida Bar Business Law Section *supra* note 4.
[17] Bjerre, et al., *supra* note 8; Florida Bar Business Law Section, *supra* note 4.
[18] *Id.*
[19] Florida Bar Business Law Section, *supra* note 4.
[20] *Id.*
[21] *Id.*

State	Method	Statutes
Alabama	Amended its LLC and limited partnership statutes.	§§ 10A-5A-1.06 and 10A-9-7.02, Ala. Code
Colorado	Amended all applicable statutes.	§§ 4-9-406, 4-9-408, 7-90-104, Col. Rev. Stat.
Delaware	Amended all applicable statutes.	Title 6, §§ 9-406, 9-408, 15-104, 17-1101, and 18-1101, Del. Code Ann.
Kansas	Amended its LLC statute.	§ 17-76, K.S.A.
Kentucky	Amended its LLC and partnership statutes.	§§ 275.255, 362.2-702, 32.1-503, Ky. Rev. Stat.
Maine	Amended its LLC statute.	Title 31, § 1507, Maine Stat.
North Carolina	Amended its UCC codification and LLC statutes.	§§ 25-9-406, 25-9-408, 57D-10-02, N.C. Gen. Stat. Ann.
Ohio	Amended its partnership statute.	§ 1776.49, Ohio Rev. Code Ann.
Texas	Amended all applicable statutes.	§§ 9.406, 9.408, 101.106, and 154.001, Tex. Bus. & Com. Code Ann.
Virginia	Amended all applicable statutes.	§§ 8.9A-406, 8.9A-408, 13.1-1001.1, 50-73.84, Va. Code Ann.

Effect of Proposed Changes

CS/HB 519 amends ss. 679.4061 and 679.4081, F.S., to incorporate the 2018 UCC amendments. Specifically, the bill provides that the anti-assignment override provisions set out in those sections do not apply to a security interest in an ownership interest in a general partnership, a limited partnership, or an LLC. This removes any potential conflict between these sections and the "pick your partner principle" by allowing contract terms prohibiting the creation of such security interests to stand and promotes the freedom of the owners in a partnership or LLC to contract.

The bill provides an effective date of January 1, 2023.

B. SECTION DIRECTORY:

Section 1: Amends s. 679.4061, F.S., relating to discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.

Section 2: Amends s. 679.4081, F.S., relating to restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.

Section 3: Provides an effective date of January 1, 2023.

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 a contract among business partners or a controlling statute to limit the ability of an owner in a partnership or LLC to create a security interest in his or her ownership interest in the business. The bill:

- Protects the investment of the owners in a partnership or LLC in a manner consistent with the "pick your partner principle;"
- May eliminate the need for a partnership or LLC to classify an ownership interest in the business as a security, thereby reducing the business's transaction costs; and
- May reduce litigation costs related to disputes over the application of the override provisions to ownership interests in a partnership or LLC.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 13, 2022, the Civil Justice and Property Rights Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment changed the bill's effective date from July 1, 2022, to January 1, 2023.

This analysis is drafted to the committee substitute as passed by the Civil Justice and Property Rights Subcommittee.

A bill to be entitled

An act relating to the rights of third parties under the Uniform Commercial Code; amending ss. 679.4061 and 679.4081, F.S.; providing that certain restrictions on the effectiveness of terms in specified agreements and the effectiveness of certain rules of law, statutes, or regulations related to the discharge of account debtors and certain restrictions on the assignment of promissory notes, health-care-insurance receivables, and certain general intangibles, respectively, do not apply to a security interest in an ownership interest in a general partnership, a limited partnership, or a limited liability company; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsections (4) and (6) of section 679.4061, Florida Statutes, are amended, and subsection (12) is added to that section, to read:

679.4061 Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.—

(4) Except as otherwise provided in subsections (5) and

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

(12) ~~subsection (5)~~ and ss. 680.303 and 679.4071, and subject to subsection (8), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(a) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(b) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(6) Except as otherwise provided in subsection (12) and ss. 680.303 and 679.4071, and subject to subsections (8) and (9), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(a) Prohibits, restricts, or requires the consent of the

government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

(b) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(12) Subsections (4), (6), and (11) do not apply to a security interest in an ownership interest in a general partnership, a limited partnership, or a limited liability company.

Section 2. Subsections (1) and (3) of section 679.4081, Florida Statutes, are amended, and subsection (8) is added to that section, to read:

679.4081 Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.—

(1) Except as otherwise provided in subsections (2) and (8) ~~subsection (2)~~, a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person

obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(a) Would impair the creation, attachment, or perfection of a security interest; or

(b) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(3) Except as otherwise provided in subsection (8), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(a) Would impair the creation, attachment, or perfection of a security interest; or

(b) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(8) This section does not apply to a security interest in an ownership interest in a general partnership, a limited partnership, or a limited liability company.

Section 3. This act shall take effect January 1, 2023.

CS/HB 545

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 545 Service of Process
SPONSOR(S): Civil Justice & Property Rights Subcommittee, Beltran
TIED BILLS: **IDEN./SIM. BILLS:** SB 1062

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Property Rights Subcommittee	16 Y, 0 N, As CS	Mathews	Jones
2) Regulatory Reform Subcommittee		Brackett	Anstead
3) Judiciary Committee			

SUMMARY ANALYSIS

"Process" is used by a court or administrative body to acquire or exercise jurisdiction over a person or property. Original process includes an original writ or summons issued by the court as the first step in a lawsuit and includes a notice to the party being served regarding the time and date to appear before the court. Final process is a writ of execution pursuant to a final judgment issued in the legal proceeding. The traditional and preferred form of service of process on a competent adult is by personal delivery to that person.

In Florida, business entities are categorized differently, depending on how each business is created and structured. The procedures for service of process on various types of business entities are not uniform under current law. The required methodology for service of process differs for each business entity, including partnerships, limited partnerships, limited liability companies, foreign corporations, and domestic corporations. A business' registered agent need be served first only if that business is an LLC. This may lead to confusion and lack of actual notice to the intended party.

When a party is unable to personally serve an individual or a business entity's representative, Florida law allows service of process through substituted service on the Florida Secretary of State, either by personal service or by certified mail.

CS/HB 545 makes uniform the method for serving process on business entities, by requiring each entity to identify a registered agent for service of process. The bill expands s. 48.091, F.S., to specifically apply to limited partnerships, limited liability limited partnerships, limited liability companies, and corporations. As such, the bill requires each type of business entity to designate a registered agent and registered office for service of process. The bill repeals the duty to work through the hierarchy of officers and prioritizes service of process on a registered agent.

The bill makes other changes to current law to simplify and modernize service of process against business entities and other specified individuals, including authorizing a court to permit service by email or other electronic means in limited situations.

The bill is unlikely to have a significant fiscal impact on state and local government.

Except for two sections within the bill which are effective upon becoming law, the bill provides an effective date of January 2, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Judicial Service of Process

"Process" is used by a court or administrative body to acquire or exercise jurisdiction over a person or property.[1] There are three primary types of process: original, mesne, and final process. Original process includes an original writ or summons issued by the court as the first step in a lawsuit and includes a notice to the party being served regarding the time and date to appear before the court. Mesne process is an intermediate process issued between the original process and the final judgment. Final process is a writ of execution pursuant to a final judgment issued in the subject legal proceeding.

Generally, service of process is made by:

- Delivering a copy of the process to the person to be served; or
- Leaving the process at the person's usual place of abode[2] with any person residing there who is fifteen years of age or older and informing that person of the contents of the process.[3]

Service of Process on Business Entities

In Florida, business entities may be categorized differently depending on how each business entity is created and structured. The procedures for service of process on various types of business entities are not consistent under current law. Florida law recognizes the following types of business entities:

- Partnerships, which are entities with two or more persons who co-own a business and share in the profits and losses of the business.[4]
- Limited Partnerships, which are partnerships composed of both general and limited partners where each partner may determine or limit his or her personal liability within the partnership; in limited partnerships, limited partners are not responsible for the partnership's actions, debts, and obligations.[5]
- General Partnerships, which are partnerships where the rights and responsibilities are divided equally among the partners and each partner may act on behalf of all the other partners.[6]
- Corporations, which are independent legal entities that exist separately from the people who own, control, and manage them; the owners of the corporation have limited liability and the corporation is considered to be its own, separate "person."[7]
- Limited Liability Companies, which are similar to corporations in that they offer limited personal liability, but do not have the same management requirements and obligatory formalities as a corporation.[8]
- Sole Proprietorships, which are unincorporated businesses owned and operated by one individual with no distinction between the business and the owner.[9]

Partnerships

[1] Black's Law Dictionary 837 (6th ed. 1995).
[2] "Usual place of abode" means the place where the party actually lives at the time of service of process. *Shurman v. Atlantic Mortg. & Inv. Corp.*, 795 So. 2d 952 (Fla. 2001).
[3] S. 48.031(1)(a), F.S.
[4] Florida Department of State, *Types of Business Entities/Structures*, https://dos.myflorida.com/sunbiz/start-business/corporate-structure/ (last visited on Jan. 11, 2022).
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] *Id.*

Process against a partnership may be served on any partner and is valid as if served on each individual partner.[10] If a partner is not available during regular business hours, he or she may designate an employee to accept service on his or her behalf.[11] Service must first be attempted upon either a partner or his or her designated employee during regular business hours.[12]

Service against a limited partnership may be served on any general partner or on the designated agent for service of process specified in the certificate of limited partnership.[13] If a general partner cannot be found in Florida and service cannot be made on the agent because of failure to maintain such an agent or adequately identify such agent, service of process may be made upon the Florida Secretary of State as agent of the limited partnership.[14]

Limited Liability Company (LLC)

Service of process against a foreign or domestic LLC must first be made on the LLC's registered agent.[15] If service cannot be made on the registered agent because the LLC has failed to identify such an agent or because the LLC does not have a registered agent, process against the LLC may be served on:

- A member of a member-managed LLC;
- A manager of a manager-managed LLC; or
- An employee designated by the member or manager to accept service on behalf of the LLC.[16]

After one attempt to serve the member, manager, or designated employee, process may be served on the person in charge of the LLC during regular business hours.[17] If process is unable to be made after reasonable diligence under the aforementioned methods, service of process may be made by service on the Florida Secretary of State as agent of the LLC.[18]

Business entities may sometimes have authority to convert from one form or entity to another, known as conversion. Where the converting entity is a registered LLC and the converted entity is any form of foreign entity that is not recognized in Florida, the entity must give the Florida Secretary of State a mailing address that can be used if the entity is served by substitute service upon the Florida Secretary of State.

In order to cancel its certificate of authority to transact business in Florida, a foreign LLC must, in part, furnish the Florida Secretary of State with an address that can be used should the company be served through substitute process through the Florida Secretary of State and must commit to keeping such record address accurate and current.

Agents of Nonresidents Doing Business in Florida

For any partnership that engages in business in Florida but does not have a principal place of business in Florida, process may be served on the person who is in charge of a business in which the defendant is engaged within Florida at the time of service.[19] A copy of the process with a notice of such service must be sent by registered mail or certified mail to the partnership, and an affidavit of compliance must be filed with the court.[20]

Corporations

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[10] S. 48.061(1), F.S.
[11] *Id.*
[12] *Id.*
[13] S. 48.061(2), F.S.
[14] *Id.*
[15] S. 48.062(1), F.S.
[16] S. 48.062(2), F.S.
[17] S. 48.062(2)(c), F.S.
[18] S. 48.062(3), F.S.
[19] S. 48.071, F.S.
[20] *Id.*

Service on a private corporation may be served on the president or vice president or other head of the corporation.[21] In the absence of a president or vice president, service may be made on the cashier, treasurer, secretary, or general manager.[22] In the absence of a president, vice president, cashier, treasurer, secretary, or general manager, service may be made upon any director of the corporation.[23] If no such person or director is available, service may be made on any officer or business agent residing in Florida.[24]

Alternatively, process may be served on the corporation's registered agent as designated by the corporation.[25] Each Florida corporation and foreign corporation qualified to do business in Florida must designate a registered agent in compliance with ch. 607, F.S.[26]

In order to cancel its certificate of authority to transact business in Florida, a foreign corporation must, in part, furnish the Florida Secretary of State with an address that can be used should the corporation be served through substitute process through the Florida Secretary of State and must commit to keeping such record address accurate and current.

Lack of Uniformity

Currently, there is not a uniform method for effectuating service on each type of business entity in Florida. For example, a party is only required to first serve a registered agent when the entity being served is a LLC.[27]

Substituted Service

The Florida Secretary of State, as head of the Florida Department of State, is involved in many aspects of service of process. The Division of Corporations, housed within the Department of State, accepts business entity registrations and renewals, and maintains a publicly-accessible record of every entity, listing a registered agent and the names of the various officers, leaders, and managers in the entity. In some scenarios involving nonresident business entities, Florida law allows service of process through substituted service on the Florida Secretary of State when a party is unable to personally serve the individual or the business entity's representative.[28] Substituted service on the Secretary of State is effectuated by either hand delivery or by certified mail addressed to the Secretary of State, together with a fee of $8.75. A copy of the process must be sent to the individual or entity at the last known address by certified or registered mail.[29] Case law interpreting the statute requires that a party using substituted service on the Secretary of State make an honest and conscientious effort, in addition to the mailing, to provide the defendant with actual notice of the lawsuit,[30] which may be noticed through a known email.[31]

Service of Notice of Intent to Initiate Litigation for Medical Negligence

[21] S. 48.081(1), F.S.
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] S. 48.081(3), F.S.
[26] S. 48.091(1), F.S.
[27] S. 48.062(1), F.S.
[28] S. 48.161, F.S.; S. 48.181, F.S.
[29] S. 48.161, F.S.
[30] *All Mobile Video v. Whitener*, 773 So. 2d 587, 589-90 (Fla. 1st DCA 2000) (plaintiff knew telephone and fax number of defendant company but did not call or fax for new address when mailed copy of process was returned).
[31] *Crystal Springs Partners, Ltd. v. Michael R. Band, P.A.*, 132 So. 3d 1230 (Fla 3rd DCA 2014) (law firm plaintiff knew former client's email address and should have emailed copy of process in addition to mailing).

Florida law requires a claimant to notify each prospective defendant of his or her intent to initiate litigation for medical negligence. Such notice may only be made by certified mail, return receipt requested.[32]

Effect of Proposed Changes

Judicial Service of Process on Business Entities

CS/HB 545 makes uniform the methods for serving process on business entities by requiring each business entity to designate a registered agent to accept service of process.

The bill expands s. 48.091, F.S., to specifically apply to limited partnerships, limited liability limited partnerships, and limited liability companies as well as corporations. As such, under the bill, each type of business entity is required to designate a registered agent and registered office for service of process. The bill adds all forms of business entities to the statute governing registered agents and prioritizes service of process upon the registered agent. The bill codifies the duty of a registered agent to promptly forward the process and any related documents to the responsible person within the business entity. Under the bill, when an agent of a nonresident doing business in Florida is served on behalf of the nonresident, the process served is as valid as if it was served personally on the nonresident. However, a copy of such process must be sent to the nonresident person or business and may be sent by certified mail, registered mail, or by a commercial firm regularly engaged in the business of document or package delivery. The party seeking to serve the nonresident is responsible for filing an affidavit of service of such with the court.

Cancellation of Certificates of Authority and Conversion

The bill adds a requirement that a business which cancels its certificate of authority to transact business in Florida must provide an email address along with the required mailing address to the state. Further, the bill requires any business converting from one entity to another to provide an email address along with the other requirements to the state.

Substituted Service

The bill modernizes substituted service upon the Florida Secretary of State, allowing such service to the Secretary electronically or via a commercial courier service such as UPS or Federal Express. When using substituted service on the Secretary of State, the bill:

- Allows the Secretary of State to agree to receive service of process electronically.
- Repeals the $8.75 fee payable to the Secretary of State.
- Expands the options for delivery by adding the option to use a commercial firm regularly engaged in the business of document or package delivery as an alternative to mailing.
- Requires that the party send a copy by email or other electronic means if the parties have recently and regularly used any of those means of communication.
- Requires that the party send a copy by mail or commercial delivery of the process to the last known address of the party being served.
- Requires the party to file with the court proof of delivery from the post office or commercial service, unless the party being served is actively refusing or rejecting delivery.
- Requires the party to file an affidavit showing due diligence in the search for the party being served and the need for substituted service, together with any return receipt or other proof of mailing or delivery, within 40 days after delivery to the Secretary of State. The court may extend the 40 days.
- Establishes that the date of service of substituted process is the date of delivery to the Secretary of State. The Secretary of State must maintain a record of each process delivered.

The bill also defines the due diligence necessary before resorting to substituted service on a natural person as:

[32] S. 766.106(2), F.S.

- Diligent inquiry and an honest and conscientious effort appropriate to the circumstances to acquire the information necessary to effectuate personal service;
- Reasonable use of the knowledge at the party's command, including knowledge obtained by the diligent inquiry; and
- An appropriate number of attempts to serve the party, taking into account the particular circumstances.

In making the determination as to whether the party effectuating service on a natural person used due diligence, the bill creates a rebuttable presumption that the serving party exercised due diligence by making three good faith attempts to serve the other party at each location where and during the hours when such party is likely to be found, using reasonably available resources to the party seeking to secure service of process.

The bill authorizes substituted service on the Secretary of State for nonresidents and foreign business entities doing business in Florida or an individual or business concealing its whereabouts. Under the bill, any individual or foreign business concealing its whereabouts is deemed to have appointed the Secretary of State as its agent on whom service of process may be made.

Proof of Return Service

For personal service made on an individual or party in another state or territory within the United States, a return-of-service form must be filed with the court. The return-of-service form, or any other competent evidence, must include the time, manner, and place of service.

Service in Foreign Countries

The bill creates s. 48.197, F.S., providing requirements for the service of process on a party in a foreign country. Service may be made on a party in a foreign country by any internationally agreed upon means of service whereby actual notice of the proceedings is provided. If there is no internationally agreed upon means of service, service may be made as permitted by the foreign country's law for service or as the foreign country directs in response to a letter rogatory or letter of request. Additionally, unless specifically prohibited by the laws of the foreign country, service may be made by delivering a copy of the summons and complaint to the individual or by using any type of mail which the clerk addresses and sends to the party and requires a signed receipt. Service in a foreign country may also be made pursuant to motion and order of the court by alternative means, including electronically by email or other technology.

Service upon a minor or an incompetent person in a foreign country may be made as prescribed by the foreign country's law for service in that country, as the foreign country directs in response to a letter rogatory or letter of request, or pursuant to motion and order of the court by alternative means.

Service by Alternative Means

The bill creates s. 48.102, F.S., which allows the court to authorize service via email or other electronic means, by a person authorized to serve process or by an attorney, in limited cases where traditional methods have been unsuccessful. After the serving party has shown reasonable diligence to locate and effectuate personal service of process on a business entity, the court may authorize service in any other manner that the party seeking to effectuate service shows will be reasonably effective.

Service of Notice of Intent to Initiate Litigation for Medical Negligence

The bill expands the methods by which a claimant may serve notice of intent to initiate medical negligence litigation. A claimant may provide such notice by any of the following:

- United States Postal Service (USPS) certified mail, return receipt requested;

- USPS mail with a tracking number;
- An interstate, commercial mail carrier or delivery service; or,
- A person authorized by law to serve process.

The bill also specifies that delivery to an address on file with the Department of Health, the Secretary of State, or the Agency for Health Care Administration creates a rebuttable presumption that service of the presuit notice was made. If the question of proper service is made, the court must conduct an evidentiary hearing. If service is challenged it must be challenged in the first response to the complaint. If the court determines that service was properly made and the prospective defendant proves by the greater weight of the evidence that neither they nor a person legally related to the prospective defendant knew or should have known of the service, the court must stay the case for a presuit period pursuant to s. 766.106, F.S. In such situation, the statute of limitations and statute of repose are tolled from the time service was properly made at the prospective defendant's address until the conclusion of the presuit period.

Constructive Service by Publication

The bill amends s. 49.011, F.S., to expand the cases in which service of process by publication is permitted. The bill authorizes constructive service by publication in a paternity case upon the legal mother when there is no legal father established.

Service of Process on Unknown Parties in Possession

The bill creates s. 48.184, F.S., which applies only to actions governed by s. 82.03, s. 83.21, s. 83.59, or s. 723.061, F.S., and only to the extent that those actions seek the removal of unknown parties in possession of real property. The bill permits a landowner or landlord to serve a summons for the removal of persons wrongfully occupying his or her property when such identities are unknown to the landowner or landlord. The bill allows a summons to be issued for "Unknown Parties in Possession" when filing an eviction or detainer action rather than having to identify the party in question or identifying the parties as "John Doe" and "Jane Doe." The clerk of court is required to issue a summons in the name of "Unknown Party in Possession." The property owner must make three attempts at service, one during business hours, one during nonbusiness hours, and one on a weekend.[33] On each attempt the process server must inquire as to the name of the unknown occupant. The property owner must have a copy of the process mailed by the clerk of court to the unknown party in possession at the property address and must post a copy of the process conspicuously on the property. The date of service for purposes of calculating the deadline for a defendant to file an answer is the later of the date of personal service, the date of posting on the property, or the date the clerk mails the process. If the inquiry discovers the name of the unknown person in possession, the person must be named in the pleadings. If the name is not known and the legal requirements of eviction are met, the clerk may issue a writ of possession against an unknown person and the sheriff may remove any person in the property.

Effective Date

The bill provides an effective date of January 2, 2023, except for the following two provisions, which are effective upon the bill becoming law:

- Section 16, which amends s. 766.106, F.S., service of notice of intent to initiate litigation for medical negligence.
- Section 35, which establishes the effective date of the bill.

B. SECTION DIRECTORY:

Section 1: Amends s. 15.16, F.S., relating to reproduction of records; admissibility in evidence; electronic receipt and transmission of records; certification; acknowledgement.

[33] In general, service of process may not be made on a Sunday. Section 48.20, F.S.

Section 2: Amends s. 48.061, F.S., relating to service on partnerships, limited liability partnerships, and limited partnerships.

Section 3: Amends s. 48.062, F.S., relating to service on a domestic limited liability company or registered foreign limited liability company.

Section 4: Amends s. 48.071, F.S., relating to service on agents of nonresidents doing business in the state.

Section 5: Amends s. 48.081, F.S., relating to service on a domestic corporation or registered foreign corporation.

Section 6: Amends s. 48.091, F.S., relating to partnerships, corporations, and limited liability companies; designation of registered agent and registered office.

Section 7: Amends s. 48.101, F.S., relating to service on dissolved corporations, dissolved limited liability companies, dissolved limited partnerships, and dissolved limited liability partnerships.

Section 8: Creates s. 48.102, F.S., relating to service by other means.

Section 9: Amends s. 48.151, F.S., relating to service on statutory agents for certain persons.

Section 10: Amends s. 48.161, F.S., relating to method of substituted service on nonresident.

Section 11: Amends s. 48.181, F.S., relating to substituted service on nonresidents and foreign business entities engaging in business in state or concealing their whereabouts.

Section 12: Amends s. 48.194, F.S., relating to personal service in another state, territory, or commonwealth of the United States.

Section 13: Creates s. 48.197, F.S., relating to service in a foreign country.

Section 14: Amends s. 49.011,F.S., relating to service of process by publication.

Section 15: Creates s. 48.184, F.S., relating to service of process for removal of unknown parties in possession.

Section 16: Amends s. 766.106, F.S., relating to notice before filing action for medical negligence; presuit screening period; offers for admission of liability and for arbitration; informal discovery; review.

Section 17: Amends s. 495.145, F.S., relating to forum for actions regarding registration.

Section 18: Amends s. 605.0117, F.S., relating to serving process, giving notice, or making a demand.

Section 19: Amends s. 605.09091, F.S., relating to judicial review of denial reinstatement.

Section 20: Amends s. 605.0910, F.S., relating to withdrawal and cancellation of certificate of authority.

Section 21: Amends s. 605.1045, F.S., relating to articles of conversion.

Section 22: Amends s. 607.0504, F.S., relating to serving process, giving notice, or making a demand on a corporation.

Section 23: Amends s. 607.1423, F.S., relating to judicial review of denial of reinstatement.

Section 24: Amends s. 607.15101, F.S., relating to serving process, giving notice, or making a demand on a foreign corporation.

Section 25: Amends s. 607.1520, F.S., relating to withdrawal and cancellation of certificate of authority.

Section 26: Amends s. 617.0504, F.S., relating to serving process, giving notice, or making a demand on a corporation.

Section 27: Amends s. 617.1510, F.S., relating to serving process, giving notice, or making a demand on a foreign corporation.

Section 28: Amends s. 617.1520, F.S., relating to withdrawal of foreign corporation.

Section 29: Amends s. 620.1117, F.S., relating to serving process, giving notice, or making a demand on a limited partnership or a foreign limited partnership.

Section 30: Amends s. 620.1907, F.S., relating to cancellation of certificate of authority; effect of failure to have certificate.

Section 31: Amends s. 620.2105, F.S., relating to effect of conversion.

Section 32: Amends s. 620.2109, F.S., relating to effect of merger.

Section 33: Amends s. 620.8915, F.S., relating to effect of conversion.

Section 34: Amends s. 620.8919, F.S., relating to effect of merger.

Section 35: Provides an effective date of January 2, 2023, for all sections of the bill except two.

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 lower litigation costs for plaintiffs and defendants by streamlining service of process and authorizing additional methods of service such as electronic service, courier service, or interstate delivery services.

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:

Notice which is "reasonably calculated, under all the circumstances, to apprise interested persons of the pendency of an action and afford them an opportunity to present their objections," is a fundamental requirement of due process under the Fourteenth Amendment to the United States Constitution.[34] Service of process is necessary to satisfy the due process requirement and alert the defendant that an action has been commenced against him or her and warn him or her that he or she must appear at a certain time and place to offer any defenses he or she may have.[35]

The Real Property, Probate, and Trust Law Section of the Florida Bar (RPPTL) alleges that this change will give clear notice to an unknown person occupying a dwelling that an eviction or wrongful detainer action has been initiated against them. RPPTL asserts that posting the summons and complaint on the property and mailing copies to the address of the unknown occupants is a more targeted method of giving unknown occupants constructive notice, and is more likely to provide the occupants actual notice of the action than service by publication would. As such, RPPTL argues that this proposed form of service on "unknown occupants," is more likely to withstand constitutional scrutiny than publication, which is the only existing alternative.[36]

Additionally, RPPTL believes that because an action for possession of property is an in rem or quasi in rem proceeding, no personal jurisdiction is required, and the proposed service of process procedure for unknown parties should not run afoul of any due process rights.[37]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 13, 2022, the Civil Justice and Property Rights Subcommittee adopted one strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Removes the term social media from the sections on service by alternative means.
- Limits the criteria for due diligence to only apply to service of process on an individual or natural person.
- Adds a duty of a foreign corporation to keep an updated email address on file with the Florida Secretary of State.

[34] *Mullane v. Central Hanover Bank & Trust Co*., 339 U.S. 306, 314 (1950).
[35] *Abbate v. Provident Nat'l Bank*, 631 So. 2d 312, 313 (Fla. 5th DCA 1994).
[36] Real Estate Leasing Committee of the Real Property, Probate, and Trust Law Section of the Florida Bar, *White Paper on Service of Process on Unknown Parties in Possession* (2022).
[37] *Id*. *See McDaniel v. McElvy*, 108 So. 820, 830-31 (Fla. 1926); *Hinton v. Gold*, 813 So. 2d 1057, 1059 (Fla. 4th DCA 2002).

- Clarifies that a process server delivering a presuit notice of intent to file a medical negligence action does not need to be a "certified process server."
- Clarifies that alternative means of service by email or other technology may be made by any person authorized to serve process or by an attorney.
- Requires that, for personal service in another territory or commonwealth of the U.S., a return of service form be filed with the court stating the time, manner, and place of service.
- Provides that, in medical negligence litigation cases, when the notice of intent to initiate litigation is served by a process server, the statute of limitations is tolled upon the process server's first attempt to serve the prospective defendant and continues during the 90-day period to all prospective defendants.
- Clarifies that in the section regarding medical negligence litigation, the terms prospective and potential are used interchangeably and have the same meaning.
- In paternity cases, provides for constructive service by publication against a legal mother when there is no legal father established.

This analysis is drafted to the committee substitute as passed by the Civil Justice and Property Rights Subcommittee.

A bill to be entitled

An act relating to service of process; amending s. 15.16, F.S.; authorizing the Department of State to electronically receive service of process under ch. 48, F.S.; amending s. 48.061, F.S.; revising procedures for service on partnerships, limited liability partnerships, and limited partnerships; amending s. 48.062, F.S.; defining the term "registered foreign limited liability company"; revising procedures for service on a domestic limited liability company or registered foreign limited liability company; amending s. 48.071, F.S.; providing for service on nonresidents doing business in this state by use of a commercial firm regularly engaged in the business of document or package delivery; amending s. 48.081, F.S.; defining the term "registered foreign corporation"; revising requirements for service on a domestic corporation or registered foreign corporation; amending s. 48.091, F.S.; defining terms; requiring designation of registered agents and registered offices by certain partnerships, corporations, and companies; specifying duties of a registered agent; authorizing a person serving process to serve certain persons under specified conditions; amending s. 48.101, F.S.; providing for service on

dissolved corporations, dissolved limited liability companies, dissolved limited partnerships, and dissolved limited liability partnerships; creating s. 48.102, F.S.; authorizing service by other means in certain circumstances; amending s. 48.151, F.S.; revising the applicability of provisions relating to service on statutory agents for certain persons; amending s. 48.161, F.S.; revising provisions relating to substituted service; providing for substituted service on individuals or corporations or other business entities; specifying actions that may be considered due diligence in effectuating service; specifying when service is considered effectuated; requiring the department to maintain certain records; amending s. 48.181, F.S.; defining the term "foreign business entity"; revising provisions relating to substituted service; providing for substituted service on certain nonresidents and foreign business entities and on individuals and foreign business entities concealing their whereabouts; creating s. 48.184, F.S.; providing for service of process for removal of unknown parties in possession of real property; amending s. 48.194, F.S.; revising provisions relating to service outside this state but within the United States; deleting provisions relating to service

outside the United States; amending s. 49.011, F.S.; providing for constructive service on the legal mother in certain situations; creating s. 48.197, F.S.; providing for service in a foreign country; amending s. 766.106, F.S.; revising requirements for service of presuit notice before filing a medical negligence complaint; creating a rebuttable presumption that service was received by a prospective defendant in certain circumstances; providing court duties if service is challenged during subsequent litigation; revising provisions concerning tolling of the statute of limitations upon service of presuit notice by specified means; amending ss. 495.145, 605.0117, 605.09091, 605.0910, 605.1045, 607.0504, 607.1423, 607.15101, 607.1520, 617.0504, 617.1510, 617.1520, 620.1117, 620.1907, 620.2105, 620.2109, 620.8915, and 620.8919, F.S.; conforming cross-references and provisions to changes made by the act; providing effective dates.

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

Section 1. Subsection (3) of section 15.16, Florida Statutes, is amended to read:

15.16 Reproduction of records; admissibility in evidence;

electronic receipt and transmission of records; certification; acknowledgment.—

(3) The Department of State may cause to be received electronically any records that are required or authorized to be filed with it pursuant to chapter 48, chapter 55, chapter 117, chapter 118, chapter 495, chapter 605, chapter 606, chapter 607, chapter 610, chapter 617, chapter 620, chapter 621, chapter 679, chapter 713, or chapter 865, through facsimile or other electronic transfers, for the purpose of filing such records. The originals of all such electronically transmitted records must be executed in the manner provided in paragraph (5)(b). The receipt of such electronic transfer constitutes delivery to the department as required by law. The department may use electronic transmissions for purposes of notice in the administration of chapters 48, 55, 117, 118, 495, 605, 606, 607, 610, 617, 620, 621, 679, and 713 and s. 865.09. The Department of State may collect e-mail addresses for purposes of notice and communication in the performance of its duties and may require filers and registrants to furnish such e-mail addresses when presenting documents for filing.

Section 2. Section 48.061, Florida Statutes, is amended to read:

48.061 Service on partnerships, limited liability partnerships, and limited partnerships.—

(1)(a) Process against a partnership that is not a limited

liability partnership or a limited partnership, including a limited liability limited partnership, must ~~shall~~ be served on any partner and is as valid for service on the partnership as if served on each individual partner.

1. If a partner is not available during regular business hours to accept service on behalf of the partnership, he or she may designate an employee or agent to accept such service.

2. After one attempt to serve a partner or designated employee or agent for service of process has been made, process may be served on a person in charge of the partnership during regular business hours.

(b) If the partnership designated an agent when registering as a general partnership with the Department of State, service on the agent is as valid for service on the partnership as if served on each individual partner; however, unless individual partners are served, the plaintiff may only proceed to judgment and execution against the assets of the partnership.

(2)(a) Process against a domestic limited liability partnership must first be served on the then-current registered agent for service of process specified in its statement of qualification, in its statement of qualification as amended or restated, or as redesignated in its annual report or change of agent filing and is as valid for service on the limited liability partnership as if served on each individual partner.

If service cannot be made on the registered agent because the domestic limited liability partnership ceases to have a registered agent, or if the registered agent cannot otherwise be served after one good faith attempt because of a failure to comply with this chapter or chapter 620, the process may be served on any partner.

1. If a partner is not available during regular business hours to accept service on behalf of the partnership, he or she may designate an employee to accept such service.

2. After one attempt to serve a partner or designated employee has been made, process may be served on a person in charge of the partnership during regular business hours.

(b) If, after due diligence, the process cannot be completed under paragraph (a), the process may be served as provided in s. 48.161 on the Secretary of State as an agent of the domestic limited liability partnership or by order of the court under s. 48.102.

(3)(a)1. Process against a domestic limited partnership, including a domestic limited liability limited partnership, must first be served on the then-current agent for service of process specified in its certificate of limited partnership, in its certificate as amended or restated, or as redesignated in its annual report or change of agent filing and is as valid for service on the domestic limited partnership as if served on each individual general partner of the partnership.

2. If service cannot be made on the registered agent because the domestic limited partnership or domestic limited liability limited partnership ceases to have a registered agent, or if the registered agent cannot otherwise be served following one good faith attempt because of a failure to comply with this chapter or chapter 620, the process may be served on any general partner.

3. After service on a general partner or the registered agent, the plaintiff may proceed to judgment and execution against the assets of the domestic limited partnership or of that general partner, unless the domestic limited partnership is a limited liability limited partnership.

(b) If, after due diligence, the process cannot be completed under paragraph (a), then process may be served as provided in s. 48.161 on the Secretary of State as an agent of the limited partnership or by order of the court under s. 48.102.

(4)(a) Process against a foreign limited liability partnership that was required to comply with s. 620.9102 may be served as prescribed under subsection (2).

(b) A foreign limited liability partnership engaging in business in this state but not registered is considered, for purposes of service of process, a nonresident engaging in business in this state and may be served pursuant to s. 48.181 or by order of the court under s. 48.102.

(5)(a) Process against a foreign limited partnership that was required to comply with s. 620.1902 may be served as prescribed under subsection (3).

(b) A foreign limited partnership engaging in business in this state but not registered is considered, for purposes of service of process, a nonresident engaging in business in this state and may be served pursuant to s. 48.181 or by order of the court under s. 48.102 ~~After one attempt to serve a partner or designated employee has been made, process may be served on the person in charge of the partnership during regular business hours. After service on any partner, plaintiff may proceed to judgment and execution against that partner and the assets of the partnership. After service on a designated employee or other person in charge, plaintiff may proceed to judgment and execution against the partnership assets but not against the individual assets of any partner~~.

~~(2) Process against a domestic limited partnership may be served on any general partner or on the agent for service of process specified in its certificate of limited partnership or in its certificate as amended or restated and is as valid as if served on each individual member of the partnership. After service on a general partner or the agent, the plaintiff may proceed to judgment and execution against the limited partnership and all of the general partners individually. If a general partner cannot be found in this state and service cannot~~

~~be made on an agent because of failure to maintain such an agent or because the agent cannot be found or served with the exercise of reasonable diligence, service of process may be effected by service upon the Secretary of State as agent of the limited partnership as provided for in s. 48.181. Service of process may be made under ss. 48.071 and 48.21 on limited partnerships.~~

~~(3) Process against a foreign limited partnership may be served on any general partner found in the state or on any agent for service of process specified in its application for registration and is as valid as if served on each individual member of the partnership. If a general partner cannot be found in this state and an agent for service of process has not been appointed or, if appointed, the agent's authority has been revoked or the agent cannot be found or served with the exercise of reasonable diligence, service of process may be effected by service upon the Secretary of State as agent of the limited partnership as provided for in s. 48.181, or process may be served as provided in ss. 48.071 and 48.21.~~

Section 3. Section 48.062, Florida Statutes, is amended to read:

48.062 Service on a domestic limited liability company or registered foreign limited liability company.—

(1) As used in this section, the term "registered foreign limited liability company" means a foreign limited liability company that has an active certificate of authority to transact

business in this state pursuant to a record filed with the Department of State.

(2) ~~Process against~~ A domestic limited liability company~~,~~ ~~domestic~~ or registered foreign limited liability company~~,~~ may be served with process required or authorized by law by service on its ~~the~~ registered agent designated by the domestic limited liability company or registered foreign limited liability company under chapter 605. ~~A person attempting to serve process pursuant to this subsection may serve the process on any employee of the registered agent during the first attempt at service even if the registered agent is a natural person and is temporarily absent from his or her office.~~

(3) ~~(2)~~ If service cannot be made on a registered agent of the domestic limited liability company or registered foreign limited liability company because the domestic limited liability company or registered foreign limited liability company ceases to have a registered agent, or if the registered agent of the domestic limited liability company or registered foreign limited liability company cannot otherwise be served after one good faith attempt because of a failure to comply with this chapter or chapter 605 ~~or because the limited liability company does not have a registered agent, or if its registered agent cannot with reasonable diligence be served, process against the limited liability company, domestic or foreign~~, the process may be served on any of the following:

(a) Any manager of a manager-managed domestic limited liability company or registered foreign limited liability company. ~~On a member of a member-managed limited liability company;~~

(b) Any member of a member-managed domestic limited liability company or registered foreign limited liability company. ~~On a manager of a manager-managed limited liability company; or~~

(c) Any person listed publicly by the domestic limited liability company or registered foreign limited liability company on its latest annual report, as most recently amended ~~If a member or manager is not available during regular business hours to accept service on behalf of the limited liability company, he, she, or it may designate an employee of the limited liability company to accept such service. After one attempt to serve a member, manager, or designated employee has been made, process may be served on the person in charge of the limited liability company during regular business hours~~.

(4)~~(3)~~ If, after due ~~reasonable~~ diligence, the ~~service of~~ process cannot be completed under subsection (2) and if either:

(a) The only person listed publicly by the domestic limited liability company or registered foreign limited liability company on its latest annual report, as most recently amended, is also the registered agent on whom service was attempted under subsection (2); or

(b) After due diligence, service was attempted on at least one person listed publicly by the domestic limited liability company or registered foreign limited liability company on its latest annual report, as most recently amended, and cannot be completed on such person under subsection (3) ~~(1) or subsection (2)~~,

the service of process may be served as provided in s. 48.161 on ~~effected by service upon~~ the Secretary of State as an agent of the domestic limited liability company or the registered foreign limited liability company or by order of the court under s. 48.102 ~~as provided for in s. 48.181~~.

(5)~~(4)~~ If the ~~address for the~~ registered agent or any person listed publicly by the domestic limited liability company or registered foreign limited liability company on its latest annual report, as most recently amended, has an address that ~~member, or manager~~ is a residence, a private mailbox, a virtual office, or an executive office or mini suite, service on the domestic limited liability company or registered foreign limited liability company may be made by serving any of the following:

(a) The registered agent of the domestic limited liability company or registered foreign limited liability company, in accordance with s. 48.031.

(b) Any person listed publicly by the domestic limited liability company or registered foreign limited liability

company on its latest annual report, as most recently amended, in accordance with s. 48.031.

(c) Any~~,~~ member~~,~~ or manager of the domestic limited liability company or registered foreign limited liability company, in accordance with s. 48.031.

(6) A foreign limited liability company engaging in business in this state which is not registered is considered, for purposes of service of process, a nonresident engaging in business in this state and may be served pursuant to s. 48.181 or by order of the court under s. 48.102.

(7)~~(5)~~ This section does not apply to service of process on insurance companies.

Section 4. Section 48.071, Florida Statutes, is amended to read:

48.071 Service on agents of nonresidents doing business in the state.—When any natural person or partnership not residing or having a principal place of business in this state engages in business in this state, process may be served on the person who is in charge of any business in which the defendant is engaged within this state at the time of service, including agents soliciting orders for goods, wares, merchandise, or services. Any process so served is as valid as if served personally on the nonresident person or partnership engaging in business in this state in any action against the person or partnership arising out of such business. A copy of such process with a notice of

service on the person in charge of such business must ~~shall~~ be sent forthwith to the nonresident person or partnership by registered mail; by ~~or~~ certified mail, return receipt requested; or by use of a commercial firm regularly engaged in the business of document or package delivery. The party seeking to effectuate service, or the attorney for such party, shall prepare~~.~~ an affidavit of compliance with this section which must ~~shall~~ be filed before the return day or within such further time as the court may allow.

Section 5. Section 48.081, Florida Statutes, is amended to read:

48.081 Service on a domestic corporation or registered foreign corporation.—

(1) As used in this section, the term "registered foreign corporation" means a foreign corporation that has an active certificate of authority to transact business in this state pursuant to a record filed with the Department of State.

(2) A domestic corporation or a registered foreign corporation may be served with process required or authorized by law by service on its registered agent designated by the corporation under chapter 607 or chapter 617, as applicable.

(3) If service cannot be made on a registered agent of the domestic corporation or registered foreign corporation because the domestic corporation or registered foreign corporation ceases to have a registered agent, or if the registered agent of

the domestic corporation or registered foreign corporation cannot otherwise be served after one good faith attempt because of a failure to comply with this chapter, chapter 607, or chapter 617, as applicable, the process may be served on either of the following ~~Process against any private corporation, domestic or foreign, may be served~~:

(a) The chair of the board of directors, ~~On~~ the president, any ~~or~~ vice president, the secretary, or the treasurer ~~or other head~~ of the domestic corporation or registered foreign corporation.~~;~~

(b) Any person listed publicly by the domestic corporation or registered foreign corporation on its latest annual report, as most recently amended ~~In the absence of any person described in paragraph (a), on the cashier, treasurer, secretary, or general manager;~~

~~(c) In the absence of any person described in paragraph (a) or paragraph (b), on any director; or~~

~~(d) In the absence of any person described in paragraph (a), paragraph (b), or paragraph (c), on any officer or business agent residing in the state~~.

(4) If, after due diligence, the process cannot be completed under subsection (2) and if either:

(a) The only person listed publicly by the domestic corporation or registered foreign corporation on its latest annual report, as most recently amended, is also the registered

agent on whom service was attempted under subsection (2); or

(b) After due diligence, service was attempted on at least one person listed publicly by the domestic corporation or registered foreign corporation on its latest annual report, as most recently amended, and cannot be completed on such person under subsection (3),

the process may be served as provided in s. 48.161 on the Secretary of State as an agent of the domestic corporation or registered foreign corporation or by order of the court under s. 48.102

~~(2) If a foreign corporation has none of the foregoing officers or agents in this state, service may be made on any agent transacting business for it in this state~~.

~~(3)(a) As an alternative to all of the foregoing, process may be served on the agent designated by the corporation under s. 48.091. However, if service cannot be made on a registered agent because of failure to comply with s. 48.091, service of process shall be permitted on any employee at the corporation's principal place of business or on any employee of the registered agent. A person attempting to serve process pursuant to this paragraph may serve the process on any employee of the registered agent during the first attempt at service even if the registered agent is temporarily absent from his or her office.~~

(5)~~(b)~~ If the ~~address for the~~ registered agent or any

person listed publicly by the domestic corporation or registered foreign corporation on its latest annual report, as most recently amended, has an address that ~~officer, director, or principal place of business~~ is a residence, a private mailbox, a virtual office, or an executive office or mini suite, service on the domestic corporation or registered foreign corporation may be made by serving any of the following:

(a) The registered agent of the domestic corporation or registered foreign corporation, ~~officer, or director~~ in accordance with s. 48.031.

(b) Any person listed publicly by the domestic corporation or registered foreign corporation on its latest annual report, as most recently amended, in accordance with s. 48.031.

(c) Any person serving in one of the positions specified in paragraph (3)(a), in accordance with s. 48.031.

(6) A foreign corporation engaging in business in this state which is not registered is considered, for purposes of service of process, a nonresident engaging in business in this state and may be served pursuant to s. 48.181 or by order of the court under s. 48.102.

(7)~~(4)~~ This section does not apply to service of process on insurance companies.

~~(5) When a corporation engages in substantial and not isolated activities within this state, or has a business office within the state and is actually engaged in the transaction of~~

~~business therefrom, service upon any officer or business agent while on corporate business within this state may personally be made, pursuant to this section, and it is not necessary in such case that the action, suit, or proceeding against the corporation shall have arisen out of any transaction or operation connected with or incidental to the business being transacted within the state.~~

Section 6. Section 48.091, Florida Statutes, is amended to read:

48.091 Partnerships, corporations, and limited liability companies; designation of registered agent and registered office.—

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

(a) "Registered foreign corporation" and "registered foreign limited liability company" have the same meanings as in ss. 48.081 and 48.062, respectively.

(b) "Registered foreign limited liability partnership" or "registered foreign limited partnership" means a foreign limited liability partnership or foreign limited partnership that has an active certificate of authority to transact business in this state pursuant to a record filed with the Department of State.

(2) Every domestic limited liability partnership; domestic limited partnership, including limited liability limited partnerships; domestic corporation; domestic limited liability company; registered foreign limited liability partnership;

registered foreign limited partnership, including limited liability limited partnerships; registered foreign corporation; and registered foreign limited liability company ~~Florida corporation and every foreign corporation now qualified or hereafter qualifying to transact business in this state~~ shall designate a registered agent and registered office in accordance with chapter 605, ~~part I of~~ chapter 607, chapter 617, or chapter 620, as applicable.

(3) ~~(2)~~ Every domestic limited liability partnership; domestic limited partnership, including limited liability limited partnerships; domestic corporation; domestic limited liability company; registered foreign limited liability partnership; registered foreign limited partnership, including limited liability limited partnerships; registered foreign corporation; registered foreign limited liability company; and domestic or foreign general partnership that elects to designate a registered agent shall cause the designated registered agent to ~~corporation shall~~ keep the designated registered office open from at least 10 a.m. to 12 noon each day except Saturdays, Sundays, and legal holidays, and shall cause the designated registered agent to keep one or more individuals who are, or are representatives of, the designated ~~registered agents on whom process may be served at the office during these hours. The corporation shall keep a sign posted in the office in some conspicuous place designating the name of the corporation and~~

~~the name of its~~ registered agent on whom process may be served at the office during these hours.

(4) A person attempting to serve process pursuant to this section on a registered agent that is other than a natural person may serve the process on any employee of the registered agent. A person attempting to serve process pursuant to this section on a natural person, if the natural person is temporarily absent from his or her office, may serve the process during the first attempt at service on any employee of such natural person.

(5) The registered agent shall promptly forward copies of the process and any other papers received in connection with the service to a responsible person in charge of the business entity. Failure to comply with this subsection does not invalidate the service of process.

Section 7. Section 48.101, Florida Statutes, is amended to read:

48.101 Service on dissolved corporations, dissolved limited liability companies, dissolved limited partnerships, and dissolved limited liability partnerships.—

(1) Process against the directors of any corporation that ~~which~~ was dissolved before July 1, 1990, as trustees of the dissolved corporation must ~~shall~~ be served on one or more of the directors of the dissolved corporation as trustees thereof and binds all of the directors of the dissolved corporation as

trustees thereof. ~~Process against any other dissolved corporation shall be served in accordance with s. 48.081.~~

(2)(a) Process against any other dissolved domestic corporation must be served in accordance with s. 48.081.

(b) In addition, provided that service was first properly attempted on the registered agent pursuant to s. 48.081(2), but was not successful, service may then be attempted as required under s. 48.081(3). In addition to the persons listed in s. 48.081(3), service may then be attempted on the person appointed by the circuit court as the trustee, custodian, or receiver under s. 607.1405(6).

(c) A party attempting to serve a dissolved domestic for-profit corporation under this section may petition the court to appoint one of the persons specified in s. 607.1405(6) to receive service of process on behalf of the corporation.

(3)(a) Process against any dissolved domestic limited liability company must be served in accordance with s. 48.062.

(b) In addition, provided that service was first properly attempted on the registered agent pursuant to s. 48.062(2), but was not successful, service may then be attempted as required under s. 48.062(3). In addition to the persons listed in s. 48.062(3), service on a dissolved domestic limited liability company may be made on the person appointed as the liquidator, trustee, or receiver under s. 605.0709.

(c) A party attempting to serve a dissolved domestic

limited liability company under this section may petition the court to appoint one of the persons specified in s. 605.0709(5) to receive service of process on behalf of the limited liability company.

(4) Process against any dissolved domestic limited partnership must be served in accordance with s. 48.061.

Section 8. Section 48.102, Florida Statutes, is created to read:

48.102 Service by other means.—If, after due diligence, a party seeking to effectuate service is unable to effectuate personal service of process on a domestic or foreign corporation; a domestic or foreign general partnership, including a limited liability partnership; a domestic or foreign limited partnership, including a limited liability limited partnership; or a domestic or foreign limited liability company, the court, upon motion and a showing of such inability, may authorize service in any other manner that the party seeking to effectuate service shows will be reasonably effective to give the entity on which service is sought to be effectuated actual notice of the suit. Such other manners of service may include service electronically by e-mail or other technology, by any person authorized to serve process in accordance with this chapter, or by an attorney.

Section 9. Subsection (2) of section 48.151, Florida Statutes, is amended to read:

48.151 Service on statutory agents for certain persons.—

(2) This section does not apply to substituted service of process under s. 48.161 or s. 48.181 ~~on nonresidents~~.

Section 10. Section 48.161, Florida Statutes, is amended to read:

48.161 Method of substituted service on nonresident.—

(1) When authorized by law, substituted service of process on a nonresident individual or a corporation or other business entity incorporated or formed under the laws of any other state, territory, or commonwealth, or the laws of any foreign country, may ~~or a person who conceals his or her whereabouts by serving a public officer designated by law shall~~ be made by sending ~~leaving~~ a copy of the process to the office of the Secretary of State by personal delivery; by registered mail; ~~with a fee of $8.75 with the public officer or in his or her office or by mailing the copies~~ by certified mail, return receipt requested; by use of a commercial firm regularly engaged in the business of document or package delivery; or by electronic transmission ~~to the public officer with the fee~~. The service is sufficient service on a party that ~~defendant who~~ has appointed or is deemed to have appointed the Secretary of State ~~a public officer~~ as such party's ~~his or her~~ agent for ~~the~~ service of process. The Secretary of State shall keep a record of all process served on the Secretary of State showing the day and hour of service.

(2) Notice of service and a copy of the process must ~~shall~~

be sent forthwith by the party effectuating service or by such party's attorney by registered mail; by ~~registered or~~ certified mail, return receipt requested; or by use of a commercial firm regularly engaged in the business of document or package delivery. In addition, if the parties have recently and regularly used e-mail or other electronic means to communicate between themselves, the notice of service and a copy of the process must be sent by such electronic means or, if the party is being served by substituted service, the notice of service and a copy of the process must be served at such party's last known physical address and, if applicable, last known electronic address. The party effectuating service shall file proof of service or return receipts showing delivery to the other party by mail or courier and by electronic means, if electronic means were used, unless the party is actively refusing or rejecting the delivery of the notice. An ~~by the plaintiff or his or her attorney to the defendant, and the defendant's return receipt and the~~ affidavit of compliance of the party effectuating service ~~plaintiff~~ or such party's ~~his or her~~ attorney must ~~of compliance shall~~ be filed within 40 days after ~~on or before~~ the date ~~return day~~ of service on the Secretary of State ~~process~~ or within such additional time as the court allows. The affidavit of compliance must set forth the facts that justify substituted service under this section and that show due diligence was exercised in attempting to locate and effectuate personal

service on the party before using substituted service under this section. The party effectuating service does not need to allege in its original or amended complaint the facts required to be set forth in the affidavit of compliance.

(3) When an individual or a business entity conceals its whereabouts, the party seeking to effectuate service, after exercising due diligence to locate and effectuate personal service, may use substituted service pursuant to subsection (1) in connection with any action in which the court has jurisdiction over such individual or business entity. The party seeking to effectuate service must also comply with subsection (2); however, a return receipt or other proof showing acceptance of receipt of the notice of service and a~~, or the notice and~~ copy of the ~~shall be served on the defendant, if found within the state, by an officer authorized to serve legal~~ process by the concealed party need not be filed~~, or if found without the state, by a sheriff or a deputy sheriff of any county of this state or any duly constituted public officer qualified to serve like process in the state or jurisdiction where the defendant is found. The officer's return showing service shall be filed on or before the return day of the process or within such time as the court allows. The fee paid by the plaintiff to the public officer shall be taxed as cost if he or she prevails in the action. The public officer shall keep a record of all process served on him or her showing the day and hour of service~~.

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

(4)(a) The party effectuating service is considered to have used due diligence if that party:

1. Made diligent inquiry and exerted an honest and conscientious effort appropriate to the circumstances to acquire the information necessary to effectuate personal service;

2. In seeking to effectuate personal service, reasonably employed the knowledge at the party's command, including knowledge obtained pursuant to subparagraph 1.; and

3. Made an appropriate number of attempts to serve the party, taking into account the particular circumstances.

(b) In making the determination as to whether the party effectuating service of process on any party who is a natural person used due diligence, there is a rebuttable presumption that the serving party exercised due diligence by making three good faith attempts to serve the other party during such times when and such locations where such party is reasonably likely to be found, as determined through resources reasonably available to the party seeking to secure service of process.

(5) ~~(2)~~ If any individual ~~person~~ on whom service of process is authorized under subsection (1) dies, service may be made in the same manner on his or her administrator, executor, curator, or personal representative ~~in the same manner~~.

(6) ~~(4)~~ The Secretary of State ~~public officer~~ may designate an individual ~~some other person~~ in his or her office to accept service.

(7) Service of process is effectuated under this section on the date the service is received by the Department of State.

(8) The Department of State shall maintain a record of each process served pursuant to this section and record the time of and the action taken regarding the service.

(9)~~(3)~~ This section does not apply to persons on whom service is authorized under s. 48.151.

Section 11. Section 48.181, Florida Statutes, is amended to read:

48.181 Substituted service on nonresidents and foreign business entities ~~nonresident~~ engaging in business in state or concealing their whereabouts.—

(1) As used in this section, the term "foreign business entity" means any corporation or other business entity that is incorporated, formed, or existing under the laws of any other state, territory, or commonwealth, or the laws of any foreign country.

(2) The acceptance by any individual ~~person or persons, individually or associated together as a copartnership or any other form or type of association,~~ who is a resident ~~are residents~~ of any other state, territory, or commonwealth, or of any foreign ~~or~~ country, or by any foreign business entity ~~and all foreign corporations, and any person who is a resident of the state and who subsequently becomes a nonresident of the state or conceals his or her whereabouts,~~ of the privilege

extended by law to nonresidents ~~and others~~ to operate, conduct, engage in, or carry on a business or business venture in this ~~the~~ state, or to have an office or agency in this ~~the~~ state, is deemed to constitute ~~constitutes~~ an appointment by the individual or ~~persons and~~ foreign business entity ~~corporations~~ of the Secretary of State of this ~~the~~ state as its ~~their~~ agent on whom ~~all~~ process in any action or proceeding against the individual or foreign business entity ~~them~~, or any combination thereof ~~of them~~, arising out of any transaction or operation connected with or incidental to the business or business venture may be served as substituted service in accordance with this chapter. The acceptance of the privilege is signification of the agreement of the respective individual or ~~persons and~~ foreign business entity ~~corporations~~ that the process served against it in accordance with this chapter ~~them which is so served~~ is of the same validity as if served personally on the individual ~~persons~~ or foreign business entity ~~corporations~~.

(3) ~~(2)~~ If a foreign business entity ~~corporation~~ has registered to do business ~~a resident agent or officer~~ in this ~~the~~ state and has maintained its registration in an active status or otherwise continued to have a registered agent, personal service of process must first ~~shall~~ be attempted ~~served~~ on the foreign business entity in the manner and order of priority described in this chapter as applicable to the foreign business entity. If, after due diligence, the party seeking to

effectuate service of process is unable to effectuate service of process on the registered agent or other official as provided in this chapter, the party may use substituted service of process on the Secretary of State ~~resident agent or officer~~.

(4) Any individual or foreign business entity that conceals its whereabouts is deemed to have appointed the Secretary of State as its agent on whom all process may be served in any action or proceeding against it, or any combination thereof, arising out of any transaction or operation connected with or incidental to any business or business venture carried on in this state by such individual or foreign business entity.

(5)~~(3)~~ Any individual or foreign business entity that ~~person, firm, or corporation which~~ sells, consigns, or leases by any means whatsoever tangible or intangible personal property, through brokers, jobbers, wholesalers, or distributors to any individual ~~person~~, ~~firm, or~~ corporation, or other business entity in this state is conclusively presumed to be both engaged in substantial and not isolated activities within this state and operating, conducting, engaging in, or carrying on a business or business venture in this state.

(6) Service pursuant to this section must be effectuated in the manner prescribed by s. 48.161.

Section 12. Section 48.184, Florida Statutes, is created to read:

48.184 Service of process for removal of unknown parties in possession.—

(1) This section applies only to actions governed by s. 82.03, s. 83.21, s. 83.59, or s. 723.061 and only to the extent that such actions seek relief for the removal of unknown parties in possession of real property. The provisions of this section are cumulative to other provisions of law or rules of court about service of process, and all other such provisions are cumulative to this section.

(2) A summons must be issued in the name of "Unknown Party in Possession" when the name of an occupant of real property is not known to the plaintiff and the property occupied by the unknown party is identified in the complaint and summons. A separate summons must be issued for each such unknown occupant.

(3) The plaintiff shall attempt to serve the summons on any unknown occupant of the property described in the summons and complaint. If service on the unknown occupant is not effectuated on the first attempt, at least two additional attempts must be made. The three attempts to obtain service must be made once during business hours, once during nonbusiness hours, and once during a weekend. The process server shall make an inquiry as to the name of the unknown occupant at the time of service. The return of service must note the name of the occupant if obtained by the process server or state that the name of the occupant could not be obtained after inquiry. If the

name of the occupant becomes known to the plaintiff through the return of service or otherwise, without notice or hearing thereon, all subsequent proceedings must be conducted under the true name of such occupant and all prior proceedings are deemed amended accordingly.

(4) Service of process must also be made on unknown occupants by both of the following means:

(a) By attaching the summons and complaint to a conspicuous location on the premises involved in the proceedings.

(b) Upon issuance of the summons, by the plaintiff providing the clerk of the court with one additional copy of the summons and complaint for each unknown occupant and a prestamped envelope for each unknown occupant addressed to the unknown occupant at the address of the premises involved in the proceedings. The clerk of the court shall immediately mail a copy of the summons and complaint by first-class mail, note the fact of mailing in the docket, and file a certificate in the court file of the fact and date of mailing. The clerk of the court shall charge such fees for such services as provided by law.

(5) Service is effective on the unknown occupant in possession on the later of the date that personal service is made, the date of attaching the summons and complaint to a conspicuous location on the premises, or upon mailing by the

clerk.

(6) The judgment and writ of possession must refer to any unknown occupant in possession by name if the name is shown on the return of service or is otherwise known to the plaintiff. If the name of any unknown occupant in possession is not shown on the return of service or otherwise known to the plaintiff and service has been effectuated as provided in this section, the judgment and writ of possession must refer to each such person as "Unknown Party in Possession," and the writ of possession must be executed by the sheriff by dispossessing the occupants and placing the plaintiff in possession of the property.

Section 13. Subsections (1) and (2) of section 48.194, Florida Statutes, are amended to read:

48.194 Personal service in another ~~outside~~ state, territory, or commonwealth of the United States.—

(1) Except as otherwise provided herein, service of process on a party in another ~~persons outside of this~~ state, territory, or commonwealth of the United States must ~~shall~~ be made in the same manner as service within this state by any person authorized to serve process in the state where service shall be made ~~the person is served~~. No order of court is required. A ~~court may consider the~~ return-of-service form described in s. 48.21, or any other competent evidence, shall be filed with the court stating the time, manner, and place of service. The court may consider such evidence in determining

whether service has been properly made. ~~Service of process on persons outside the United States may be required to conform to the provisions of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.~~

(2) When ~~Where~~ in rem or quasi in rem relief is sought in a foreclosure proceeding as defined by s. 702.09, and the address of the person to be served is known, service of process on a person in another state, territory, or commonwealth ~~outside~~ of the United States ~~this state where the address of the person to be served is known~~ may be made by registered mail as follows:

(a) The party's attorney or the party, if the party is not represented by an attorney, shall place a copy of the original process and the complaint, petition, or other initial pleading or paper and, if applicable, the order to show cause issued pursuant to s. 702.10 in a sealed envelope with adequate postage addressed to the person to be served.

(b) The envelope must ~~shall~~ be placed in the mail as registered mail.

(c) Service under this subsection is deemed ~~shall be considered~~ obtained upon the signing of the return receipt by the person allowed to be served by law.

Section 14. Subsection (15) of section 49.011, Florida Statutes, is amended to read:

49.011 Service of process by publication; cases in which

allowed.—Service of process by publication may be made in any court on any party identified in s. 49.021 in any action or proceeding:

(15) To determine paternity, but only as to:

(a) The legal father in a paternity action in which another man is alleged to be the biological father, in which case it is necessary to serve process on the legal father in order to establish paternity with regard to the alleged biological father; or

(b) The legal mother when there is no legal father.

Section 15. Section 48.197, Florida Statutes, is created to read:

48.197 Service in a foreign country.—

(1) Service of process may be effectuated in a foreign country upon a party, other than a minor or an incompetent person, as provided in any of the following:

(a) By any internationally agreed-upon means of service reasonably calculated to give actual notice of the proceedings, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

(b) If there is no internationally agreed-upon means of service, or if an international agreement allows but does not specify other means, by a method reasonably calculated to give actual notice of the proceedings:

1. As prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

2. As the foreign authority directs in response to a letter rogatory or letter of request; or

3. Unless prohibited by the foreign country's law, by:

a. If serving an individual, delivering a copy of the summons and of the complaint to the individual personally; or

b. Using any form of mail which the clerk addresses and sends to the party and which requires a signed receipt.

(c) Pursuant to motion and order by the court, by other means, including electronically by e-mail or other technology, which the party seeking service shows is reasonably calculated to give actual notice of the proceedings and is not prohibited by international agreement, as the court orders.

(2) Service of process may be effectuated in a foreign country upon a minor or an incompetent person in the manner prescribed by subparagraph (1)(b)1., subparagraph (1)(b)2., or paragraph (1)(c).

Section 16. Effective upon this act becoming a law, subsection (2), paragraph (a) of subsection (3), and subsection (4) of section 766.106, Florida Statutes, are amended to read:

766.106 Notice before filing action for medical negligence; presuit screening period; offers for admission of liability and for arbitration; informal discovery; review.—

(2) PRESUIT NOTICE.—

(a) After completion of presuit investigation pursuant to s. 766.203(2) and before ~~prior to~~ filing a complaint for medical negligence, a claimant shall notify each prospective defendant of intent to initiate litigation for medical negligence by at least one of the following verifiable means:

1. United States Postal Service certified mail, return receipt requested;

2. United States Postal Service mail with a tracking number;

3. An interstate commercial mail carrier or delivery service; or

4. Any person authorized by law to serve process.

(b)1. Proof of service made pursuant to this subsection and delivered to an address on file with the Department of Health, the Secretary of State, or the Agency for Health Care Administration creates a rebuttable presumption that service was received by the prospective defendant.

2. If service is challenged during subsequent litigation, an evidentiary hearing must be held by the court to determine whether the prospective defendant or a person legally related to the prospective defendant was provided notice pursuant to this subsection and, if so, the date of such service. If service is challenged under this subparagraph, it must be challenged in the first response to the complaint, and if:

a. The court determines that service was properly made at the prospective defendant's address as listed on the state licensing agency website or an address on file with the Secretary of State; and

b. The prospective defendant proves by the greater weight of the evidence that neither the prospective defendant nor a person legally related to the prospective defendant at the time of service knew or should have known of the service,

the court shall stay the case for a presuit investigation period pursuant to s. 766.106 and the statute of limitations and statute of repose shall be tolled from the time service was properly made at the prospective defendant's address as listed on the state licensing agency website or an address on file with the Secretary of State. The tolling shall end at the conclusion of the presuit investigation period provided for in this subsection and the stay of litigation shall automatically end at the conclusion of the presuit investigation period ~~by certified mail, return receipt requested, of intent to initiate litigation for medical negligence~~.

(c) Notice to each prospective defendant must include, if available, a list of all known health care providers seen by the claimant for the injuries complained of subsequent to the alleged act of negligence, all known health care providers during the 2-year period before ~~prior to~~ the alleged act of

negligence who treated or evaluated the claimant, copies of all of the medical records relied upon by the expert in signing the affidavit, and the executed authorization form provided in s. 766.1065.

(d) ~~(b)~~ Following the initiation of a suit alleging medical negligence with a court of competent jurisdiction, and service of the complaint upon a prospective defendant, the claimant shall provide a copy of the complaint to the Department of Health and, if the complaint involves a facility licensed under chapter 395, the Agency for Health Care Administration. The requirement of providing the complaint to the Department of Health or the Agency for Health Care Administration does not impair the claimant's legal rights or ability to seek relief for his or her claim. The Department of Health or the Agency for Health Care Administration shall review each incident that is the subject of the complaint and determine whether it involved conduct by a licensee which is potentially subject to disciplinary action, in which case, for a licensed health care practitioner, ~~the provisions of~~ s. 456.073 applies ~~apply~~ and, for a licensed facility, ~~the provisions of~~ part I of chapter 395 applies ~~apply~~.

(3) PRESUIT INVESTIGATION BY PROSPECTIVE DEFENDANT.—

(a) A ~~no~~ suit may not be filed for a period of 90 days after notice is delivered ~~mailed~~ to any prospective defendant. During the 90-day period, the prospective defendant or the

prospective defendant's insurer or self-insurer shall conduct a review as provided in s. 766.203(3) to determine the liability of the prospective defendant. Each insurer or self-insurer shall have a procedure for the prompt investigation, review, and evaluation of claims during the 90-day period. This procedure must ~~shall~~ include one or more of the following:

1. Internal review by a duly qualified claims adjuster;

2. Creation of a panel comprised of an attorney knowledgeable in the prosecution or defense of medical negligence actions, a health care provider trained in the same or similar medical specialty as the prospective defendant, and a duly qualified claims adjuster;

3. A contractual agreement with a state or local professional society of health care providers, which maintains a medical review committee; or

4. Any other similar procedure which fairly and promptly evaluates the pending claim.

Each insurer or self-insurer shall investigate the claim in good faith, and both the claimant and prospective defendant shall cooperate with the insurer in good faith. If the insurer requires, a claimant must ~~shall~~ appear before a pretrial screening panel or before a medical review committee and shall submit to a physical examination, if required. Unreasonable failure of any party to comply with this section justifies

dismissal of claims or defenses. There shall be no civil liability for participation in a pretrial screening procedure if done without intentional fraud.

(4) SERVICE OF PRESUIT NOTICE AND TOLLING.—The notice of intent to initiate litigation must ~~shall~~ be served within the time limits set forth in s. 95.11. However, upon mailing of the notice of intent to initiate litigation, as provided in subparagraph (2)(a)1., subparagraph (2)(a)2., or subparagraph (2)(a)3., and during the 90-day period provided in subsection (3), the statute of limitations is tolled as to all prospective ~~potential~~ defendants. If the notice of intent to initiate litigation is served by a process server, as provided in subparagraph (2)(a)4., the statute of limitations is tolled upon the process server's first attempt to serve the prospective defendant and continues during the 90-day period as to all prospective defendants. Upon stipulation by the parties, the 90-day period may be extended and the statute of limitations is tolled during any such extension. Upon receiving notice of termination of negotiations in an extended period, the claimant shall have 60 days or the remainder of the period of the statute of limitations, whichever is greater, within which to file suit. As used in this section, the terms "prospective" and "potential" are interchangeable as synonyms.

Section 17. Section 495.145, Florida Statutes, is amended to read:

495.145 Forum for actions regarding registration.—An action seeking cancellation of a registration of a mark registered under this chapter may be brought in any court of competent jurisdiction in this state. Service of process on a nonresident registrant may be made in accordance with ss. 48.161 and 48.181 ~~s. 48.181~~. The department may ~~shall~~ not be made a party to cancellation proceedings.

Section 18. Section 605.0117, Florida Statutes, is amended to read:

605.0117 Serving ~~Service of~~ process, giving notice, or making a demand.—

(1) Process against a limited liability company or registered foreign limited liability company may be served in accordance with s. 48.062 and chapter 48 or chapter 49 ~~with process required or authorized by law by serving on its registered agent~~.

~~(2) If a limited liability company or registered foreign limited liability company ceases to have a registered agent or if its registered agent cannot with reasonable diligence be served, the process required or permitted by law may instead be served:~~

~~(a) On a member of a member-managed limited liability company or registered foreign limited liability company; or~~

~~(b) On a manager of a manager-managed limited liability company or registered foreign limited liability company.~~

~~(3) If the process cannot be served on a limited liability company or registered foreign limited liability company pursuant to subsection (1) or subsection (2), the process may be served on the secretary of state as an agent of the company.~~

~~(4) Service of process on the secretary of state may be made by delivering to and leaving with the department duplicate copies of the process.~~

~~(5) Service is effectuated under subsection (3) on the date shown as received by the department.~~

~~(6) The department shall keep a record of each process served pursuant to this section and record the time of and the action taken regarding the service.~~

(2)~~(7)~~ Any notice or demand on a limited liability company or registered foreign limited liability company under this chapter may be given or made to any member of a member-managed limited liability company or registered foreign limited liability company or to any manager of a manager-managed limited liability company or registered foreign limited liability company; to the registered agent of the limited liability company or registered foreign limited liability company at the registered office of the limited liability company or registered foreign limited liability company in this state; or to any other address in this state which ~~that~~ is in fact the principal office of the limited liability company or registered foreign limited liability company in this state.

(3) A registered series of a foreign series limited liability company may be served in the same manner as a registered limited liability company.

(4) ~~(8)~~ This section does not affect the right to serve process, give notice, or make a demand in any other manner provided by law.

Section 19. Subsection (1) of section 605.09091, Florida Statutes, is amended to read:

605.09091 Judicial review of denial of reinstatement.—

(1) If the department denies a foreign limited liability company's application for reinstatement after revocation of its certificate of authority, the department must ~~shall~~ serve the foreign limited liability company, pursuant to s. 605.0117(2) ~~s. 605.0117(7)~~, with a written notice that explains the reason or reasons for the denial.

Section 20. Paragraphs (f) and (g) of subsection (1) and subsection (2) of section 605.0910, Florida Statutes, are amended to read:

605.0910 Withdrawal and cancellation of certificate of authority.—

(1) To cancel its certificate of authority to transact business in this state, a foreign limited liability company must deliver to the department for filing a notice of withdrawal of certificate of authority. The certificate of authority is canceled when the notice becomes effective pursuant to s.

605.0207. The notice of withdrawal of certificate of authority must be signed by an authorized representative and state the following:

(f) A mailing address and an e-mail address to which a party seeking to effectuate service of process ~~the department~~ may send ~~mail~~ a copy of any process served on the Secretary of State under paragraph (e).

(g) A commitment to notify the department in the future of any change in its mailing address or e-mail address.

(2) After the withdrawal of the foreign limited liability company is effective, service of process on the Secretary of State using the procedures set forth in s. 48.161 ~~under this section~~ is service on the foreign limited liability company. ~~Upon receipt of the process, the department shall mail a copy of the process to the foreign limited liability company at the mailing address set forth under paragraph (1)(f).~~

Section 21. Paragraph (f) of subsection (2) of section 605.1045, Florida Statutes, is amended to read:

605.1045 Articles of conversion.—

(2) The articles of conversion must contain the following:

(f) If the converted entity is a foreign entity that does not have a certificate of authority to transact business in this state, a mailing address and an e-mail address to which a party seeking to effectuate service of process ~~the department~~ may send any process served on the Secretary of State ~~department~~ pursuant

to s. 605.0117 and chapter 48.

Section 22. Section 607.0504, Florida Statutes, is amended to read:

607.0504 Serving ~~Service of~~ process, giving notice, or making a demand on a corporation.—

(1) A corporation may be served with process required or authorized by law in accordance with s. 48.081 and chapter 48 or chapter 49 ~~by serving on its registered agent~~.

~~(2) If a corporation ceases to have a registered agent or if its registered agent cannot with reasonable diligence be served, the process required or permitted by law may instead be served on the chair of the board, the president, any vice president, the secretary, or the treasurer of the corporation at the principal office of the corporation in this state.~~

~~(3) If the process cannot be served on a corporation pursuant to subsection (1) or subsection (2), the process may be served on the secretary of state as an agent of the corporation.~~

~~(4) Service of process on the secretary of state shall be made by delivering to and leaving with the department duplicate copies of the process.~~

~~(5) Service is effectuated under subsection (3) on the date shown as received by the department.~~

~~(6) The department shall keep a record of each process served on the secretary of state pursuant to this subsection and record the time of and the action taken regarding the service.~~

(2)~~(7)~~ Any notice or demand on a corporation under this chapter may be given or made to the chair of the board, the president, any vice president, the secretary, or the treasurer of the corporation; to the registered agent of the corporation at the registered office of the corporation in this state; or to any other address in this state which ~~that~~ is in fact the principal office of the corporation in this state.

(3)~~(8)~~ This section does not affect the right to serve process, give notice, or make a demand in any other manner provided by law.

Section 23. Subsection (1) of section 607.1423, Florida Statutes, is amended to read:

607.1423 Judicial review of denial of reinstatement.—

(1) If the department denies a corporation's application for reinstatement after administrative dissolution, the department must ~~shall~~ serve the corporation under ~~either~~ s. 607.0504(1) ~~or (2)~~ with a written notice that explains the reason or reasons for denial.

Section 24. Section 607.15101, Florida Statutes, is amended to read:

607.15101 Serving ~~Service of~~ process, giving notice, or making a demand on a foreign corporation.—

(1) A foreign corporation may be served with process required or authorized by law in accordance with s. 48.081 and chapter 48 or chapter 49 ~~by serving on its registered agent~~.

~~(2) If a foreign corporation ceases to have a registered agent or if its registered agent cannot with reasonable diligence be served, the process required or permitted by law may instead be served on the chair of the board, the president, any vice president, the secretary, or the treasurer of the foreign corporation at the principal office of the foreign corporation in this state.~~

~~(3) If the process cannot be served on a foreign corporation pursuant to subsection (1) or subsection (2), the process may be served on the secretary of state as an agent of the foreign corporation.~~

~~(4) Service of process on the secretary of state may be made by delivering to and leaving with the department duplicate copies of the process.~~

~~(5) Service is effectuated under subsection (3) on the date shown as received by the department.~~

~~(6) The department shall keep a record of each process served on the secretary of state pursuant to this section and record the time of and the action taken regarding the service.~~

(2)~~(7)~~ Any notice or demand on a foreign corporation under this chapter may be given or made~~:~~ to the chair of the board, the president, any vice president, the secretary, or the treasurer of the foreign corporation; to the registered agent of the foreign corporation at the registered office of the foreign corporation in this state; or to any other address in this state

which ~~that~~ is in fact the principal office of the foreign corporation in this state.

(3)~~(8)~~ This section does not affect the right to serve process, give notice, or make a demand in any other manner provided by law.

Section 25. Paragraphs (f) and (g) of subsection (1) and subsection (2) of section 607.1520, Florida Statutes, are amended to read:

607.1520 Withdrawal and cancellation of certificate of authority for foreign corporation.—

(1) To cancel its certificate of authority to transact business in this state, a foreign corporation must deliver to the department for filing a notice of withdrawal of certificate of authority. The certificate of authority is canceled when the notice of withdrawal becomes effective pursuant to s. 607.0123. The notice of withdrawal of certificate of authority must be signed by an officer or director and state the following:

(f) A mailing address and an e-mail address to which a party seeking to effectuate service of process ~~the secretary of state~~ may send ~~mail~~ a copy of any process served on the Secretary of State under paragraph (e).

(g) A commitment to notify the department in the future of any change in its mailing address or e-mail address.

(2) After the withdrawal of the foreign corporation is effective, service of process on the Secretary of State using

the procedures in s. 48.161 ~~under this section~~ is service on the foreign corporation. ~~Upon receipt of the process, the secretary of state shall mail a copy of the process to the foreign corporation at the mailing address set forth under paragraph (1)(f).~~

Section 26. Subsections (1) and (3) of section 617.0504, Florida Statutes, are amended to read:

617.0504 Serving ~~Service of~~ process, giving notice, or making a demand on a corporation.—

(1) Process against any corporation may be served in accordance with s. 48.081 and chapter 48 or chapter 49.

(3) This section does not prescribe the only means, or necessarily the required means, of serving process, giving notice, or making a demand on a corporation.

Section 27. Section 617.1510, Florida Statutes, is amended to read:

617.1510 Serving ~~Service of~~ process, giving notice, or making a demand on a foreign corporation.—

(1) Process against a foreign corporation may be served in accordance with s. 48.081 and chapter 48 or chapter 49 ~~The registered agent of a foreign corporation authorized to conduct its affairs in this state is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation~~.

~~(2) A foreign corporation may be served by registered or~~

~~certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent annual report if the foreign corporation:~~

~~(a) Has no registered agent or its registered agent cannot with reasonable diligence be served;~~

~~(b) Has withdrawn from conducting its affairs in this state under s. 617.1520; or~~

~~(c) Has had its certificate of authority revoked under s. 617.1531.~~

~~(3) Service is perfected under subsection (2) at the earliest of:~~

~~(a) The date the foreign corporation receives the mail;~~

~~(b) The date shown on the return receipt, if signed on behalf of the foreign corporation; or~~

~~(c) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.~~

~~(4) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation. Process against any foreign corporation may also be served in accordance with chapter 48 or chapter 49.~~

(2)~~(5)~~ Any notice to or demand on a foreign corporation made pursuant to this act may be made in accordance with the procedures for notice to or demand on domestic corporations

under s. 617.0504.

Section 28. Subsections (2) and (3) of section 617.1520, Florida Statutes, are amended to read:

617.1520 Withdrawal of foreign corporation.—

(2) A foreign corporation authorized to conduct its affairs in this state may apply for a certificate of withdrawal by delivering an application to the Department of State for filing. The application must ~~shall~~ be made on forms prescribed and furnished by the Department of State and must ~~shall~~ set forth all of the following:

(a) The name of the foreign corporation and the jurisdiction under the law under ~~of~~ which it is incorporated.~~;~~

(b) That it is not conducting its affairs in this state and that it surrenders its authority to conduct its affairs in this state.~~;~~

(c) That it revokes the authority of its registered agent to accept service on its behalf and appoints the Secretary of State ~~Department of State~~ as its agent for service of process based on a cause of action arising during the time it was authorized to conduct its affairs in this state.~~;~~

(d) A mailing address and an e-mail address to which a party seeking to effectuate service of process ~~the Department of State~~ may send ~~mail~~ a copy of any process served on it under paragraph (c).~~; and~~

(e) A commitment to notify the Department of State in the

future of any change in its mailing address or e-mail address.

(3) After the withdrawal of the corporation is effective, service of process in accordance with s. 48.161 ~~on the Department of State under this section~~ is service on the foreign corporation. ~~Upon receipt of the process, the Department of State shall mail a copy of the process to the foreign corporation at the mailing address set forth under subsection (2).~~

Section 29. Section 620.1117, Florida Statutes, is amended to read:

620.1117 Serving ~~Service of~~ process, giving notice, or making a demand on a limited partnership or a foreign limited partnership.—

(1) Service of process on a limited partnership or foreign limited partnership must be made in accordance with s. 48.061 and chapter 48 or chapter 49 ~~A registered agent appointed by a limited partnership or foreign limited partnership is an agent of the limited partnership or foreign limited partnership for service of any process, notice, or demand required or permitted by law to be served upon the limited partnership or foreign limited partnership~~.

(2) Any notice or demand on a limited partnership or foreign limited partnership under this chapter may be given or made to any general partner of the limited partnership or foreign limited partnership, to the registered agent of the

limited partnership or foreign limited partnership at the registered office in this state, or to any other address in this state which is in fact the principal office of the limited partnership or foreign limited partnership in this state ~~If a limited partnership or foreign limited partnership does not appoint or maintain a registered agent in this state or the registered agent cannot with reasonable diligence be found at the address of the registered office, the Department of State shall be an agent of the limited partnership or foreign limited partnership upon whom process, notice, or demand may be served~~.

~~(3) Service of any process, notice, or demand on the Department of State may be made by delivering to and leaving with the Department of State duplicate copies of the process, notice, or demand.~~

~~(4) Service is effected under subsection (3) upon the date shown as having been received by the Department of State.~~

~~(5) The Department of State shall keep a record of each process, notice, and demand served pursuant to this section and record the time of, and the action taken regarding, the service.~~

(3)~~(6)~~ This section does not affect the right to serve process, give notice, or make a demand in any other manner provided by law.

Section 30. Subsection (5) of section 620.1907, Florida Statutes, is amended to read:

620.1907 Cancellation of certificate of authority; effect

of failure to have certificate.—

(5) If a foreign limited partnership transacts business in this state without a certificate of authority or cancels its certificate of authority, it may be served under s. 48.061(5)(b) ~~the foreign limited partnership shall appoint the Department of State as its agent for service of process for rights of action arising out of the transaction of business in this state~~.

Section 31. Subsections (3) and (4) of section 620.2105, Florida Statutes, are amended to read:

620.2105 Effect of conversion.—

(3) A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting limited partnership, if before the conversion the converting limited partnership was subject to suit in this state on the obligation. A converted organization that is a foreign organization and not authorized to transact business in this state appoints the Secretary of State ~~Department of State~~ as its agent for service of process for purposes of enforcing an obligation under this subsection and any appraisal rights of limited partners under ss. 620.2113-620.2124 to the extent applicable to the conversion. Service on the Secretary of State ~~Department of State~~ under this subsection is made in the same manner and with the same consequences as in ss. 48.161 and 620.1117 ~~s. 620.1117(3) and (4)~~.

(4) A copy of the statement of conversion, certified by the Secretary of State ~~Department of State~~, may be filed in any county of this state in which the converting organization holds an interest in real property.

Section 32. Subsection (2) of section 620.2109, Florida Statutes, is amended to read:

620.2109 Effect of merger.—

(2) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by a constituent organization, if before the merger the constituent organization was subject to suit in this state on the obligation. A surviving organization that is a foreign organization and not authorized to transact business in this state shall appoint the Secretary of State ~~Department of State~~ as its agent for service of process for the purposes of enforcing an obligation under this subsection and any appraisal rights of limited partners under ss. 620.2113-620.2124 to the extent applicable to the merger. Service on the Secretary of State ~~Department of State~~ under this subsection is made in the same manner and with the same consequences as in ss. 48.161 and 620.1117 ~~s. 620.1117(3) and (4)~~.

Section 33. Subsections (3) and (4) of section 620.8915, Florida Statutes, are amended to read:

620.8915 Effect of conversion.—

(3) A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting partnership, if before the conversion the converting partnership was subject to suit in this state on the obligation. A converted organization that is a foreign organization and not authorized to transact business in this state shall appoint the Secretary of State ~~Department of State~~ as its agent for service of process for purposes of enforcing an obligation under this subsection. Service on the Secretary of State ~~Department of State~~ under this subsection is ~~shall be~~ made in the same manner and with the same consequences as provided in s. 48.161 ~~s. 48.181~~.

(4) A copy of the certificate of conversion, certified by the Secretary of State ~~Department of State~~, may be filed in any county of this state in which the converting organization holds an interest in real property.

Section 34. Subsection (2) of section 620.8919, Florida Statutes, is amended to read:

620.8919 Effect of merger.—

(2) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by a constituent organization, if before the merger the constituent organization was subject to suit in this state on the obligation. A surviving organization that is a foreign organization and not authorized

to transact business in this state shall appoint the Secretary of State ~~Department of State~~ as its agent for service of process pursuant to s. 48.161 ~~the provisions of s. 48.181~~.

Section 35. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect January 2, 2023.

HB 667

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 667 Department of Business and Professional Regulation
SPONSOR(S): McClain
TIED BILLS: **IDEN./SIM. BILLS:** SB 714

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee		Wright	Anstead
2) State Administration & Technology Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The Department of Business and Professional Regulation (DBPR) is responsible for licensing and regulating various businesses and professions throughout the state, including asbestos professionals, mold-related professionals, electrical contractors, public lodging establishments, and public food service establishments.

Related to mold-related professional licensing regulations, the bill provides a pathway for a person who holds a license in another state to obtain a Florida license.

Related to asbestos professional licensing regulations, the bill:
- provides a limited pathway for a person who holds a license in another state to obtain a Florida license, and
- removes the requirement to show limits of bondability and credit to demonstrate financial stability as required for initial licensure.

Related to electrical contractors licensing regulations, the bill allows certain local electrical and alarm contractors to be licensed statewide.

Related to pugilistic exhibitions, the bill removes the maximum participant weight differential requirement for all exhibition matches. This will allow any exhibition to include participants who are not in the same weight category.

Related to public lodging establishments and public food service establishments, the bill:
- requires licensees to submit certain documents, fees, and communications online;
- requires licensees to provide an email address for primary communication with DBPR;
- allows notices to be served to the operator of a licensed establishment via email, in addition to in-person service and registered mail;
- allows the guest registry at a transient public lodging establishment to be kept online, and guests are no longer required to sign the registry;
- allows 2-year renewals on licenses, instead of only one-year renewals; and
- removes the requirement for a staggered initial license fee schedule.

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

The bill has a negative fiscal impact on state government and no impact on local governments. The loss of revenue for the Division of Hotels and Restaurants over three fiscal years would be an estimated $5,097,633. *See* Fiscal Analysis & Economic Impact Statement.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Department of Business and Professional Regulation

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

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

The Division of Professions licenses and regulates various professions through 12 professional boards, five programs, and one council, including the: [2]

- Asbestos Licensing Unit,
- Electrical Contractors' Licensing Board (ECLB), and
- Mold-Related Services Program.

The Division of Regulation is the enforcement authority for Labor Organizations and Business Agents, the Florida Athletic Commission (FAC), Farm Labor Program, Child Labor Program, and any professional boards and programs housed within Professions.[3]

The Division of Hotels and Restaurants under DBPR (H&R) licenses, inspects and regulates public lodging and food service establishments in Florida.[4]

Mold-Related Services

Background

Mold assessors and mold remediators are regulated by part XVI of ch. 468, F.S., and licensed by the Mold-Related Services Licensing Program in DBPR.

"Mold assessment" means a process performed by a mold assessor that includes the physical sampling and detailed evaluation of data obtained from a building history and inspection to formulate an initial hypothesis about the origin, identity, location, and extent of amplification of mold growth of greater than 10 square feet.[5]

[1] s. 20.165, F.S.
[2] Florida Department of Business and Professional Regulation, *Division of Professions*, http://www.myfloridalicense.com/DBPR/division-of-professions/ (last visited Jan. 14, 2022).
[3] Except the Board of Architecture and Interior Design, and the Florida Board of Professional Engineers. Florida Department of Business and Professional Regulation, *Division of Regulation*, http://www.myfloridalicense.com/DBPR/division-of-regulation/ (last visited Jan. 14, 2022).
[4] Florida Department of Business and Professional Regulation, Division of Hotels and Restaurants, http://www.myfloridalicense.com/DBPR/hotels-restaurants/ (last visited Jan. 14, 2022).
[5] S. 468.8411(3), F.S.

"Mold remediation" means the removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, of mold or mold-contaminated matter of greater than 10 square feet that was not purposely grown at that location; however, it may not include work that requires a contractor license under Ch. 489, F.S.[6]

In order to be licensed as a mold assessor or mold remediator, an applicant must:

- be of good moral character,
- pass the required DBPR-approved examination offered by a nationally recognized organization that certifies persons in the specialty of mold assessment or mold remediation,
- have required liability insurance, and
- complete either:
  - at least a 2-year associate of arts degree with certain course requirements, and a minimum of 1 year of experience; or
  - a high school diploma or the equivalent with a minimum of 4 years of experience.[7]

A person who is licensed in another state is eligible for a license by endorsement in Florida if they:[8]

- are of good moral character;
- hold required general liability insurance;
- hold a valid license to practice as a mold assessor or mold remediator in another state or territory of the United States whose educational requirements are substantially equivalent to Florida; and
- have passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the required Florida examination.

Applicants for a mold-related license pay an initial licensure fee of $230. There are currently 2,700 licensed mold assessors and 2,727 licensed mold remediators in the state.[9]

Effect of the Bill

The bill allows applicants who hold a mold-related license in another state to obtain a license by endorsement in Florida, if they have held a valid license to practice in another state or territory of the United States for at least 10 years before the date of application, without needing to take a Florida-specific examination or training.

Such applications for a Florida license by endorsement must be made either when the applicant's license in another state or territory is active or within 2 years of when such license was last active.

The bill clarifies the provision relating to licensure examination requirements.

Asbestos Consultants and Contractors

Background

Asbestos consultants and contractors are regulated by Ch. 469, F.S., and licensed by the Asbestos Licensing Unit in DBPR. Florida licensing standards must also comply with the United States Environmental Agency Asbestos Model Accreditation Plan for States (MAP), which includes mandatory nationwide standards for testing and education.[10]

"Asbestos abatement" means the removal, encapsulation, enclosure, or disposal of asbestos.[11]

[6] S. 468.8411(5), F.S.
[7] S. 468.8413(2), F.S.
[8] S. 468.8414(3), (4), F.S.
[9] Email from Cody McCloud, Legislative Affairs Director, Department of Business and Professional Regulation, RE: HB 667 (Jan. 6, 2022).
[10] 40 CFR § 763 Subp. E App. C.
[11] S. 469.001(1), F.S.

An asbestos consultant may:

- conduct an asbestos survey,
- develop an operation and maintenance plan,
- monitor and evaluate asbestos abatement, and
- prepare asbestos abatement specifications.[12]

An asbestos contractor may perform the work of an asbestos consultant and also conduct asbestos abatement work.[13]

In order to be eligible to be licensed as an asbestos consultant or contractor, an applicant must meet one of the following criteria:[14]

- hold a current, valid, active license as an architect issued under Ch. 481, F.S.;
- hold a current, valid, active license as a professional engineer issued under Ch. 471, F.S.,
- hold a current, valid, active license as a professional geologist under Ch. 492, F.S.;
- be a diplomat of the American Board of Industrial Hygiene; or
- have been awarded designation as a Certified Safety Professional by the Board of Certified Safety Professionals.

An applicant for licensure as either an asbestos consultant or contractor must also:[15]

- if applying for an asbestos consultant license, complete DBPR-approved courses in the following topics:
  - building asbestos surveys and mechanical systems,
  - asbestos management planning,
  - respiratory protection, and
  - project designer.
- if applying for an asbestos contractor license, complete courses in the following topics:
  - asbestos contractor/supervisor, and
  - respiratory protection.
- provide evidence of satisfactory work on 10 asbestos projects within the last 5 years,
- provide evidence of financial stability, and
- pass the DBPR-approved examination.

In order to determine financial stability and adopt standards in related rules,[16] DBPR must use both the applicant's credit history and **limits of bondability and credit**.[17]

There is no provision which specifically allows or addresses licenses by endorsement for asbestos licensees of other states.

Applicants for an asbestos license pay a business license fee of $555, an initial licensure fee of $555, and an examination fee of $340.[18] There are currently 119 licensed asbestos contractors and 106 licensed asbestos consultants in the state.[19] DBPR has averaged 33 asbestos applications per year over the last three fiscal years.[20]

Effect of the Bill

The bill allows applicants who hold an asbestos license in another state license to obtain a license by endorsement in Florida if they have:

- passed a written examination in any state that meets the requirements of MAP,

[12] S. 469.003, F.S.
[13] S. 469.003(3), F.S.
[14] S. 469.004(1), F.S.
[15] S. 469.005, F.S.
[16] The standards for determining an applicant's financial stability can be found in rule 61E1-4.002, F.A.C.
[17] S. 469.006(2)(c)2., F.S.
[18] R. 61E1-3.001, F.A.C.
[19] DBPR, *supra* note 9.
[20] Department of Business and Professional Regulation, Agency Analysis of 2022 Senate Bill 714, p. 9 (Jan. 14, 2022).

- held a license as an asbestos consultant or asbestos contractor issued by another state or territory of the United States for at least 10 years,
- demonstrated financial stability, and
- completed the required DBPR-approved courses.

Such applicants must apply while they hold an active license in another state or territory, or within 2 years after such license was last active.

The bill removes the requirement that applicants show **limits of bondability and credit** in order to prove financial stability. Applicants will still need to provide their credit history to meet financial stability standards.

Electrical Contractors

Background

Statewide electrical, alarm system, and specialty contractors are regulated by part II of Ch. 489, F.S., and licensed and regulated by the ECLB within DBPR.[21] An electrical contractor engages in business as a contractor or performs electrical or alarm work for compensation.[22]

Electrical contractors may work on electrical wiring, fixtures, appliances, apparatus, raceways, and conduits which generate, transmit, transform, or utilize electrical energy in any form. The scope of an electrical contractor's license includes alarm system work.[23]

Alarm system contractors may lay out, fabricate, install, maintain, alter, repair, monitor, inspect, replace, or service burglary, fire, robbery, or medical emergency alarm systems.[24]

In order to become a certified electrical, alarm system, or specialty contractor, an applicant must:[25]

- be at least 18 years of age;
- be of good moral character;
- pass the certification examination;
- have workers' compensation insurance or an exemption, and public liability and property damage insurance; and
- meet certain training and education criteria.

A registered contractor is an individual that have taken and passed a local competency examination and can practice the specific category of contracting for which they are approved, only in the local jurisdiction for which the license is issued.[26] Locally registered contractors that are required to hold a contracting license to practice their profession in accordance with state law must register with DBPR after obtaining a local license.[27]

Section 489.514, F.S., created a pathway that allowed registered local electrical and alarm contractors who met certain criteria to have their local registration converted into a certified statewide license by the ECLB. The provision required applicants to apply by November 1, 2021, and is thus is no longer available for use by local registered contractors. This provision is commonly referred to as the "grandfathering provision."

Any registered contractor wishing to have their license "grandfathered" into a certified license had to submit a completed application to the ECLB, pay an appropriate fee, and show evidence of the following criteria:

[21] S. 489.507, F.S.
[22] S. 489.505(9), F.S.
[23] Ss. 489.505(12) & 489.537(7), F.S.
[24] S. 489.505(1)-(2), F.S.
[25] S. 489.511(1) & (4), F.S.
[26] S. 489.505(21)-(23), F.S.
[27] S. 489.513, F.S.

- currently holds a valid registered local license in the certification of electrical contractor, alarm system contractor, or electrical specialty contractor sought;
- has, for the certification category sought, passed a written, proctored examination that the ECLB finds to be substantially similar to the examination required to be licensed as a certified contractor;
- has at least 5 years of experience as a contractor in the certification category sought, or as an inspector or building administrator with oversight over that category. For contractors, only time periods in which the contractor license is active and the contractor is not on probation shall count toward the required 5 years;
- has not had the contractor's license revoked at any time, suspended in the last 5 years, or assessed a fine in excess of $500 in the last 5 years; and
- has the required workers' compensation insurance or an exemption, and public liability and property damage insurance.[28]

DBPR received 766 applications from local electrical and alarm contractors for a statewide license during the last period of grandfathering, from July 1, 2019, through November 1, 2021.[29]

Effect of the Bill

The bill reopens the grandfathering provision for locally registered electrical, alarm system, and specialty contractors to obtain licensure as statewide certified contractors without an expiration date.

Pugilistic Exhibitions

Background

Chapter 548, F.S., governs the FAC under DBPR. The function of the FAC is to license and regulate pugilistic events and matches, including professional boxing, kickboxing, and mixed martial arts. The FAC ensures that all matches are conducted in accordance with provisions of state laws and rules.

A match participant, manager, trainer, second, timekeeper, referee, judge, announcer, physician,[30] matchmaker, or promoter must be licensed by FAC before directly or indirectly acting in such capacity in connection with any match. In order to obtain a license, an applicant must:[31]

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

An "exhibition" is a boxing, kickboxing, or mixed martial arts engagement in which persons participating show or display their skill without necessarily striving to win using strikes and blows to the head or other full-contact maneuvers.[32] Participants in an exhibition, except one held solely for training purposes, must weigh within 12 pounds of each other.[33]

Effect of the Bill

The bill removes the maximum participant weight differential requirement for all exhibition matches. This will allow any exhibition to include participants that are more than 12 pounds from each other.

Hotels and Restaurants

[28] S. 489.514, F.S.
[29] DBPR, *supra* note 20, at 9.
[30] A physician must be licensed pursuant to chapter 458 or chapter 459, must maintain a license in good standing, and must demonstrate satisfactory medical training or experience in boxing. S. 548.017, F.S.
[31] S. 548.021, F.S.
[32] S. 548.002(8), F.S.
[33] S. 548.043(2), F.S.

"Public lodging establishment" includes:[34]

- "Transient public lodging establishments," which means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days, or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests; and
- "Nontransient public lodging establishments," which means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

Classifications of public lodging establishments include hotels, motels, vacation rentals, apartments, bed and breakfast inns, and timeshare projects.[35]

"Public food service establishments" means any building, vehicle, place, or structure, or any room or division thereof, where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption, with certain exceptions.[36]

Classifications of public food service establishments include permanent food service restaurants, catering services, mobile food dispensing vehicles, vending machines, theme park carts, culinary education programs, and temporary food service events.[37]

Electronic Communications - Background

While H&R has rulemaking authority to adopt rules to implement Ch. 509, F.S., H&R does not have authority to adopt rules to require electronic submissions for any required document or fee from a licensee, or for H&R to require online communications with a licensee.[38] There is also no statutory requirement that such documents, fees or communications be transmitted online or for licensees to give an email address to H&R.[39]

Notices that are served by H&R must be delivered to the operator of a licensed establishment by an H&R agent or by registered mail. If H&R is unable to effect service, the notice may be conspicuously posted at the licensee's establishment.[40] Inspection reports may be served via electronic means.

Each transient public lodging establishment is required to maintain a register of guests who occupy rental units in the establishment. The guests must also sign the registry. There is not a specific allowance that the registry may be kept in an electronic format.

Electronic Communications – Effect of the Bill

The bill gives rulemaking authority to H&R to adopt rules to mandate that certain documents, fees, and communications must be made online. H&R may prescribe requirements and procedures for exemptions due to technological or financial hardship.

The bill requires all H&R licensees to provide an email address to function as the primary method of communication with H&R.

[34] S. 509.013(4), F.S.
[35] S. 509.242, F.S.
[36] S. 509.013(5), F.S.
[37] R. 61C-1.002, F.A.C.; Florida Department of Business and Professional Regulation, *Hotels and Restaurants – Licensing Guides*, http://www.myfloridalicense.com/DBPR/hotels-restaurants/licensing/licensing-guides/ (last visited Jan. 14, 2022).
[38] S. 509.032, F.S.
[39] S. 509.091, F.S.
[40] S. 509.091(1), F.S.

The bill allows H&R to serve notices to the operator of a licensed establishment via email, in addition to in-person service and registered mail.

The bill allows the guest registry at a transient public lodging establishment to be kept online, and guests are no longer required to sign the registry.

Licensure Fees- Background

Each public lodging establishment and public food service establishment must obtain a license from H&R. Licenses are renewed annually, and H&R must adopt a rule establishing a staggered schedule for license renewals.[41]

The staggered initial license fee schedules require such establishments applying for an initial license to pay the full license fee if the application is made during the annual renewal period or more than 6 months before the next such renewal period, and one-half of the fee if the application is made 6 months or less before the next renewal period.[42] For example: if an applicant is applying for a hotel license with between 26 and 50 rental units, the initial license fee is $215, but if such applicant is applying for the license less than 6 months before the beginning of the next renewal period, the initial license fee is $112.50. Such applicant will need to pay the full annual fee when the next renewal period begins.[43]

H&R adopts, by rule, a schedule of fees to be paid by each public lodging establishment and public food service establishment for the issuance or renewal of a license. Such fees are based on the number of rental units in the public lodging establishment, and based on seating capacity and services offered for public food service establishments. Licenses must be renewed annually.[44] License fees generally range from $91 for a temporary food vendor to $357 for a hotel with 501 or more rental units.[45]

Licensure Fees- Effect of the Bill

The bill removes the requirement for a staggered initial license fee schedule for public lodging establishments and public food service establishments, and instead provides for an initial license that may be renewed for one or two years. Applications for licensure must be made on forms provided by H&R, and H&R must adopt rules for license issuance and renewal.

The bill provides that license renewal fees for public lodging establishments must be based on the number of rental units in the establishment and whether the renewal is for one or two years. License renewal fees for public food service establishments must be based on the classification of the license and whether the renewal is for one or two years.

The bill provides that the statutory maximum fee for a public lodging establishment for a two-year renewal is set at $2,000, which is double the currently allowed maximum for annual renewals. The statutory maximum fee for a public food service establishment for a two-year renewal is set at $800, which is double the currently allowed maximum for annual renewals.

The bill clarifies that all fees be must be paid by the applicant when the license application is submitted to H&R.

B. SECTION DIRECTORY:

[41] S. 509.241(1), F.S.
[42] S. 509.251(1), (2), F.S.
[43] S. 509.251(1), (2), F.S.; Department of Business and Professional Regulation, *Hotel and Restaurants – Hotel-Motel Guide*, http://www.myfloridalicense.com/DBPR/hotels-restaurants/licensing/hotels-and-restaurants-hotel-motel-guide/ (last visited Jan. 14, 2022).
[44] S. 509.251(1), (2), F.S.
[45] R. 61C-1.008, F.A.C.

Section 1 Amends s. 468.8414, F.S., revising licensure requirements for mold assessors and remediators.
Section 2 Amends s. 469.004, F.S., revising licensure requirements for asbestos consultants and contractors.
Section 3 Amends s. 469.006, F.S., revising licensure requirements for asbestos consultants and contractors.
Section 4 Amends s. 489.514, F.S., removing a deadline for an electrical contractor licensing provision.
Section 5 Amends s. 509.032, F.S., providing rulemaking authority for electronic form submissions for hotels and restaurants.
Section 6 Amends s. 509.091, F.S, revising requirements for hotel and restaurant inspection reports.
Section 7 Amends s. 509.101, F.S., revising requirements for hotel guest registries.
Section 8 Amends s. 509.241, F.S., revising fee schedules for public lodging establishments and public food service establishments.
Section 9 Amends s. 509.251, F.S., revising fee schedules for public lodging establishments and public food service establishments.
Section 10 Amends s. 548.043, F.S., revising participant weights differentials for certain pugilistic exhibitions.
Section 11 Reenacts s. 509.102, F.S.
Section 12 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

DBPR expects the following fiscal impacts on revenues:[46]

Division of Hotels and Restaurants
Based on internal projections for FY 2022-23, the bill would reduce H&R's license revenue by approximately 6%.

Under the current license fee structure, about 58% of new applicants pay an initial license fee for some fraction of time and then pay H&R again to renew their license within the same fiscal year.

Under the bill, H&R will collect a slightly larger initial license fee and a lower amount of renewal fees during the first year of licensure for each new license. The bill would eliminate half year prorating of license fees, replacing it with a full year which slightly increases revenue, but results in a true "annual license" from the start with no same fiscal year renewals.

Overall, based on internal projections for FY 2022-23, the initiative would reduce license revenue by $1,652,302, or roughly 6%. The figures assume a 2.81% annual growth rate in H&R license revenue.

	FY22-23	FY23-24	FY24-25
Estimated Division License Revenue	$25,634,761	$26,355,779	$27,097,076
Estimated Revenue Reduction	$(1,652,302)	$(1,698,775)	$(1,746,556)
% Change	- 6%	- 6%	- 6%

H&R is unable to predict how many licensees will choose a 2-year license or renewal, so it is unknown how the 2-year option would affect revenue.

[46] DBPR, *supra* note 20, at 6-7.

Division of Professions
The fiscal impact is indeterminate. There is a maximum $399,056 of potential grandfathering fee revenue over the next three years based on the number of based on the potential number of applicants of currently registered local contractors.

2. Expenditures:

Division of Hotels & Restaurants
There is an anticipated reduction in the 8% service charge to General Revenue due to a reduction in license fees and possible reduction in postage expenditures.[47]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Local governments could see an insignificant decrease in revenues associated with renewal and reciprocity fees if eligible registered contractors choose to apply for the grandfathering provision created in the bill for ECLB licensees.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There may be a positive impact on the private sector by expanding the geographical scope of practice for those registered electrical contractors that choose to take advantage of the grandfathering provision. Thus, making more electrical contractors available to work across the state.

The removal of the bond and credit limitation proof requirement will likely reduce costs to asbestos applicants.

The bill will likely generally reduce license fees paid by food and lodging licensees during their first 12 months of licensure. DBPR estimates licensees will save about $1.65 million in FY 22-23. The decrease comes from eliminating the staggered schedule and outdated prorating system which in turn provides new licensees with a full year of licensure. Under the current license fee structure, new applicants often pay for a new license and pay to renew their license within the same fiscal year.[48]

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:

[47] DBPR, *supra* note 20, at 7.
[48] *Id*.

The bill will require DBPR to amend rules related to asbestos licensing standards and pugilistic exhibition requirements.

The bill gives rulemaking authority to H&R to adopt rules relating to electronic communications and license issuance and renewal.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Department of Business and Professional Regulation; amending s. 468.8414, F.S.; requiring the department to certify for licensure qualified individuals who practice mold assessment or mold remediation and hold certain licenses issued by other states or territories; requiring applications to be filed within a specified timeframe after such licensure; amending s. 469.004, F.S.; providing an exception for the issuance of an asbestos consultant's license; requiring the department to certify asbestos consultants and asbestos contractors for licensure who meet certain exam and other state licensure requirements; requiring applications to be filed within a specified timeframe after such licensure; requiring asbestos consultants and asbestos contractors to complete certain courses; amending s. 469.006, F.S.; revising the financial responsibility criteria the department must use when issuing consulting or contracting licenses; amending s. 489.514, F.S.; removing a time limitation for applying for certain contracting licenses under certain provisions; amending s. 509.032, F.S.; authorizing the Division of Hotels and Restaurants of the department to adopt rules for certain electronic submissions and

exemptions; amending s. 509.091, F.S.; requiring licensees and licensed agents to provide the division with e-mail addresses for contact with the division; authorizing the division to deliver notices and inspection reports by e-mail; amending s. 509.101, F.S.; revising the maintenance requirements an operator must meet for a transient establishment's guest register; amending s. 509.241, F.S.; providing for the expiration of public lodging establishment and public food service establishment licenses; authorizing the licenses to be renewed for specified timeframes; requiring the division to provide forms for license renewals and license applications; amending s. 509.251, F.S.; revising the public lodging establishment and public food service establishment license fees to include an option for 2-year renewals; limiting the fees the division may charge for a 2-year license renewal; requiring license fees to be paid in full at the time of application; amending s. 548.043, F.S.; deleting a requirement limiting the types of boxing exhibitions which require a specified maximum difference in participant weights; reenacting s. 509.102(2), F.S., relating to mobile food dispensing vehicles, to incorporate the amendment made to s. 509.251, F.S., in a reference thereto; providing an

effective date.

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

Section 1. Subsection (3) of section 468.8414, Florida Statutes, is amended to read:

468.8414 Licensure.—

(3) The department shall certify as qualified for a license by endorsement an applicant who is of good moral character, who has the insurance coverage required under s. 468.8421, and who:

(a) Is qualified to take the examination as set forth in s. 468.8413 and has passed a certification examination offered by a nationally recognized organization that certifies persons in the specialty of mold assessment or mold remediation, and the department ~~that~~ has ~~been~~ approved the certification examination ~~by the department~~ as being substantially equivalent to the requirements of this part and s. 455.217; ~~or~~

(b) Holds a valid license to practice mold assessment or mold remediation issued by another state or territory of the United States if the criteria for issuance of the license were substantially the same as the licensure criteria ~~that is~~ established by this part as determined by the department; or

(c) Has held a valid license to practice mold assessment or mold remediation issued by another state or territory of the

United States for at least 10 years before the date of application. The application for licensure must be made either when the license in the other state or territory is active or within 2 years after such license was last active.

Section 2. Subsection (3) of section 469.004, Florida Statutes, is renumbered as subsection (4), subsection (1) is amended, and a new subsection (3) is added to that section, to read:

469.004 License; asbestos consultant; asbestos contractor.—

(1) All asbestos consultants must be licensed by the department. Except for an asbestos consultant's license issued by endorsement as provided under subsection (3) or otherwise expressly provided by law, an asbestos consultant's license may be issued only to an applicant who holds a current, valid, active license as an architect issued under chapter 481; holds a current, valid, active license as a professional engineer issued under chapter 471; holds a current, valid, active license as a professional geologist issued under chapter 492; is a diplomat of the American Board of Industrial Hygiene; or has been awarded designation as a Certified Safety Professional by the Board of Certified Safety Professionals.

(3) The department shall certify as qualified for licensure by endorsement any individual applying for licensure who has passed a written examination that meets the requirements

of the United States Environmental Protection Agency Asbestos Model Accreditation Plan, has held a valid license to practice as an asbestos consultant or asbestos contractor issued by another state or territory of the United States for at least 10 years before the date of application, and is applying for the same or similar license in the state, subject to ss. 469.005(5) and 469.006. The application for licensure must be made either when the license in the other state or territory is active or within 2 years after such license was last active. Asbestos consultants and asbestos contractors must complete courses as required by s. 469.005(2) or (3), respectively, to qualify for licensure by endorsement.

Section 3. Paragraph (c) of subsection (2) of section 469.006, Florida Statutes, is amended to read:

469.006 Licensure of business organizations; qualifying agents.—

(2)

(c) As a prerequisite to the issuance of a license under this section, the applicant shall submit the following:

1. An affidavit on a form provided by the department attesting that the applicant has obtained workers' compensation insurance as required by chapter 440, public liability insurance, and property damage insurance, in amounts determined by department rule. The department shall establish by rule a procedure to verify the accuracy of such affidavits based upon a

random sample method.

2. Evidence of financial responsibility. The department shall adopt rules to determine financial responsibility which ~~shall~~ specify grounds on which the department may deny licensure. Such criteria must ~~shall~~ include, but not be limited to, credit history ~~and limits of bondability and credit~~.

Section 4. Subsection (3) of section 489.514, Florida Statutes, is amended to read:

489.514 Certification for registered contractors; grandfathering provisions.—

~~(3) An applicant must make application by November 1, 2021, to be licensed pursuant to this section.~~

Section 5. Subsection (6) of section 509.032, Florida Statutes, is amended to read:

509.032 Duties.—

(6) RULEMAKING AUTHORITY.—The division shall adopt such rules as are necessary to carry out ~~the provisions of~~ this chapter. The division may adopt rules requiring electronic submission of any form, document, or fee as required by this chapter. The division may prescribe by rule requirements and procedures for an individual to obtain an exemption due to a technological or financial hardship.

Section 6. Section 509.091, Florida Statutes, is amended to read:

509.091 Notices; form and service.—

(1) All licensees and licensed agents must provide an e-mail address to the division to function as the primary method of contact for all communication with the division.

(2) Each notice or inspection report served by the division pursuant to this chapter must be in writing and must be delivered personally by an agent of the division, be sent by e-mail, or mailed ~~by registered letter~~ to the operator of the public lodging establishment or public food service establishment. If the operator refuses to accept service or evades service or the agent is otherwise unable to effect service after due diligence, the division may post such notice or inspection report in a conspicuous place at the establishment.

~~(2) Notwithstanding subsection (1), the division may deliver lodging inspection reports and food service inspection reports to the operator of the public lodging establishment or public food service establishment by electronic means.~~

Section 7. Subsection (2) of section 509.101, Florida Statutes, is amended to read:

509.101 Establishment rules; posting of notice; food service inspection report; maintenance of guest register; mobile food dispensing vehicle registry.—

(2) It is the duty of each operator of a transient establishment to maintain at all times a register of~~, signed by or for~~ guests who occupy rental units within the establishment,

showing the dates upon which the rental units were occupied by such guests and the rates charged for their occupancy. Each operator shall maintain this register ~~shall be maintained~~ in chronological order, shall make the register ~~and~~ available for inspection by the division at any time, and may keep the register in an electronic format. Operators need not make available registers that ~~which~~ are more than 2 years old.

Section 8. Section 509.241, Florida Statutes, is amended to read:

509.241 Licenses required; exceptions.—

(1) LICENSES; ~~ANNUAL~~ RENEWALS.—Each public lodging establishment and public food service establishment shall obtain a license from the division. Such license may not be transferred from one place or individual to another. It is ~~shall be~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for such an establishment to operate without a license. Local law enforcement shall provide immediate assistance in pursuing an illegally operating establishment. The division may refuse a license, or a renewal thereof, to any establishment ~~that is~~ not constructed and maintained in accordance with law and with the rules of the division. The division may refuse to issue a license, or a renewal thereof, to any establishment an operator of which, within the preceding 5 years, has been adjudicated guilty of, or has forfeited a bond when charged with, any crime reflecting on professional

character, including soliciting for prostitution, pandering, letting premises for prostitution, keeping a disorderly place, or illegally dealing in controlled substances as defined in chapter 893, whether in this state or in any other jurisdiction within the United States, or has had a license denied, revoked, or suspended pursuant to s. 429.14. Licenses expire if not renewed before the expiration date and may be renewed for 1 or 2 years. Licenses must ~~shall~~ be renewed using forms provided by ~~annually, and~~ the division. The division shall adopt a rule establishing procedures ~~a staggered schedule~~ for license issuance and renewals. If any license expires while administrative charges are pending against the license, the proceedings against the license must ~~shall~~ continue to conclusion as if the license were still in effect.

(2) APPLICATION FOR LICENSE.—Each person who plans to open a public lodging establishment or a public food service establishment must ~~shall~~ apply for and receive a license from the division using forms provided by the division before commencing ~~prior to the commencement of~~ operation. A condominium association, as defined in s. 718.103, which does not own any units classified as vacation rentals or timeshare projects under s. 509.242(1)(c) or (g) is not required to apply for or receive a public lodging establishment license.

(3) DISPLAY OF LICENSE.—Any license issued by the division shall be conspicuously displayed in the office or lobby of the

licensed establishment. Public food service establishments that ~~which~~ offer catering services shall display their license number on all advertising for catering services.

Section 9. Subsections (1) and (2) of section 509.251, Florida Statutes, are amended to read:

509.251 License fees.—

(1) The division shall adopt~~,~~ by rule~~,~~ a schedule of fees to be paid by each public lodging establishment as a prerequisite to issuance or renewal of a license. Initial license ~~Such~~ fees must ~~shall~~ be based on the number of rental units in the establishment. License renewal fees must be based on the number of rental units in the establishment and whether the renewal is for 1 or 2 years. The aggregate fee per establishment charged any public lodging establishment may not exceed $1,000 for a 1-year license or $2,000 for a 2-year license; however, the fees described in paragraphs (a) and (b) may not be included as part of the aggregate fee subject to this cap. Vacation rental units or timeshare projects within separate buildings or at separate locations but managed by one licensed agent may be combined in a single license application, and the division must ~~shall~~ charge a license fee as if all units in the application are in a single licensed establishment. ~~The fee schedule shall require an establishment which applies for an initial license to pay the full license fee if application is made during the annual renewal period or more than 6 months~~

~~before the next such renewal period and one-half of the fee if application is made 6 months or less before such period.~~ The fee schedule must ~~shall~~ include fees collected for the purpose of funding the Hospitality Education Program, pursuant to s. 509.302. All fees~~, which~~ are payable in full for each application at the time ~~regardless of when~~ the application is submitted.

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

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

(2) The division shall adopt~~,~~ by rule~~,~~ a schedule of fees to be paid by each public food service establishment as a prerequisite to issuance or renewal of a license. Initial license fees must be based on the classification of the license. License renewal fees must be based on the classification of the license and whether a renewal is for 1 or 2 years. The fee schedule must ~~shall~~ prescribe a base ~~basic~~ fee and additional fees based on seating capacity and services offered. The aggregate fee per establishment charged any public food service

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

establishment may not exceed $400 for a 1-year license or $800 for a 2-year license; however, the fees described in paragraphs (a) and (b) may not be included as part of the aggregate fee subject to this cap. ~~The fee schedule shall require an establishment which applies for an initial license to pay the full license fee if application is made during the annual renewal period or more than 6 months before the next such renewal period and one-half of the fee if application is made 6 months or less before such period.~~ The fee schedule must ~~shall~~ include fees collected for the purpose of funding the Hospitality Education Program, pursuant to s. 509.302. All fees~~,~~ ~~which~~ are payable in full for each application at the time ~~regardless of when~~ the application is submitted.

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

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

Section 10. Subsection (2) of section 548.043, Florida Statutes, is amended to read:

548.043 Weights and classes, limitations; gloves.—

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

(2) The commission shall establish by rule the acceptable difference in weight between participants; however, the maximum difference in weight in boxing matches may ~~shall~~ not exceed 12 pounds, except matches in the cruiserweight and heavyweight classes and exhibitions ~~held solely for training purposes~~.

Section 11. For the purpose of incorporating the amendment made by this act to section 509.251, Florida Statutes, in a reference thereto, subsection (2) of section 509.102, Florida Statutes, is reenacted to read:

509.102 Mobile food dispensing vehicles; preemption.—

(2) Regulation of mobile food dispensing vehicles involving licenses, registrations, permits, and fees is preempted to the state. A municipality, county, or other local governmental entity may not require a separate license, registration, or permit other than the license required under s. 509.241, or require the payment of any license, registration, or permit fee other than the fee required under s. 509.251, as a condition for the operation of a mobile food dispensing vehicle within the entity's jurisdiction. A municipality, county, or other local governmental entity may not prohibit mobile food dispensing vehicles from operating within the entirety of the entity's jurisdiction.

Section 12. This act shall take effect July 1, 2022.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 831 Licensure Requirements for Land Surveyors and Mappers
SPONSOR(S): Mariano
TIED BILLS: **IDEN./SIM. BILLS:** SB 1286

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

SUMMARY ANALYSIS

Chapter 472, F.S., governs the practice of land surveying and mapping in Florida. Through the Florida Board of Professional Surveyors and Mappers (Board), the Department of Agriculture and Consumer Services (DACS) licenses and regulates professional surveyors and mappers in the state. Current law provides education and experience prerequisites that must be met in order to be eligible to take the licensure examination to practice as a surveyor and mapper.

Currently, applicants must have a bachelor's degree in surveying and mapping and four or more years of responsible work experience under a professional surveyor in order to take the licensure examination. Applicants with a bachelor's degree in a course of study other than surveying and mapping must have six or more years of work experience under a professional surveyor, five of which must have been in responsible charge of the work performed. These applicants must also complete a minimum of 25 semester hours from a college or university approved by the board in surveying and mapping related subjects in order to take the licensure examination.

In addition, exiled foreign-trained professionals must have graduated with an appropriate college degree from a college or university and lawfully practiced the profession for at least three years in order to take the licensure examination.

The bill:

- Allows applicants with an associate degree and six or more years of responsible work experience under a professional surveyor and mapper to be eligible to take the licensure examination.
- Allows applicants with a high school diploma or equivalent and six or more years of responsible work experience under a professional surveyor and mapper to be eligible to take the licensure examination.
- Allows applicants who hold a license to practice in another state with two years of experience in the active practice of mapping to be eligible to take the licensure examination.
- Allows applicants with a registered apprenticeship certificate in surveying and mapping and an experience record of two or more years in the active practice of mapping to be eligible to take the licensure examination.

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

The effective date of the bill is July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Land Surveying and Mapping

Chapter 472, F.S., governs the practice of land surveying and mapping in Florida. Through the Florida Board of Professional Surveyors and Mappers (Board), the Department of Agriculture and Consumer Services (DACS) licenses and regulates professional surveyors and mappers in the state.[1]

These regulations include, but are not limited to:[2]

- Examination;
- Licensure, including certificates of authorization;
- Continuing education;
- Seals;
- Standards of practice;
- Prohibitions and penalties;
- Disciplinary guidelines;
- Investigative procedures;
- Power to administer oaths, take depositions, and issue subpoenas;
- Unlicensed activities; and
- Elevation certificates.

According to DACS, licensed surveyors and mappers make exact measurements and determine property boundaries. They provide data relevant to the shape, contour, gravitation, location, elevation or dimension of land or land features on or near the earth's surface for engineering, mapmaking, mining, land evaluation, construction and other purposes.[3]

The Board has authority to adopt rules to implement ch. 472, F.S., subject to approval by DACS.[4] Effective October 1, 2009, the regulation of professional surveyors and mappers by the Board was transferred from the Department of Business and Professional Regulation (DBPR) to DACS.[5]

According to DACS, there are 2,579 surveyors and mappers currently licensed in Florida.[6]

Licensing Examinations

Current law provides education and experience prerequisites that must be met in order to be eligible to take the licensure examination to practice as a surveyor and mapper or as a surveyor and mapper intern.[7] All applicants must be approved by the Board prior to taking any examination.

All pathways to licensure as a professional surveyor and mapper in Florida require at least a four-year college degree. The prerequisites to take the licensure examination to practice as a surveyor and mapper are as follows:

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[1] S. 472.007, F.S.
[2] *See* ch. 472, F.S.
[3] Florida Department of Agriculture and Consumer Services, Consumer Services, *Surveyors and Mappers*, https://www.fdacs.gov/Business-Services/Surveyors-and-Mappers (last visited Jan. 5, 2022).
[4] S. 472.008, F.S.
[5] Ch. 2009-66, Laws of Fla.
[6] Email from Carlos Nathan, Legislative Affairs Director, Department of Agriculture and Consumer Services, Re: Surveyors Data, (Jan. 6, 2022).
[7] S. 472.013, F.S.

- A bachelor's degree in surveying and mapping or in a similarly titled program:
  - Four or more years of work experience under a professional surveyor;
  - All four years of work experience must have been in responsible charge of the accuracy and correctness of the surveying work performed; or
- A bachelor's degree in a course of study other than surveying and mapping:
  - Six or more years of work experience under a professional surveyor;
  - Five of the six years of experience must have been in responsible charge of the accuracy and correctness of the surveying work performed.
  - These applicants must also complete a minimum of 25 semester hours from a college or university approved by the board in surveying and mapping subjects or in any combination of courses in civil engineering, surveying, mapping, mathematics, photogrammetry, forestry, or land law and the physical sciences.

The following is a chart outlining these education and work experience prerequisites:

Type of Applicant	Type of Degree	Work Experience
Surveyor and Mapper *(Option 1)*	Surveying and Mapping Bachelor's Degree	4 or more years subordinate to surveyor and mapper and in "responsible charge" of work performed
Surveyor and Mapper *(Option 2)*	Non-Surveying and Mapping Bachelor's Degree; and 25 semester hours surveying and mapping subjects	6 or more years subordinate to surveyor and mapper of which 5 years must be in "responsible charge" of work performed

The board, by rule,[8] is authorized to establish fees for examination. The initial application and examination fee must not exceed $125 plus the actual per applicant cost to DACS to purchase the examination from the National Council of Engineering Examiners or a similar national organization. The examination fee must be sufficient to cover the cost of obtaining and administering the examination and is refundable if the applicant is found ineligible to sit for the examination. The application fee is nonrefundable.[9]

Exiled Foreign-Trained Professionals

Exiled foreign-trained professionals that wish to become surveyors and mappers must have graduated with an appropriate college degree from a college or university and must have lawfully practiced the profession for at least three years. Specifically, an exiled professional is eligible for examination if the exiled professional satisfies all of the following seven requirements:

- Immigrated to the United States after leaving the person's home country because of political reasons, provided the country is located in the Western Hemisphere and does not have diplomatic relations with the United States;
- Applied to DACS and submits a fee;
- Was a resident of this state immediately preceding the person's application;
- Demonstrated to DACS, through submission of documentation verified by the applicant's respective professional association in exile, that the applicant graduated with an appropriate professional or occupational degree from a college or university.

[8] R. 5J-17.070, F.S.
[9] S. 472.011, F.S.

    - However, DACS may not require receipt of any documentation from the Republic of Cuba as a condition of eligibility under this section;
- Lawfully practiced the profession for at least 3 years;
- Prior to 1980, successfully completed an approved course of study pursuant to chapters 74-105 and 75-177, Laws of Florida; and
- Presented a certificate demonstrating the successful completion of a continuing education program, which offers a course of study that will prepare the applicant for the examination.
    - The department shall develop rules for the approval of such programs for the board.[10]

Upon request of a person who meets the requirements for foreign-trained professionals and submits an examination fee, DACS, for the Board, is required to conduct a written practical examination that tests the person's current ability to practice the profession competently in accordance with the actual practice of the profession. The fees charged for the examinations are established by DACS, for the board, by rule,[11] and must be sufficient to develop or to contract for the development of the examination and its administration, grading, and grade reviews.[12]

Licensure by Endorsement

The board is required to certify as qualified for a license by endorsement an applicant who, at the time of application, holds a valid license to practice surveying and mapping issued by another state or territory of the United States, if:

- The license was issued before July 1, 1999; the applicant has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. 472.013, F.S.; and the applicant has a specific experience record of at least eight years as a subordinate to a registered surveyor and mapper in the active practice of surveying and mapping, six years of which must be of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed; or
- The criteria for issuance of the license by another state are substantially the same as the licensure criteria that existed in Florida at the time the license was issued.[13]

All applicants for licensure by endorsement must also pass the Florida law and rules portion of the examination prior to licensure.[14]

Florida law does not provide practicing surveyors and mappers from other states with less than a four-year degree a pathway to licensure unless they were licensed in the other state prior to July 1, 1999, or prior to Florida having a four-year degree requirement.

Recent Trends

According to the Bureau of Labor Statistics, in 2020 there were 45,000 working surveyors in the U.S. and 15,000 were 34 years of age or younger.[15] Many in the profession are baby boomers who will be retiring and need to be replaced.[16]

Some in the industry have indicated that a shortage may exist in the profession because of extensive education expectations and cost. Many state boards require a four-year degree before beginning work in the surveying field. These requirements might hinder those from pursuing a surveying path.

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[10] S. 472.001(1), F.S.
[11] R. 5J-17.210, F.A.C.
[12] S. 472.0101, F.S.
[13] S. 472.015, F.S.
[14] *Id*.
[15] U.S. Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey*, https://www.bls.gov/cps/cpsaat11b.pdf (last visited Jan. 5, 2022).
[16] U.S. Bureau of Labor Statistics, Occupational Outlook Handbook, https://www.bls.gov/ooh/architecture-and-engineering/surveyors.htm#tab-6 (last visited Jan. 5, 2022).

Nationally there appears to be a decline in the number of students graduating from surveying programs.[17]

In Florida, the number of licensed surveyors has decreased by 305 licensees, from 2,884 licensees in 2013 to 2,579 licensees in 2021.[18]

Other States

Each state and territory in the U.S. require those who perform the tasks defined as the practice of surveying to hold a professional surveying license. Most states require professional surveyors to meet a combination of requirements in education and exams.[19]

Generally, while each state board for surveyors has its own requirements for licensure, potential licensees will follow a similar path of prerequisites to obtain a license in any state. Prerequisites typically include:

- An education requirement - Sometimes a high school diploma but some states also require a four-year degree from an accredited surveying program.
- Successful completion of a Fundamentals of Surveying (FS) written examination - testing an applicant's breadth of understanding of basic surveying principles.
- Successful completion of a written Principles and Practice of Surveying (PS) examination - testing an applicant's knowledge and competency of surveying skills.
- A requisite amount of surveying experience - which for most states is four years and is usually under the supervision of a professional surveyor.[20]

According to research, in 2020, the education and experience requirements in all 50 states appear to indicate the following patterns:

- Most states require at least a four-year degree and four years of professional experience.
- Typically, the extent of the degree is relative to the amount of professional experience required.
- Fourteen states provide an option that requires only a high school diploma (or do not have any educational requirements) along with a certain amount of professional experience.
- Six states provide an option that does not require the completion of a degree, but requires the completion of a certain amount of survey and mapping coursework and professional experience.
- The degrees that are required are typically in a surveying and mapping curriculum, a curriculum related to surveying and mapping, or an unrelated curriculum but with a certain amount of coursework in a surveying related curriculum.
- States that allow postgraduate coursework in a surveying curriculum allow the coursework to be substituted for professional experience.
- Twenty-eight states do not provide an education-less alternative method of licensure.[21]

Effect of the Bill

The bill creates new pathways for people to become licensed as a surveyor and mapper that maintain the prerequisite to take the licensure examination without requiring a bachelor's degree.

Specifically, the bill makes the following changes:

[17] Nearterm Blog, *Is There a Shortage of Land Surveyors?* (Nov. 2, 2020), https://nearterm.com/is-there-a-shortage-of-land-surveyors/ (last visited Jan. 5, 2022).
[18] Email from Carlos Nathan, Legislative Affairs Director, Department of Agriculture and Consumer Services, Re: Surveyors Data, (Jan. 6, 2022).
[19] The National Council of Examiners for Engineering and Surveying (NCEES), *Surveying Licensure*, https://ncees.org/surveying/surveying-licensure/ (last visited Jan. 5, 2022).
[20] The National Council of Examiners for Engineering and Surveying (NCEES), *NCEES Member Licensing Boards*, https://ncees.org/member-licensing-boards/ (last visited Jan. 5, 2022).
[21] NCEES, *supra* note 19.

The bill changes the requirement related to obtaining a bachelor's degree from a school that is "recognized by the board" to instead require the degree be "from an **accredited** college or university."

The bill creates additional pathways to be eligible to take the licensure examination for applicants who have:

- Received an **associate degree** with a minimum of 25 semester hours from an accredited college or university in surveying and mapping subjects or in any combination of courses in civil engineering, surveying, mapping, mathematics, photogrammetry, forestry, or land law and the physical science.
    - Such applicants must have **six or more years experience** as a subordinate to a professional surveyor and mapper in the active practice of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge.
- Received a **high school diploma**, or its equivalent and obtained a minimum of 25 semester hours from an accredited college or university in surveying and mapping subjects or in any combination of courses in civil engineering, surveying, mapping, mathematics, photogrammetry, forestry, or land law and the physical sciences.
    - Such applicants must have a specific experience record of **six or more years** as a subordinate to a professional surveyor and mapper in the active practice of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge.

The bill amends the licensure by endorsement requirements to be eligible to take the licensure examination for applicants who:

- Hold a **valid license** to practice surveying and mapping **in another state**, jurisdiction, or territory; and
- Have **two years of experience** in the active practice of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed.

The bill creates a pathway to be eligible to take the licensure examination for applicants who have:

- Received a **registered apprenticeship certificate** in surveying and mapping after completing a registered apprenticeship program approved by the Department of Education; and
- A specified experience record of **two or more years as a subordinate** to a professional surveyor and mapper in the active practice of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed.

Work experience acquired as a part of the education requirement may not be construed as experience in responsible charge.

The bill defines the term "accredited college or university" as a college or university that has been accredited by the Southern Association of Colleges and Schools, another regional accrediting agency, the Accrediting Council for Independent Colleges and Schools, or an accrediting agency or association that is recognized by the database created and maintained by the United States Department of Education.

The bill allows exiled foreign-trained professionals who have practiced the profession for three years to substitute this experience for the current education requirement.

B. SECTION DIRECTORY:

Section 1: amends s. 472.005, F.S., defining the term "accredited college or university."

Section 2: amends s. 472.0101, F.S., relating to foreign-trained professionals, special examination and license provisions.

Section 3: amends s. 472.013, F.S., relating to examinations, prerequisites.

Section 4: amends s. 472.003, F.S., conforming a cross-reference to changes made by the act.

Section 5: provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. The bill may have a positive impact on examination and licensing revenue, to the extent that additional individuals will take the licensure examination and become licensed. All funds collected are deposited into the DACS General Inspection Trust Fund. According to DACS, the bill will not have a fiscal impact on the Department.[22]

2. Expenditures:

Indeterminate. The bill may result in DACS processing additional applications for examination and licensure. However, DACS can likely absorb the related cost within existing resources. According to DACS, the bill will not have a fiscal impact on the Department.[23]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill relaxes experience and education prerequisites in order to be eligible to take the licensure examination to practice as a surveyor and mapper, which will lower the cost to become licensed, and allow more people to practice their chosen profession.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to effect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

[22] Department of Agriculture and Consumer Services, Agency Analysis of 2022 HB 831, p. 3 (Jan. 3, 2022).
[23] *Id.*

Agency rules may have to be amended to change current education and work experience requirements. Current law appears to provide sufficient rulemaking authority for DACS to implement the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments

Current law provides seven prerequisites to the surveying and mapping licensure examination for foreign-trained professionals. One of these includes the following provision:

> *Prior to 1980, successfully completed an approved course of study pursuant to chapters 74-105 and 75-177, Laws of Florida.*

According to DACS, "this provision refers to a course of study that may never have existed. The chapter laws referenced in the provision provided for the licensing of an applicant who had been licensed under the laws of a foreign country under certain conditions." DACS further provides:

> "Back in 1974, the professional regulation statute was amended to give foreign born professionals more access to Florida licenses. Chapter 74-105 provided for the licensing of an applicant who had been licensed under the laws of a foreign country under certain conditions. If 5 or more applicants showed proof (a certificate of licensure or the certification by affidavit from the respective foreign professional association) they lawfully practiced a profession in a foreign country prior to July 1, 1974, they would be approved to take a one year course (continuing education). Once they graduated, they could take a written exam the same as or similar to the exam taken by other applicants. They had the option taking the test in their native language if there were at least 5 applicants who wanted that. If the board already had a program for granting licenses to foreign professionals, the applicants had the option of choosing which alternative they wanted.
>
> The next year Chapter 75-177 made some changes. The minimum number of applicants needed to trigger the creation of the one year course was raised to 15; if the board already had a program for granting licenses to foreign professionals, and the Department of Education deemed it equivalent to the one year program, it would be in lieu of the one year program and applicants wouldn't have that option.
>
> However, it is not known if PSM ever developed and offered that one year course."[24]

It is not likely this provision would apply to many applicants. Removing this outdated provision and revising other requirements may make this provision more inclusive to foreign-trained applicants.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[24] Richard Kimsey, Director, Division of Consumer Services, Department of Agriculture and Consumer Services, FW: [External] HB 821 Foreign-trained professionals, (Mar. 2, 2021).

A bill to be entitled

An act relating to licensure requirements for land surveyors and mappers; reordering and amending s. 472.005, F.S.; defining the term "accredited college or university"; amending s. 472.0101, F.S.; authorizing an exiled professional to substitute a specified lawful practice of the profession for the education requirement of the examination; amending s. 472.013, F.S.; revising education requirements for licensure to include an applicant who has received an associate degree under certain circumstances; requiring such education to be from an accredited college or university; providing that specified experience may be substituted for education requirements for licensure as a land surveyor or mapper; providing that an applicant who holds a valid license from another state, jurisdiction, or territory, and has certain experience in the practice of surveying and mapping may take the licensure examination to practice as a land surveyor or mapper in this state; providing that completion of a specified apprenticeship program may be substituted for education requirements for licensure as a land surveyor or mapper; amending s. 472.003, F.S.; conforming a cross-reference to changes made by the

act; providing an effective date.

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

Section 1. Section 472.005, Florida Statutes, is amended to read:

472.005 Definitions.—As used in ss. 472.001-472.037, the term:

(1) "Accredited college or university" means a college or university that has been accredited by the Southern Association of Colleges and Schools, another regional accrediting agency, the Accrediting Council for Independent Colleges and Schools, or an accrediting agency or association that is recognized by the database created and maintained by the United States Department of Education.

(2) ~~(1)~~ "Board" means the Board of Professional Surveyors and Mappers.

(3) ~~(14)~~ "Commissioner" means the Commissioner of Agriculture.

(4) ~~(15)~~ "Consumer member" means a person appointed to serve on the board who is not, and never has been, a professional surveyor or mapper in any jurisdiction or a member of any closely related profession regulated by the board.

(5) ~~(2)~~ "Department" means the Department of Agriculture and Consumer Services.

(6)~~(9)~~ "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.

(7)~~(12)~~ "Legal entity" means a corporation, partnership, association, or person practicing under a fictitious name who is certified under s. 472.021.

(8)~~(7)~~ ~~The term~~ "License" means a registration, certificate, or license issued by the department pursuant to this chapter.

(9)~~(16)~~ "Licensee" means any person or business entity that has been issued, pursuant to this chapter, a registration, certificate, or license by the department.

(10)~~(11)~~ "Monument" means an artificial or natural object that is permanent or semipermanent and used or presumed to occupy any real property corner, any point on a boundary line, or any reference point or other point to be used for horizontal or vertical control.

(11)~~(8)~~ "Photogrammetrist" means any person who engages in the practice of surveying and mapping using aerial or terrestrial photography or other sources of images.

(12)~~(4)~~(a) "Practice of surveying and mapping" means, among other things, any professional service or work, the adequate performance of which involves the application of special knowledge of the principles of mathematics, the related

physical and applied sciences, and the relevant requirements of law for adequate evidence of the act of measuring, locating, establishing, or reestablishing lines, angles, elevations, natural and manmade features in the air, on the surface and immediate subsurface of the earth, within underground workings, and on the beds or surface of bodies of water, for the purpose of determining, establishing, describing, displaying, or interpreting the facts of size, volume, shape, topography, tidal datum planes, and legal or geodetic location or relocation.

(b) The practice of surveying and mapping also includes, but is not limited to, photogrammetric control; orientation of improved or unimproved real property and appurtenances and personal property attached thereto, including acreage and condominiums; the monumentation and remonumentation of property boundaries and subdivisions; the measurement of and preparation of plans showing existing improvements after construction; the layout of proposed improvements; the preparation of descriptions for use in legal instruments of conveyance of real property and property rights; the preparation of subdivision planning maps and record plats, as provided for in chapter 177; the determination of, but not the design of, grades and elevations of roads and land in connection with subdivisions or divisions of land; and the creation and perpetuation of alignments related to maps, record plats, field note records, reports, property descriptions, and plans and drawings that represent them.

(13) ~~(6)~~ ~~The term~~ "Responsible charge" means direct control and personal supervision of surveying and mapping work, but does not include experience as a chainperson, rodperson, instrumentperson, ordinary draftsperson, digitizer, scriber, photo lab technician, ordinary stereo plotter operator, aerial photo pilot, photo interpreter, and other positions of routine work.

(14) ~~(13)~~ "Retired professional surveyor and mapper" means a person who has been licensed as a professional surveyor and mapper by the board and who chooses to relinquish or not to renew his or her license and applies to and is approved by the board to use the title "Professional Surveyor and Mapper, Retired."

(15) ~~(3)~~ "Surveyor and mapper" includes the term "professional surveyor and mapper" and means a person who is registered to engage in the practice of surveying and mapping under ss. 472.001-472.037. For the purposes of this statute, a surveyor and mapper means a person who determines and displays the facts of size, shape, topography, tidal datum planes, legal or geodetic location or relation, and orientation of improved or unimproved real property through direct measurement or from certifiable measurement through accepted photogrammetric procedures.

(16) ~~(5)~~ ~~The term~~ "Surveyor and mapper intern" includes the term "surveyor-mapper-in-training" and means a person who

complies with the requirements provided by ss. 472.001-472.037 and who has passed an examination as provided by rules adopted by the board.

(17) ~~(10)~~ "Subordinate" means a person who performs work under the direction, supervision, and responsible charge of a person who is registered under this chapter.

Section 2. Paragraphs (e) and (f) of subsection (1) of section 472.0101, Florida Statutes are amended, and paragraph (d) of that subsection is republished, to read:

472.0101 Foreign-trained professionals; special examination and license provisions.—

(1) When not otherwise provided by law, the department shall by rule provide procedures under which exiled professionals may be examined under this chapter. A person is eligible for the examination if the exiled professional:

(d) Demonstrates to the department, through submission of documentation verified by the applicant's respective professional association in exile, that the applicant was graduated with an appropriate professional or occupational degree from a college or university. However, the department may not require receipt of any documentation from the Republic of Cuba as a condition of eligibility under this section;

(e) A person who has lawfully practiced the profession for at least 3 years may substitute such practice of the profession for the education requirement under paragraph (d);

(f) Before ~~Prior to~~ 1980, successfully completed an approved course of study pursuant to chapters 74-105 and 75-177, Laws of Florida; and

Section 3. Subsection (2) of section 472.013, Florida Statutes, is amended to read:

472.013 Examinations, prerequisites.—

(2) An applicant shall be entitled to take the licensure examination to practice in this state as a surveyor and mapper if the applicant is of good moral character and has satisfied one of the following requirements:

(a) The applicant has received a bachelor's degree, its equivalent, or higher in surveying and mapping or a similarly titled program, including, but not limited to, geomatics, geomatics engineering, and land surveying, from an accredited ~~a~~ college or university ~~recognized by the board~~ and has a specific experience record of 4 or more years as a subordinate to a professional surveyor and mapper in the active practice of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed. Work experience acquired as a part of the education requirement may not be construed as experience in responsible charge.

(b) The applicant has received a bachelor's degree, its equivalent, or higher in a course of study, other than in

surveying and mapping, at an accredited college or university and has a specific experience record of 6 or more years as a subordinate to a registered surveyor and mapper in the active practice of surveying and mapping, which experience is ~~5 years of which shall be~~ of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed. The applicant must have completed a minimum of 25 semester hours from an accredited ~~a~~ college or university ~~approved by the board~~ in surveying and mapping subjects or in any combination of courses in civil engineering, surveying, mapping, mathematics, photogrammetry, forestry, or land law and the physical sciences. ~~Any of the required 25 semester hours of study completed not as a part of the bachelor's degree, its equivalent, or higher may be approved at the discretion of the board.~~ Work experience acquired as a part of the education requirement may not be construed as experience in responsible charge.

(c) The applicant has received an associate degree and has a specific experience record of 6 or more years as a subordinate to a professional surveyor and mapper in the active practice of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed. The applicant must have completed a minimum of 25 semester hours from an accredited a college or university in

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

surveying and mapping subjects or in any combination of courses in civil engineering, surveying, mapping, mathematics, photogrammetry, forestry, or land law and the physical sciences. Work experience acquired as a part of the education requirement may not be construed as experience in responsible charge.

(d) The applicant has received a high school diploma, or its equivalent, and has a specific experience record of 6 or more years as a subordinate to a professional surveyor and mapper in the active practice of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed. The applicant must have completed a minimum of 25 semester hours from an accredited college or university in surveying and mapping subjects or in any combination of courses in civil engineering, surveying, mapping, mathematics, photogrammetry, forestry, or land law and the physical sciences. Work experience acquired as a part of the education requirement may not be construed as experience in responsible charge.

(e) The applicant holds a valid license to practice surveying and mapping in another state, jurisdiction, or territory, and has 2 years of experience in the active practice of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work

performed.

(f) The applicant has received a registered apprenticeship certificate in surveying and mapping after completing a registered apprenticeship program approved by the Department of Education and has a specified experience record of 2 or more years as a subordinate to a professional surveyor and mapper in the active practice of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed. Work experience acquired as a part of the education requirement may not be construed as experience in responsible charge.

Section 4. Subsection (4) of section 472.003, Florida Statutes, is amended to read:

472.003 Persons not affected by ss. 472.001-472.037.—Sections 472.001-472.037 do not apply to:

(4) Persons employed by county property appraisers, as defined at s. 192.001(3), and persons employed by the Department of Revenue, to prepare maps for property appraisal purposes only, but only to the extent that they perform mapping services which do not include any surveying activities as described in s. 472.005 ~~s. 472.005(4)(a) and (b)~~.

Section 5. This act shall take effect July 1, 2022.

REGULATORY REFORM SUBCOMMITTEE

HB 831 by Rep. Mariano
Licensure Requirements for Land Surveyors and Mappers

AMENDMENT SUMMARY
January 20, 2022

Amendment 1 by Rep. Mariano (lines 30-131):

- Removes the definition for “accredited colleges and universities” from the bill.

Amendment 2 by Rep. Mariano (lines 164-214):

- Specifies that the colleges and universities referenced in the bill must be accredited by an accrediting body recognized by the United States Department of Education.

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 Mariano offered the following:

Amendment (with title amendment)

Remove lines 30-131

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

Remove lines 3-5 and insert:

surveyors and mappers; amending s. 472.0101, F.S.;

Amendment No. 2

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 Mariano offered the following:

Amendment

Remove lines 164-214 and insert:

geomatics engineering, and land surveying, from a college or university accredited by an accrediting body recognized by the United States Department of Education ~~recognized by the board~~ and has a specific experience record of 4 or more years as a subordinate to a professional surveyor and mapper in the active practice of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed. Work experience acquired as a part of the

education requirement may not be construed as experience in responsible charge.

(b) The applicant has received a bachelor's degree, its equivalent, or higher in a course of study, other than in surveying and mapping, at a ~~an accredited~~ college or university accredited by an accrediting body recognized by the United States Department of Education and has a specific experience record of 6 or more years as a subordinate to a registered surveyor and mapper in the active practice of surveying and mapping, which experience is ~~5 years of which shall be~~ of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed. The applicant must have completed a minimum of 25 semester hours from a college or university accredited by an accrediting body recognized by the United States Department of Education ~~approved by the board~~ in surveying and mapping subjects or in any combination of courses in civil engineering, surveying, mapping, mathematics, photogrammetry, forestry, or land law and the physical sciences. ~~Any of the required 25 semester hours of study completed not as a part of the bachelor's degree, its equivalent, or higher may be approved at the discretion of the board.~~ Work experience acquired as a part of the education requirement may not be construed as experience in responsible charge.

(c) The applicant has received an associate degree and has

a specific experience record of 6 or more years as a subordinate to a professional surveyor and mapper in the active practice of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed. The applicant must have completed a minimum of 25 semester hours from a college or university accredited by an accrediting body recognized by the United States Department of Education in surveying and mapping subjects or in any combination of courses in civil engineering, surveying, mapping, mathematics, photogrammetry, forestry, or land law and the physical sciences. Work experience acquired as a part of the education requirement may not be construed as experience in responsible charge.

(d) The applicant has received a high school diploma, or its equivalent, and has a specific experience record of 6 or more years as a subordinate to a professional surveyor and mapper in the active practice of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed. The applicant must have completed a minimum of 25 semester hours from a college or university accredited by an accrediting body recognized by the United States Department of Education in surveying and mapping subjects or in

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1033 Homeowners' Associations
SPONSOR(S): Beltran
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee		Brackett	Anstead
2) Civil Justice & Property Rights Subcommittee			
3) State Administration & Technology Appropriations Subcommittee			
4) Commerce Committee			

SUMMARY ANALYSIS

The Division of Florida Condominiums, Timeshares, and Mobile Homes, within the Department of Business and Professional Regulation (DBPR), broadly regulates condominium and cooperative associations and has limited regulatory authority over homeowner's associations (HOA).

Within the Division is Office of the Condominium Ombudsman. HOAs do not have an Ombudsman. The Condominium Ombudsman is an attorney who is a neutral resource for unit owners and associations. The Ombudsman is authorized to:

- Assist with the resolution of disputes between condominiums and unit owners;
- Issue reports and recommendations to the Governor, the Division, and the Legislature;
- Make recommendations to the Division for changes to its rules and procedures for handling complaints;
- Act as a liaison between the Division, unit owners, and associations;
- Develop policies and procedures to help affected parties understand their rights and responsibilities;
- Monitor and review procedures and disputes concerning elections and meetings;
- Provide resources to assist board members and officers to carry out their powers and duties; and
- Encourage and facilitate voluntary meetings between unit owners, board members, managers, and other affected parties to assist in resolving disputes.

The Condominium Act also provides for an arbitration program within the Division for certain disputes between unit owners and condominium and cooperative associations. An arbitrator's final decision is not binding, and any party may further pursue a matter in civil court.

The HOA Act requires certain disputes between a parcel owner and an HOA to go through pre-suit mediation before a party can file an action in civil court. Condominium and cooperative disputes eligible for arbitration may go through pre-suit mediation in lieu of arbitration, but HOA disputes required to go through pre-suit mediation may not go through arbitration unless pre-suit mediation fails and all parties agree to arbitration.

The bill creates an Office of the HOA Ombudsman, which is located in DBPR. The HOA Ombudsman is an attorney who is a neutral resource for parcel owners and HOAs. The HOA Ombudsman's authority is similar to the authority of the Condominium Ombudsman.

The bill also allows certain HOA disputes, which are required to go through pre-suit mediation, to go through arbitration within the Division in lieu of pre-suit mediation.

The bill may have a fiscal impact on state government. The bill is not expected to have a fiscal impact on local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Community Associations

Condominiums

A condominium is a form of real property ownership created pursuant to ch. 718, F.S., the Condominium Act, comprised of units which may be owned by one or more persons along with an undivided right of access to common elements.[1] A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.[2] A declaration governs the relationships among condominium unit owners and the condominium association. Specifically, a declaration of condominium may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property. All unit owners are members of the condominium association, an entity responsible for the operation and maintenance of the common elements owned by the unit owners. The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration." The board enacts bylaws which govern the association's administration.

The Florida Division of Condominiums, Timeshares and Mobile Homes (Division), within the Department of Business and Professional Regulation (DBPR), provides consumer protection for Florida residents living in regulated condominiums and other communities through education, complaint resolution, mediation and arbitration, and developer disclosure. The Division has regulatory authority over the following business entities and individuals:

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

The Division is the agency charged with ensuring that condominium associations comply with the requirements of the Condominium Act.[3] The Division does this by a variety means including enforcing the Condominium Act, providing declaratory statements, providing educational programs, **providing dispute resolution, and housing the office of the Condominium Ombudsman**.[4]

Cooperatives

A cooperative is a form of property ownership created under ch. 719, F.S., in which the real property is owned by the cooperative association and individual units are leased to the residents, who own shares in the association.[5] The lease payment amount is the pro-rata share of the cooperative's operational expenses. Cooperatives operate similarly to condominiums and the laws regulating cooperatives are largely identical to those regulating condominiums.

[1] S. 718.103(11), F.S.
[2] S. 718.104(2), F.S.
[3] S. 718.501, F.S.
[4] *Id.*
[5] S. 719.103(2) and (26), F.S.

Homeowners' Associations

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners and membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.[6] Only HOAs whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S., the Homeowners' Association Act (HOA Act). Like a condominium, an HOA is administered by an elected board of directors. The powers and duties of an HOA include the powers and duties provided in the HOA Act, and in the association's governing documents, which include the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments to those documents.[7]

No state agency has direct oversight over HOAs. However, Florida law provides for a mandatory binding arbitration program, administered by the Division, for certain election and recall disputes.[8]

Ombudsman – Current Situation

Within the Division is the Office of the Condominium Ombudsman. The Condominium Ombudsman is an attorney admitted to practice in Florida who is appointed by the Governor, and is a neutral resource for unit owners and associations. The Condominium Ombudsman may employ professional and clerical staff as necessary to efficiently operate the ombudsman's office.[9]

An officer or full-time employee of the Condominium Ombudsman's office may not:[10]

- actively engage in any other business or profession that directly or indirectly relates to or conflicts with his or her work in the ombudsman's office;
- serve as the representative of any political party, executive committee, or other governing body of a political party;
- serve as an executive, officer, or employee of a political party;
- receive remuneration for activities on behalf of any candidate for public office; or
- engage in soliciting votes or other activities on behalf of a candidate for public office

The Condominium Ombudsman or any employee of his or her office may not become a candidate for election to public office unless he or she first resigns from his or her office or employment.[11]

The Condominium Ombudsman must maintain his or her principal office at a place convenient to the offices of the Division which will enable the Condominium Ombudsman to expeditiously carry out the duties and functions of his or her office. The Condominium Ombudsman may establish branch offices elsewhere in the state with the approval of the Governor. The Office of the Condominium Ombudsman is funded by the Division's Trust Fund.[12]

The Condominium Ombudsman is authorized to:[13]

- Have access to and use all of the files and records of the Division.
- Assist with the resolution of disputes between associations and unit owners that is not within the jurisdiction of the Division.
- Issue reports and recommendations to the Governor, the Division, the Advisory Council on Condominiums, and the Legislature on any matter or subject within the jurisdiction of the Division.

[6] S. 720.301(9), F.S.
[7] *See generally* ch. 720, F.S.
[8] S. 720.311, F.S.
[9] Ss. 718.5011(1), and 718.5012(2), F.S.
[10] S. 718.5011(2), F.S.
[11] *Id.*
[12] Ss. 718.5011 and 718.5014, F.S.
[13] Ss. 718.5011, and 718.5012, F.S.

- Make recommendations to the Division for changes in rules and procedures for the filing, investigation, and resolution of complaints.
- Act as a liaison among the Division, unit owners, community association managers (CAMs),[14] and boards of directors, and other affected parties.
    - The Condominium Ombudsman must develop policies and procedures to assist unit owners, boards of directors, CAMs, and other affected parties to understand their rights and responsibilities under the Condominium Act and their condominium documents.
    - The Condominium Ombudsman must coordinate and assist in the preparation and adoption of educational and reference material, and endeavor to coordinate with private or volunteer providers of these services, so the materials are widely available.
- Develop policies and procedures to help affected parties understand their rights and responsibilities.
- Monitor and review procedures and disputes concerning elections or meetings, including recommending that the Division pursue enforcement action.
- Provide resources to assist board members and officers to carry out their powers and duties consistent with the Condominium Act, and their governing documents.
- Encourage and facilitate voluntary meetings between unit owners, board members, CAMs, and other affected parties to assist in resolving a dispute before a person submits a dispute for a formal or administrative remedy.

The Condominium Ombudsman must appoint a board of director election monitor, when fifteen percent of the total voting interests or six unit owners, whichever is greater, petition the Condominium Ombudsman to appoint an election monitor to attend the annual meeting and conduct the election of board members.[15]

The Condominium Ombudsman must appoint a division employee, a person or persons specializing in condominium election monitoring, or an attorney licensed to practice in this state as the election monitor. The condominium association is responsible for all costs associated with the election monitoring process. [16]

Currently, there is no Ombudsman for HOAs, and the Office of the Condominium Ombudsman has no jurisdiction or authority over HOAs.

Ombudsman – Effect of the Bill

The bill creates an Office of the HOA Ombudsman within DBPR, which is similar to the Office of the Condominium Ombudsman.

The HOA Ombudsman must be an attorney admitted to practice in Florida who is appointed by the Governor, and is a neutral resource for parcel owners and HOAs. The HOA Ombudsman may employ professional and clerical staff as necessary to efficiently operate the Ombudsman's office.

An officer or full-time employee of the HOA Ombudsman's office may not:

- actively engage in any other business or profession that directly or indirectly relates to or conflicts with his or her work in the ombudsman's office;
- serve as the representative of any political party, executive committee, or other governing body of a political party;
- serve as an executive, officer, or employee of a political party;
- receive remuneration for activities on behalf of any candidate for public office; or
- engage in soliciting votes or other activities on behalf of a candidate for public office

[14] Management companies and managers of residential condominiums with more than ten units or having an annual budget in excess of $100,000 are required to have a community association manager license from DBPR. The Community Association Management Practice Act (Part VIII of ch. 468, F.S.) governs the licensure and regulation of CAMs.
[15] S. 718.5012(10), F.S.
[16] *Id.*

The HOA Ombudsman or any employee of his or her office may not become a candidate for election to public office unless he or she first resigns from his or her office or employment.

The HOA Ombudsman must maintain his or her principal office at a place convenient to DBPR, which will enable the HOA Ombudsman to expeditiously carry out the duties and functions of his or her office. The HOA Ombudsman may establish branch offices elsewhere in the state with the approval of the Governor. The Office of the HOA Ombudsman is funded by the General Appropriations Act.

The authority of the HOA Ombudsman is similar to the Condominium Ombudsman. The HOA Ombudsman is authorized to:

- Have access to and use of all files and records of an HOA.
- Issue reports and recommendations to the Governor, DBPR, and the Legislature on any matter or subject within the jurisdiction of the HOA Act.
- Act as a liaison between DBPR, parcel owners, CAMs, boards of directors, and other affected parties.
    - The HOA Ombudsman must develop policies and procedures to assist parcel owners, boards of directors, CAMs, and other affected parties to understand their rights and responsibilities under the HOA Act and their governing documents.
    - The HOA Ombudsman must coordinate and assist in the preparation and adoption of educational and reference material, and endeavor to coordinate with private or volunteer providers of these services, so the materials are widely available.
- Monitor and review procedures and disputes concerning elections or meetings.
- Make recommendations to DBPR for changes in rules and procedures for the filing, investigation, and resolution of complaints filed by parcel owners, associations, and CAMs.
- Provide resources to assist board members and officers to carry out their powers and duties consistent with the HOA Act, and their governing documents;
- Encourage and facilitate voluntary meetings between parcel owners, board members, CAMs, and other affected parties to assist in resolving a dispute before a person submits a dispute for a formal or administrative remedy.
- Assist with the resolution of disputes between parcel owners and the HOA or between parcel owners when the dispute is not within the jurisdiction of DBPR to resolve.

Alternative Dispute Resolution – Current Situation

Condominiums and Cooperatives

The Condominium Act and Cooperative Act provides for an arbitration program within the Division for certain disputes between unit owners and associations. The Division employs full time arbitrators and certifies private attorneys for mandatory nonbinding arbitration. An arbitrator's final decision is not binding, and any party may further pursue a matter in civil court. However, the parties may agree to be bound by the arbitrator's decision.[17]

The Condominium Act and Cooperative Act require a party to petition for arbitration with the Division before filing a complaint in civil court for the following disputes between an association and a unit owner:[18]

- Termination of an association.
- Recall of a board member.
- Disputes where the board:
    - Requires an owner to take an action or refrain from any action involving the owner's unit.
    - Alters or adds to a common element.

[17] Ss. 718.1255, and 719.1255, F.S; DBPR *Condominium Unit-Owner Rights and Responsibilities*, http://www.myfloridalicense.com/dbpr/lsc/documents/CondominiumUORREnglishMaster4162014.pdf (last visited Jan. 15, 2022).
[18] *Id.*

- Fails to provide proper notice for meetings or other actions.
- Fails to properly conduct elections.
- Fails to properly notice meetings.
- Fails to allow inspection of the association's records.

The Division does not have jurisdiction for arbitration for the following disputes between a unit owner and an association:[19]

- Disagreements regarding the interpretation or enforcement of a warranty;
- The charging of a fee or assessment;
- The eviction or other removal of a tenant from unit;
- Alleged breaches of fiduciary duty by one or more board members; and
- Claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.

The cost to petition the Division for arbitration is a $50 filing fee. The petition must include the specific nature of the dispute, demand for relief, and include proof that the petitioner provided the opposing party a notice of intent to petition for arbitration. Upon receipt of a petition for arbitration, the Division must determine if the dispute qualifies for arbitration. If the dispute qualifies for arbitration then the arbitrator must conduct the arbitration within 30 days.[20] The arbitrator must render his or her decision within 30 days of the arbitration.[21]

At the request of any party to the arbitration, an arbitrator must issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence and any party on whose behalf a subpoena is issued may apply to a court for orders compelling such attendance and production.[22]

Either party in an arbitration proceeding may petition the arbitrator to have the proceeding sent to mediation. Upon the request for mediation, the arbitrator must contact all parties in the proceeding to determine if mediation is agreeable. An arbitrator may refer a proceeding to mediation even if all parties do not agree to mediation.[23]

If a matter is referred to mediation, the parties must select a mutually agreeable mediator. The arbitrator must provide a list of available mediators. Mediation is conducted in accordance with the Florida Rules of Civil Procedure. The parties in a mediation are required to equally share the costs of mediation.[24]

An arbitration decision is not final unless the parties have agreed to be bound by the decision, or if a civil complaint is not filed within 30 days. The right to file for a trial de novo entitles the parties to file a complaint in the appropriate trial court for a judicial resolution of the dispute.[25]

The prevailing party in an arbitration proceeding must be awarded the costs of the arbitration and reasonable attorney fees in an amount determined by the arbitrator. This includes the costs and reasonable attorney fees incurred in the arbitration proceeding as well as the costs and reasonable attorney fees incurred in preparing for and attending any scheduled mediation.[26]

During the 2020 Legislative Session, the Legislature provided that in lieu of nonbinding arbitration, parties to a dispute may elect to resolve disputes through pre-suit mediation in the same manner of HOA dispute resolution.[27]

[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] Ch. 21-99, Laws of Fla.

HOAs

Instead of arbitration, the HOA Act provides for a pre-suit mediation program for certain disputes between parcel owners and HOAs. The HOA act does not require mandatory arbitration by the Division unless the dispute involves elections or recalls of board members.[28]

The following disputes between parcel owners and HOAs must go to pre-suit mediation before a party can file suit in civil court:[29]

- Disputes involving the use of or changes to an owner's parcel or the common areas;
- Covenant disputes;
- Disputes regarding meetings of the board or committees of the board;
- Disputes involving the meeting of owners that do not involve elections;
- Access to the official records disputes; and
- Disputes regarding amendments to the governing documents.

The following disputes are not subject to presuit mediation:[30]

- Disputes involving the collection of assessments, fines, or other financial obligations; and
- Actions to enforce a prior mediation agreement.

An aggrieved party initiates the mediation proceedings by serving a written petition for mediation to the opposing party. The petition must be in the format provided in statute and must identify the specific nature of the dispute and the basis for the alleged violations. The written offer must include five certified mediators that the aggrieved party believes to be neutral. If emergency relief is required then a temporary injunction may be sought in court prior to the mediation.[31]

The opposing party has 20 days to respond. If the opposing party fails to respond or refuses to mediate then the aggrieved party may proceed to civil court. If the parties agree to mediation, the mediator must hold the mediation within 90 days of the petition being sent to the opposing parties. The parties share the costs of mediation except for the cost of attorney's fees. Mediation is confidential and persons who are not parties to the dispute may not attend the mediation.[32]

If mediation is not successful in resolving all the issues between the parties, the parties may proceed to civil court or may elect to enter into binding or non-binding arbitration by the Division. All parties to the dispute must agree to enter into arbitration by the Division.[33]

According to a 2020 DBPR analysis, arbitration is a more efficient and cost-effective option than meditation and civil litigation because the filing fee for arbitration is only $50. Since 2006, less than 1 percent of arbitration cases are challenged in civil court and since 2009, 88 percent of the cases filed with arbitration are concluded by arbitration, with only 12 percent concluded by mediation.[34]

According to the analysis, private mediators typically charge $300 to $500 per hour. The cost for pre-suit mediation for an owner can be $900 for four hours of mediation, with two hours of preparation by the mediator, in addition to the cost to hire an attorney.[35]

[28] S. 720.311, F.S.
[29] S. 720.311(2)(a), F.S.
[30] *Id.*
[31] *Id.*
[32] S. 720.311(2)(a) and (b), F.S.
[33] S. 720.311(2)(c), F.S.
[34] Department of Business and Professional Regulation, Agency Analysis of 2020 HB 623, p. 6-7 (Feb. 7, 2020).
[35] *Id.*

Alternative Dispute Resolution – Effect of the Bill

The bill provides that disputes between a parcel owner and an HOA, which are subject to pre-suit mediation, may be resolved through nonbinding arbitration with the Division in lieu of pre-suit mediation.

B. SECTION DIRECTORY:

Section 1. Amending s. 720.311, F.S., relating to dispute resolution.

Section 2. Creating s. 720.319, F.S., relating to homeowners' association ombudsman.

Section 3. Providing an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate. The bill requires the Office of the HOA Ombudsman to be funded through the General Appropriations Act. The cost to fund the Office of the HOA Ombudsman is indeterminate.

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 economic impact on HOA parcel owners and HOAs by reducing the cost of resolving certain disputes. In lieu of pre-suit mediation or filing a complaint in civil court, such persons and HOAs may be able to resolve disputes through the Office of the HOA Ombudsman or arbitration with the Division.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to homeowners' associations; amending s. 720.311, F.S.; defining the term "dispute"; authorizing parties to initiate nonbinding arbitration rather than presuit mediation for certain disputes; creating s. 720.319, F.S.; creating the Office of the Homeowners' Association Ombudsman within the Department of Business and Professional Regulation; providing for funding of the office; directing the Governor to appoint the ombudsman; requiring the ombudsman to be an attorney; prohibiting the ombudsman, officers, and full-time employees from holding certain positions, engaging in certain activities, or receiving certain remuneration; providing for the principal location of the ombudsman's office; authorizing the ombudsman to establish branch offices under specified circumstances; providing for the powers and duties of the ombudsman; providing an effective date.

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

Section 1. Subsection (1) of section 720.311, Florida Statutes, is amended and subsection (3) is added to that section to read:

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

720.311 Dispute resolution.—

(1)(a) The Legislature finds that alternative dispute resolution has made progress in reducing court dockets and trials and in offering a more efficient, cost-effective option to litigation. The filing of any petition for arbitration or the serving of a demand for presuit mediation as provided for in this section shall toll the applicable statute of limitations. Any recall dispute filed with the department under s. 720.303(10) shall be conducted by the department in accordance with ~~the provisions of~~ ss. 718.112(2)(j) and 718.1255 and the rules adopted by the division. In addition, the department shall conduct binding arbitration of election disputes between a member and an association in accordance with s. 718.1255 and rules adopted by the division. Election disputes and recall disputes are not eligible for presuit mediation; these disputes must be arbitrated by the department or filed in a court of competent jurisdiction. At the conclusion of an arbitration proceeding, the department shall charge the parties a fee in an amount adequate to cover all costs and expenses incurred by the department in conducting the proceeding. Initially, the petitioner shall remit a filing fee of at least $200 to the department. The fees paid to the department shall become a recoverable cost in the arbitration proceeding, and the prevailing party in an arbitration proceeding shall recover its reasonable costs and attorney fees in an amount found reasonable

by the arbitrator. The department shall adopt rules to effectuate the purposes of this section.

(b) As used in this section, the term "dispute" means any disagreement between two or more parties that involves:

1. The authority of the board of directors, under this chapter or an association document, to:

a. Require any owner to take any action, or not to take any action, involving that owner's parcel or the appurtenances thereto.

b. Alter or add a common area or element.

2. The failure of a governing body, when required by this chapter or an association document, to:

a. Properly conduct elections.

b. Give adequate notice of meetings or other actions.

c. Properly conduct meetings.

d. Allow inspection of books and records.

The term "dispute" does not include any disagreement that primarily involves: title to any parcel or common area; the interpretation or enforcement of any warranty; the levy of a fee or assessment, or the collection of an assessment levied against a party; the eviction or other removal of a tenant from a parcel; alleged breaches of fiduciary duty by one or more directors; or claims for damages to a parcel based upon the alleged failure of the association to maintain the common area

or community property.

(3) In lieu of the initiation of presuit mediation under this section, a party may submit an eligible dispute to nonbinding arbitration in accordance with s. 718.1255.

Section 2. Section 720.319, Florida Statutes, is created to read:

720.319 Homeowners' association ombudsman.—

(1) ADMINISTRATION; APPOINTMENT; LOCATION.—

(a) There is created an Office of the Homeowners' Association Ombudsman to be located, for administrative purposes, within the Department of Business and Professional Regulation. The functions of the office shall be funded by the General Appropriations Act.

(b) The Governor shall appoint the ombudsman. The ombudsman must be an attorney admitted to practice before the Florida Supreme Court and shall serve at the pleasure of the Governor. The ombudsman, an officer, or a full-time employee of the ombudsman's office may not actively engage in any other business or profession that directly or indirectly relates to or conflicts with his or her work in the ombudsman's office; serve as the representative of any political party, executive committee, or other governing body of a political party; serve as an executive, officer, or employee of a political party; receive remuneration for activities on behalf of any candidate for public office; or engage in soliciting votes or other

activities on behalf of a candidate for public office. The ombudsman, an officer, or a full-time employee of the ombudsman's office may not become a candidate for election to public office unless he or she first resigns from his or her office or employment.

(c) The ombudsman shall maintain his or her principal office at a place convenient to the department, which will enable the ombudsman to expeditiously carry out the duties and functions of his or her office. The ombudsman may establish branch offices elsewhere in the state upon the concurrence of the Governor.

(2) POWERS AND DUTIES.—The ombudsman has the powers necessary to carry out the duties of his or her office, including, but not limited to:

(a) Having access to and use of all files and records of a homeowners' association.

(b) Employing professional and clerical staff as necessary for the efficient operation of the office.

(c) Preparing and issuing reports and recommendations to the Governor, the department, the President of the Senate, and the Speaker of the House of Representatives on any matter or subject within the jurisdiction of chapter 720.

(d) Acting as a liaison between the department, parcel owners, boards of directors, board members, community association managers, and other affected parties. The ombudsman

shall develop policies and procedures to assist parcel owners, boards of directors, board members, community association managers, and other affected parties to understand their rights and responsibilities, as set forth in this chapter, and the governing documents that govern their respective associations. The ombudsman shall coordinate and assist in the preparation and adoption of educational and reference material, and shall endeavor to coordinate with private or volunteer providers of these services, so that the availability of these resources is made known to the largest possible audience.

(e) Monitoring and reviewing procedures and disputes concerning elections or meetings.

(f) Making recommendations to the department for changes in rules and procedures for the filing, investigation, and resolution of complaints filed by parcel owners, associations, and managers.

(g) Providing resources to assist members of boards of directors and officers of associations to carry out their powers and duties consistent with this chapter and the governing documents that govern the association.

(h) Encouraging and facilitating voluntary meetings between parcel owners, boards of directors, board members, community association managers, and other affected parties when the meetings may assist in resolving a dispute within a homeowners' association before a person submits a dispute for a

formal or administrative remedy. It is the intent of the Legislature that the ombudsman act as a neutral resource for both the rights and responsibilities of parcel owners, associations, and board members.

(i) Assisting with the resolution of disputes between parcel owners and the association, or between parcel owners, if applicable.

Section 3. This act shall take effect July 1, 2022.

REGULATORY REFORM SUBCOMMITTEE

HB 1033 by Rep. Beltran
Homeowners' Associations

AMENDMENT SUMMARY
January 20, 2021

Amendment 1 by Rep. Beltran (strike):

Differences between the original bill and strike-all amendment:

- Requires an HOA to give written notice of the right to a hearing to consider imposing a fine or suspension.
- Requires that a hearing to consider an HOA fine or suspension must be held within 14 days of the request for hearing, unless the person being fined or suspended requests a later date.
- Provides a fine and suspension committee may reduce a fine or suspension in addition to rejecting or confirming the fine or suspension.
- Provides that a person may appeal the decision of the fine and suspension committee before an appeals committee made up of five HOA members who:
    - Are not on the board, the fine and suspension committee, employed by the HOA, or a family member of such persons.
- Provides that a person being fined or suspended by an HOA has a right to appear at a hearing to consider the penalty or a subsequent appeal and may do so in person, by telephone, or electronically.
- Provides that an appeals committee may confirm, reject, or reduce a fine or suspension.
- Requires an appeals committee to reduce a fine or suspension by 50 percent if the violation resulting in the fine or suspension is corrected before the hearing.
- Provides that a fine is due 5 days after receiving the notice of the appeal committee's decision.
- Clarifies that a party to an HOA dispute that is required to go to pre-suit mediation, may petition DBPR for arbitration in lieu of pre-suit mediation.
- Removes the ability for the HOA Ombudsman to have access to all the files and records of an HOA.
- Provides that members of an HOA may petition the HOA Ombudsman to appoint an election monitor for an election of the board of directors.
- Requires DBPR to adopt a rule establishing the procedures for appointing an election monitor and the scope and extent of the monitor's role.

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 Beltran offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (b) of subsection (2) of section 720.305, Florida Statutes, is amended to read:

720.305 Obligations of members; remedies at law or in equity; levy of fines and suspension of use rights.—

(2) An association may levy reasonable fines. A fine may not exceed $100 per violation against any member or any member's tenant, guest, or invitee for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association unless otherwise provided in

the governing documents. A fine may be levied by the board for each day of a continuing violation, with a single notice and opportunity for hearing, except that the fine may not exceed $1,000 in the aggregate unless otherwise provided in the governing documents. A fine of less than $1,000 may not become a lien against a parcel. In any action to recover a fine, the prevailing party is entitled to reasonable attorney fees and costs from the nonprevailing party as determined by the court.

(b)1. A fine or suspension levied by the board of administration may not be imposed unless the board first provides at least 14 days' notice to the parcel owner and, if applicable, any occupant, licensee, or invitee of the parcel owner, sought to be fined or suspended, and provides written notice of an opportunity for a hearing before a fine and suspension committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. Such hearing must be conducted within 14 days after the board of administration receives a written request for a hearing by the parcel owner or the occupant, licensee, or invitee of the parcel owner sought to be fine or suspended, unless the parcel owner or the occupant, licensee, or invitee of the parcel owner sought to be fined or suspended requests a later date in writing. The request can be made by United States mail, hand delivery, or by e-mail to the

board, a manager, the fine and suspension committee, or a designated officer. The parcel owner, occupant, licensee, or invitee sought to be fined or suspended has a right to appear before the fine and suspension committee and may do so in person or by telephone, real-time videoconferencing, or similar real-time electronic or video communication. If the fine and suspension committee, by majority vote, does not approve a proposed fine or suspension or reduce a fine or suspension, the proposed fine or suspension may not be imposed. The role of the fine and suspension committee is limited to determining whether to confirm, ~~or~~ reject, or reduce the fine or suspension levied by the board. If the proposed fine or suspension levied by the board is approved by the fine and suspension committee, the fine payment is due 5 days after notice of the approved fine is provided to the parcel owner and, if applicable, to any occupant, licensee, or invitee of the parcel owner. The association must provide written notice of such fine or suspension by United States mail or hand delivery to the parcel owner and, if applicable, to any occupant, licensee, or invitee of the parcel owner. The association must also provide the written notice by electronic transmission to the parcel owner's e-mail address, if the parcel owner's e-mail address is maintained in the association's official records.

2. Within 3 days after receiving written notice that the fine or suspension was approved by the fine and suspension

committee, a parcel owner or, if applicable, the occupant, licensee, or invitee of the parcel owner, who is fined or suspended may appeal the fine or suspension by providing written notice of such appeal to the board, a manager, the fine and suspension committee, or a designated officer by United States mail, hand delivery, or e-mail.

3. An association must give a parcel owner or, if applicable, any occupant, licensee, or invitee of the parcel owner, who appeals a fine or suspension, an opportunity for a hearing before an appeals committee made up of at least five members appointed by the board who are not officers, directors, employees of the association, or members of the fine and suspension committee, or the spouse, parent, child, brother, or sister of an officer, director, employee, or member of the fine and suspension committee. The parcel owner or the occupant, licensee, or invitee of the parcel owner fined or suspended has a right to appear before the appeals committee and may do so in person or by telephone, real-time videoconferencing, or similar real-time electronic or video communication. The role of the appeals committee is limited to determining whether to confirm, reject, or reduce the fine or suspension levied by the board and confirmed by the fine and suspension committee. If the appeals committee, by majority vote, does not approve the fine or suspension or reduce the fine or suspension, the fine or suspension may not be imposed. If the violation that resulted in

the fine or suspension is corrected before the hearing, the appeals committee must reduce the fine or suspension by at least 50 percent. The association must provide written notice of the appeals committee's decision by United States mail or hand delivery to the parcel owner and, if applicable, to the occupant, licensee, or invitee of the parcel owner who received the fine or suspension. The association must also provide the written notice by electronic transmission to the parcel owner's e-mail address, if the parcel owner's e-mail address is maintained in the association's official records. Payment of a fine that is appealed in compliance with this paragraph is due 5 days after notice of the appeals committee's decision is provided to the parcel owner and, if applicable, to the occupant, licensee, or invitee of the parcel owner.

Section 2. Paragraph (a) of subsection (2) of section 720.311, Florida Statutes, is amended and subsection (3) is added to that section to read:

720.311 Dispute resolution.—

(2)(a) Disputes between an association and a parcel owner regarding use of or changes to the parcel or the common areas and other covenant enforcement disputes, disputes regarding amendments to the association documents, disputes regarding meetings of the board and committees appointed by the board, membership meetings not including election meetings, and access to the official records of the association must ~~shall~~ be the

subject of a demand for presuit mediation served by an aggrieved party or a petition for nonbinding arbitration as provided in subsection (3) before the dispute is filed in court. Presuit mediation proceedings must be conducted in accordance with the applicable Florida Rules of Civil Procedure, and these proceedings are privileged and confidential to the same extent as court-ordered mediation. Disputes subject to presuit mediation under this section may ~~shall~~ not include the collection of any assessment, fine, or other financial obligation, including attorney ~~attorney's~~ fees and costs, claimed to be due or any action to enforce a prior mediation settlement agreement between the parties. Also, in any dispute subject to presuit mediation under this section where emergency relief is required, a motion for temporary injunctive relief may be filed with the court without first complying with the presuit mediation requirements of this section. After any issues regarding emergency or temporary relief are resolved, the court may either refer the parties to a mediation program administered by the courts or require mediation under this section. An arbitrator or judge may not consider any information or evidence arising from the presuit mediation proceeding except in a proceeding to impose sanctions for failure to attend a presuit mediation session or to enforce a mediated settlement agreement. Persons who are not parties to the dispute may not attend the presuit mediation conference without the consent of all parties,

except for counsel for the parties and a corporate representative designated by the association. When mediation is attended by a quorum of the board, such mediation is not a board meeting for purposes of notice and participation set forth in s. 720.303. An aggrieved party must ~~shall~~ serve on the responding party a written demand to participate in presuit mediation in substantially the following form:

STATUTORY OFFER TO PARTICIPATE
IN PRESUIT MEDIATION

The alleged aggrieved party, ..., hereby demands that ....., as the responding party, engage in mandatory presuit mediation in connection with the following disputes, which by statute are of a type that are subject to presuit mediation:

(List specific nature of the dispute or disputes to be mediated and the authority supporting a finding of a violation as to each dispute.)

Pursuant to section 720.311, Florida Statutes, this demand to resolve the dispute through presuit mediation is required before a lawsuit can be filed concerning the dispute. Pursuant to the statute, the parties are required to engage in presuit mediation with a neutral third-party mediator in order to attempt to resolve this dispute without court action, and the aggrieved

party demands that you likewise agree to this process. If you fail to participate in the mediation process, suit may be brought against you without further warning.

The process of mediation involves a supervised negotiation process in which a trained, neutral third-party mediator meets with both parties and assists them in exploring possible opportunities for resolving part or all of the dispute. By agreeing to participate in presuit mediation, you are not bound in any way to change your position. Furthermore, the mediator has no authority to make any decisions in this matter or to determine who is right or wrong and merely acts as a facilitator to ensure that each party understands the position of the other party and that all options for reasonable settlement are fully explored.

If an agreement is reached, it shall be reduced to writing and becomes a binding and enforceable commitment of the parties. A resolution of one or more disputes in this fashion avoids the need to litigate these issues in court. The failure to reach an agreement, or the failure of a party to participate in the process, results in the mediator declaring an impasse in the mediation, after which the aggrieved party may proceed to court on all outstanding, unsettled disputes. If you have failed or refused to participate in the entire mediation process, you will

not be entitled to recover attorney ~~attorney's~~ fees, even if you prevail.

The aggrieved party has selected and hereby lists five certified mediators who we believe to be neutral and qualified to mediate the dispute. You have the right to select any one of these mediators. The fact that one party may be familiar with one or more of the listed mediators does not mean that the mediator cannot act as a neutral and impartial facilitator. Any mediator who cannot act in this capacity is required ethically to decline to accept engagement. The mediators that we suggest, and their current hourly rates, are as follows:

(List the names, addresses, telephone numbers, and hourly rates of the mediators. Other pertinent information about the background of the mediators may be included as an attachment.)

You may contact the offices of these mediators to confirm that the listed mediators will be neutral and will not show any favoritism toward either party. The Florida Supreme Court can provide you a list of certified mediators.

Unless otherwise agreed by the parties, section 720.311(2)(b), Florida Statutes, requires that the parties share the costs of presuit mediation equally, including the fee charged by the mediator. An average mediation may require three to four hours of the mediator's time, including some preparation time, and the

parties would need to share equally the mediator's fees as well as their own attorney ~~attorney's~~ fees if they choose to employ an attorney in connection with the mediation. However, use of an attorney is not required and is at the option of each party. The mediators may require the advance payment of some or all of the anticipated fees. The aggrieved party hereby agrees to pay or prepay one-half of the mediator's estimated fees and to forward this amount or such other reasonable advance deposits as the mediator requires for this purpose. Any funds deposited will be returned to you if these are in excess of your share of the fees incurred.

To begin your participation in presuit mediation to try to resolve the dispute and avoid further legal action, please sign below and clearly indicate which mediator is acceptable to you. We will then ask the mediator to schedule a mutually convenient time and place for the mediation conference to be held. The mediation conference must be held within ninety (90) days after ~~of~~ this date, unless extended by mutual written agreement. In the event that you fail to respond within 20 days after ~~from~~ the date of this letter, or if you fail to agree to at least one of the mediators that we have suggested or to pay or prepay to the mediator one-half of the costs involved, the aggrieved party will be authorized to proceed with the filing of a lawsuit against you without further notice and may seek an award of

attorney ~~attorney's~~ fees or costs incurred in attempting to obtain mediation.

Therefore, please give this matter your immediate attention. By law, your response must be mailed by certified mail, return receipt requested, and by first-class mail to the address shown on this demand.

.....

.....

RESPONDING PARTY: YOUR SIGNATURE INDICATES YOUR AGREEMENT TO THAT CHOICE.

AGREEMENT TO MEDIATE

The undersigned hereby agrees to participate in presuit mediation and agrees to attend a mediation conducted by the following mediator or mediators who are listed above as someone who would be acceptable to mediate this dispute:

(List acceptable mediator or mediators.)

I/we further agree to pay or prepay one-half of the mediator's fees and to forward such advance deposits as the mediator may require for this purpose.

.....

Signature of responding party #1

.....

Telephone contact information

.....

Signature and telephone contact information of responding party #2 (if applicable)(if property is owned by more than one person, all owners must sign)

(3) In lieu of initiating presuit mediation under this section, an aggrieved party may submit a dispute subject to presuit mediation under subsection (2) to nonbinding arbitration in accordance with s. 718.1255.

Section 3. Section 720.319, Florida Statutes, is created to read:

720.319 Homeowners' association ombudsman.—

(1) ADMINISTRATION; APPOINTMENT; LOCATION.—

(a) There is created an Office of the Homeowners' Association Ombudsman to be located, for administrative purposes, within the Department of Business and Professional Regulation. The functions of the office shall be funded by the General Appropriations Act.

(b) The Governor shall appoint the ombudsman. The ombudsman must be an attorney admitted to practice before the Florida Supreme Court and shall serve at the pleasure of the Governor. The ombudsman, an officer, or a full-time employee of

the ombudsman's office may not actively engage in any other business or profession that directly or indirectly relates to or conflicts with his or her work in the ombudsman's office; serve as the representative, or an executive, officer, or employee, of any political party, executive committee, or other governing body of a political party; receive remuneration for activities on behalf of any candidate for public office; or engage in soliciting votes or other activities on behalf of a candidate for public office. The ombudsman, an officer, or a full-time employee of the ombudsman's office may not become a candidate for election to public office unless he or she first resigns from his or her office or employment.

(c) The ombudsman shall maintain his or her principal office at a place convenient to the department, which will enable the ombudsman to expeditiously carry out the duties and functions of his or her office. The ombudsman may establish branch offices elsewhere in the state upon the concurrence of the Governor.

(2) POWERS AND DUTIES.—The ombudsman has the powers necessary to carry out the duties of his or her office, including, but not limited to:

(a) Employing professional and clerical staff as necessary for the efficient operation of the office.

(b) Preparing and issuing reports and recommendations to the Governor, the department, the President of the Senate, and

the Speaker of the House of Representatives on any matter or subject within the jurisdiction of chapter 720.

(c) Acting as a liaison between the department, parcel owners, boards of directors, board members, community association managers, and other affected parties. The ombudsman shall develop policies and procedures to assist parcel owners, boards of directors, board members, community association managers, and other affected parties to understand their rights and responsibilities, as set forth in this chapter, and the governing documents that govern their respective associations. The ombudsman shall coordinate and assist in the preparation and adoption of educational and reference material, and shall endeavor to coordinate with private or volunteer providers of these services, so that the availability of these resources is made known to the largest possible audience.

(d) Monitoring and reviewing procedures and disputes concerning elections or meetings.

(e) Providing resources to assist members of boards of directors and officers of associations to carry out their powers and duties consistent with this chapter and the governing documents that govern the association.

(f) Encouraging and facilitating voluntary meetings between parcel owners, boards of directors, board members, community association managers, and other affected parties when the meetings may assist in resolving a dispute within a

homeowners' association before a person submits a dispute for a formal or administrative remedy. It is the intent of the Legislature that the ombudsman act as a neutral resource for both the rights and responsibilities of parcel owners, associations, and board members.

(g) Assisting with the resolution of disputes between parcel owners and the association, or between parcel owners, if applicable.

(3) ELECTION MONITORING.—

(a) Fifteen percent of the total voting interests in a homeowners' association, or six parcel owners, whichever is greater, may petition the ombudsman to appoint an election monitor to attend the annual meeting of the parcel owners and conduct the election of directors.

(b) The ombudsman shall appoint a division employee, a person who specializes in homeowners' association election monitoring, or an attorney licensed to practice in the state as the election monitor.

(c) The association must pay all costs associated with the election monitoring process.

(d) The division must adopt a rule establishing procedures for the appointment of election monitors and the scope and extent of the monitor's role in the election process.

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 homeowners' associations; amending s. 720.305, F.S.; requiring the board of administration to provide written notice of the opportunity for certain hearings to certain persons; requiring certain hearings to be held within a specified time after certain persons receive a written request for such hearing; providing how a written request may be provided to certain persons; authorizing certain persons to attend the hearing in certain ways; authorizing a fine and suspension committee to reduce a fine or suspension levied by the board; providing an appeals process for certain fines and suspensions; requiring an appeal to be heard before a committee within a specified time after certain persons receive written notice of the appeal; providing how written notice of an appeal may be provided to certain persons; providing for the composition of an appeals committee; authorizing certain persons to attend the appeals committee and providing the ways that such persons may attend; specifying the role of the appeals committee; specifying when a fine or suspension may not be

imposed; requiring the appeals committee to reduce the fine or suspension by a specified percentage under certain circumstances; requiring the association to provide written notice, in specified ways, to certain persons of the decision of the appeals committee; specifying when payment of a fine that is appealed is due; amending s. 720.311, F.S.; authorizing parties to initiate nonbinding arbitration rather than presuit mediation for certain disputes; creating s. 720.319, F.S.; creating the Office of the Homeowners' Association Ombudsman within the Department of Business and Professional Regulation; providing for funding of the office; directing the Governor to appoint the ombudsman; requiring the ombudsman to be an attorney; prohibiting the ombudsman, officers, and full-time employees from holding certain positions, engaging in certain activities, or receiving certain remuneration; providing for the principal location of the ombudsman's office; authorizing the ombudsman to establish branch offices under specified circumstances; providing for the powers and duties of the ombudsman; providing for the administration of an election monitoring process; requiring the Division of Florida Condominiums, Timeshares, and Mobile Homes to adopt certain rules; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1095 Telephone Solicitation
SPONSOR(S): Beltran
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

Chapter 501, part IV, the Florida Telemarketing Act (FTA), requires non-exempt businesses engaged in telemarketing and their salespeople to be licensed by the Florida Department of Agriculture and Consumer Services (DACS) before operating in Florida.

The law governing telephone solicitations in the state, the Florida Do Not Call Act, prohibits unsolicited telephonic sales calls and text messages from telemarketers. Residents who do not wish to receive unsolicited telephonic sales calls may have their residential, mobile, or paging device telephone number included on the Do Not Call List. DACS maintains the list, it is free to register, and a registered number remains on the list indefinitely.

The law governing telephone solicitations also prohibits telephonic sales calls that use an automated system for the selection or dialing of telephone numbers or the playing of a recorded message (robocall) when a connection is completed without the prior express written consent of the called party.

The bill makes the following changes to the law governing telephone solicitations:

- Revises the description, in the definition of "prior express written consent," of the type of automated calling system that must be used, to specifically be an automated system for the selection "and" dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called.
- Revises the definition of "unsolicited telephonic sales call" to mean a telephonic sales call other than a call made within 120 days after an express request of the called party.
- Clarifies that the provisions requiring prior express written consent do not prohibit the use of an automated telephone dialing system with live messages if the call is made or message is given solely in response to an inquiry initiated by the called party.
    - However, the bill specifies that only two calls may be made or messages given in response to each such inquiry.
- Clarifies that in order for a prevailing party to be awarded attorney fees and costs from a non prevailing party in civil litigation cases, such litigation must result from a violation, instead of a transaction involving a violation.

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

The effective date of the bill is July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida Telemarketing Act

Chapter 501, part IV, the Florida Telemarketing Act (FTA), requires non-exempt businesses engaged in telemarketing and their salespeople to be licensed by the Florida Department of Agriculture and Consumer Services (DACS) before operating in Florida. Certain exempt entities must have a valid affidavit of exemption on file prior to operating in Florida. There are approximately 28 exemptions, including, but not limited to: soliciting for religious, charitable, political or educational purposes, research companies, newspapers, book and video clubs, cable television, and persons or companies with whom the consumer has a prior business relationship.[1]

The FTA generally requires businesses that solicit the sale of consumer goods or services to:

- Be licensed;[2]
- Post a form of security;[3]
- License all of their salespeople;[4] and
- Provide DACS with a list of all telephone numbers used to make sales calls.[5]

An application for licensure as a telemarketer must include the applicant's identifying information, prior experience in the field, criminal and administrative history, especially relating to fraud, theft, or unfair and deceptive trade practices, phone numbers from which the telemarketer will make sales calls, and parent or affiliate entity under which it will transact business, if applicable.[6]

Additionally, a telemarketer applicant must submit with the application:

- A script that will be used by its salespersons during calls, or other related literature;
- The identity, address, date of birth, and alias of each of the applicant's principal officers, directors, trustees, shareholders, owners, partners, office managers, and salespersons who are employed by or affiliated with the applicant; and
- A $1,500 licensing fee.[7]

In Florida, it is unlawful for telemarketers to:

- Accept novelty payments.[8]
- Employ or be affiliated with an unlicensed salesperson.
- Be employed by or affiliated with an unlicensed commercial telephone seller.
- Operate without a license.
- Make calls before 8 a.m. or after 8 p.m. local time at the called person's time zone.
- Fail to provide the call recipient with their name and telephone number.[9]

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[1] S. 501.604, F.S.
[2] S. 501.605, F.S.
[3] Section 501.611, F.S., requires a $50,000 bond, irrevocable letter of credit issued for the applicant, or a certificate of deposit in favor of the Department for payment on findings of fraud, misrepresentation, breach of contract, or other violation by the applicant.
[4] Section 501.607, F.S.
[5] Section 501.605, F.S.
[6] S. 501.605(2), F.S.
[7] S. 501.605(5)(b), F.S.
[8] S. 501.603(8), F.S., defines a "novelty payment" as a payment method that does not have systematic monitoring and includes remotely created checks, remotely created payment orders, cash-to-cash money transfers (such as Western Union) and cash reload mechanisms (such as MoneyPak or ReloadIt). Novelty payment methods are not systematically monitored, have little to no consumer protection in the case of fraud or theft, and are used frequently in scams and other fraudulent activity.
[9] S. 501.616, F.S.

Violations of the FTA are punishable by a civil fine of up to $10,000 per violation,[10] the imposition of criminal penalties, and up to a third degree felony with repeat violations constituting a second degree felony.[11] DACS and the office of the state attorney have investigative authority, including the power to subpoena witnesses if a violation occurs.[12] Reasonable attorney's fees and costs may be awarded to the prevailing party in a civil action as part of a judgment or administrative order.[13]

Telephone Solicitations

Do Not Call List

Section 501.059, F.S., is the section of Florida law that governs telephone solicitations. The law includes the Florida Do Not Call Act, also known as the "Do Not Call" list (list), which prohibits unsolicited telephonic sales calls and text messages from telemarketers.[14] Residents who do not wish to receive unsolicited telephonic sales calls may have their residential, mobile, or paging device telephone number included on the list. DACS maintains the list, it is free to register, and a registered number remains on the list indefinitely.[15]

An "unsolicited telephonic sales call" is defined as a telephonic sales call other than a call made:

- In response to an express request of the person called;
- Primarily in connection with an existing debt or contract, if payment or performance of such debt or contract has not been completed at the time of such call;
- To a person with whom the telephone solicitor has a prior or existing business relationship; or
- By a newspaper publisher or his or her agent or employee in connection with his or her business.[16]

Telephone solicitors[17] are prohibited from making telephonic sales calls[18] to consumers who register for the list. A "telephonic sales call" means a telephone call, text message, or voicemail transmission to a consumer for the purpose of soliciting a sale of any consumer goods or services, soliciting an extension of credit for consumer goods or services, or obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.[19]

In addition to those consumers who are registered for the list, a telephone solicitor may not call or text a consumer who previously communicated to the telephone solicitor that they do not wish to be contacted. Businesses and charities are required to maintain a list of consumers who have made a do-not-call registration request, and it is a violation to call a consumer who has asked to be placed on the company's do-not-call list.[20]

When a telephone number is made available through a caller ID service during a telephonic sales call, the solicitor must ensure that the number is capable of receiving phone calls, and that the dialing of the

[10] S. 501.619, F.S.
[11] S. 501.623, F.S.
[12] S. 501.617, F.S.
[13] S. 501.621, F.S.
[14] *See* s. 501.059, F.S.
[15] Department of Agriculture and Consumer Services, *Florida Do Not Call*, https://www.fdacs.gov/Consumer-Resources/Florida-Do-Not-Call (last visited Jan. 15, 2022).
[16] S. 501.059(1)(k), F.S.
[17] Section 501.059(1)(i), F.S., defines "Telephone solicitor" as "a natural person, firm, organization, partnership, association, or corporation, or a subsidiary or affiliate thereof, doing business in this state, who makes or causes to be made a telephonic sales call, including, but not limited to, calls made by use of automated dialing or recorded message devices."
[18] S. 501.059(1)(j), F.S., defines "Telephonic sales call" as a telephone call, text message, or voicemail transmission to a consumer for the purpose of soliciting a sale of any consumer goods or services, soliciting an extension of credit for consumer goods or services, or obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.
[19] S. 501.059(1)(j), F.S.
[20] S. 501.059(5), F.S.

number will connect the call recipient with the telephone solicitor or the seller on behalf of which the phone call was placed.[21]

Anyone who receives an unsolicited sales call can report the call to DACS using the online Do Not Call Complaint Form.[22]

Prior Express Written Consent

A component of the law governing telephone solicitations also prohibits automated telephonic sales calls without the prior express written consent of the called party.[23]

"Prior express written consent" is defined as a written agreement that:

- Bears the signature of the called party;
- Clearly authorizes the person making or allowing the placement of a telephonic sales call by telephone call, text message, or voicemail transmission to deliver or cause to be delivered to the called party a telephonic sales call using an automated system for the selection or dialing of telephone numbers, the playing of a recorded message when a connection is completed to a number called, or the transmission of a prerecorded voicemail; and
- Includes the telephone number to which the signatory authorizes a telephonic sales call to be delivered.[24]

Prior express written consent must include a clear and conspicuous disclosure informing the called party that:

- By executing the agreement, the called party authorizes the person making or allowing the placement of a telephonic sales call to deliver or cause to be delivered a telephonic sales call to the called party using an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called; and
- He or she is not required to directly or indirectly sign the written agreement or to agree to enter into such an agreement as a condition of purchasing any property, goods, or services.[25]

There is a rebuttable presumption that a telephonic sales call made to any area code in this state is made to a Florida resident or to a person in this state at the time of the call.[26]

Violations

A telephone solicitor who violates the provisions of Florida's "Do Not Call" program is currently subject to an injunction and a civil penalty[27] with a maximum fine of $10,000 per violation, or an administrative fine[28] with a maximum of $1,000 per violation. Additionally, a telephone solicitor may be subject to responsibility for the consumer's attorney fees and costs.[29]

A called party who is aggrieved by a violation may bring an action for an injunction and actual damages or $500, whichever is greater.[30]

[21] S. 501.059(8)(b), F.S.
[22] Department of Agriculture and Consumer Services, *Florida Do Not Ca*ll, https://www.fdacs.gov/Consumer-Resources/Florida-Do-Not-Call (last visited Jan. 15, 2022).
[23] S. 501.059(8)(a), F.S.
[24] S. 501.059(1)(g), F.S.
[25] S. 501.059(1)(g)4., F.S.
[26] S. 501.059(8)(d), F.S.
[27] S. 501.059(9)(a), F.S.
[28] S. 501.059(9)(b), F.S.
[29] S. 501.059(11), F.S.
[30] S. 501.059(10)(a), F.S.

Courts that find that a defendant willfully or knowingly violated these provisions, are authorized to, in their discretion, increase the amount of the award to not more than three times the amount of damages.[31]

Telephone Consumer Protection Act (TCPA) History

In an effort to address a growing number of telephone marketing calls, Congress enacted the Telephone Consumer Protection Act (TCPA) in 1991. The TCPA restricts the making of telemarketing calls and the use of automatic telephone dialing systems and artificial or prerecorded voice messages. The rules apply to common carriers as well as to other marketers. In 1992, the Commission adopted rules to implement the TCPA, including the requirement that entities making telephone solicitations institute procedures for maintaining company-specific do-not-call lists.[32]

In July 2015, the Federal Communications Commission (FCC) established rules indicating that telephone carriers can block unwanted calls at the request of consumers.[33] Following the FCC's ruling, the National Association of Attorneys General (NAAG) called upon the major telephone carriers to do more to provide these services to consumers.[34] Currently there are a number of call-blocking applications that provide some relief from unwanted and spam calls.[35]

On November 16, 2017, the FCC adopted new rules to allow voice service providers to proactively block certain types of robocalls that are likely to be fraudulent because they come from certain types of phone numbers, including those that do not or cannot make outgoing calls.[36] For example, perpetrators have used IRS phone numbers that do not dial out to impersonate the tax agency, informing the people who answer that they are calling to collect money owed to the U.S. government. Such calls appear to be legitimate to those who receive them and can result in fraud or identity theft. Service providers now can block such calls, as well as calls from invalid numbers, such as those with area codes that do not exist, from numbers that have not been assigned to a provider, and from numbers allocated to a provider but not currently in use.[37]

The FCC requires telemarketers to transmit caller identification information, including the number and name of the caller. The telephone number provided must permit any individual to make a do-not-call request during regular business hours. It also provides that any person or entity that engages in telemarketing is prohibited from blocking the transmission of caller identification information. However, tax-exempt nonprofit organizations are not required to comply with these rules.[38]

With regard to telephone carriers, the FCC allows carriers to offer their customers external call-blocking apps on their landlines and allows carriers to block certain illegal robocalls directly. In addition, in December 2019, Congress enacted the "TRACED Act" to aid enforcement efforts between law enforcement agencies and the private sector on traceback issues, and required the FCC to issue rules "for the registration of a single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls."[39] In July 2020, the FCC designated the US Telecom-led Industry

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[31] S. 501.059(10)(b), F.S.
[32] Federal Communications Commission, *FCC Actions on Robocalls, Telemarketing*, https://www.fcc.gov/general/telemarketing-and-robocalls (last visited Jan. 15, 2022).
[33] Declaratory Ruling and Order, In the Matter of Rules and Regulations Implementing the Telecommunications Consumer Protection Act of 1991, 30 FCC Rcd. 7961 (July 10, 2015).
[34] National Association of Attorneys General, *Do Not Call: The History of Do Not Call and How Telemarketing Has Evolved*, https://www.naag.org/consumer-protection/attorney-general-journal/do-not-call-the-history-of-do-not-call-and-how-telemarketing-has-evolved/ (last visited Jan. 15, 2022).
[35] CTIA, *The Wireless Association, How to Stop Robocalls*, https://www.ctia.org/consumer-tips/robocalls (last visited Jan. 15, 2022).
[36] 32 FCC Rcd 9706 (11).
[37] Federal Communications Commission, *Stop Unwanted Calls and Texts*, https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts (last visited Jan. 15, 2022).
[38] 47 C.F.R. § 64.1601.
[39] Pallone-Thune Telephone Robocall Abuse *Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274 (2019)*.

Traceback Group (ITG) as the Official Consortium for coordinating industry-led efforts to trace back the origin of suspected unlawful robocalls.[40]

According to the ITG's first annual report, in 2019, over 100 companies participated in over 1,000 ITG traceback investigations, implicating more than 10 million illegal robocalls and resulting in more than 20 subpoenas and/or civil investigative demands from federal and state enforcement agencies.[41]

The ITG reported in a letter to the FCC on November 13, 2020, that about 100 providers have failed to cooperate with the ITG, including approximately 30 that are based in the United States.[42] The ITG encouraged the FCC to bring aggressive enforcement against robocallers and voice service providers that routinely refuse to participate in the traceback process.[43]

In its Fourth Report and Order on Advanced Methods to Target and Eliminate Unlawful Robocalls released December 30, 2020, the FCC required "all voice service providers to respond to traceback requests from the FCC, civil and criminal law enforcement and the Consortium."[44]

The TRACED Act requires the FCC to issue an annual public notice seeking applicants to serve as the registered consortium.[45] On August 25, 2021, the FCC selected the Traceback Group to continue as the registered consortium.[46]

National Do Not Call Registry

Although individual states were first to address consumers' requests to stop unwanted telemarketing calls,[47] the federal government soon followed with a National Do Not Call Registry in 2003.[48] In July 2003, the federal government issued a report and order establishing the National Do Not Call registry. The national registry covers all telemarketers (with the exception of certain nonprofit organizations), and applies to both interstate and intrastate calls. The registry is administered by the FTC. To reduce the number of hang-up and dead air calls consumers experience, the Commission's telemarketing rules also contain restrictions on the use of autodialers and requirements for transmitting caller ID information.

As the National Do Not Call Registry has gained popularity, some states have decided to forgo the expense of maintaining their own lists. As of September 2017, only 12 states maintained their own Do Not Call lists: Colorado, Florida, Indiana, Louisiana, Massachusetts, Mississippi, Missouri, Oklahoma, Pennsylvania, Tennessee, Texas and Wyoming.[49]

Constitutionality of Do Not Call Registries

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[40] *USTelecom The Broadband Association, FCC Names USTelecom's Industry Traceback Group as Official Robocall Traceback Consortium*, https://www.ustelecom.org/fcc-names-ustelecoms-industry-traceback-group-as-official-robocall-traceback-consortium/ (last visited Jan. 15, 2022).

[41] InsideArm, *The Latest Developments in the World of Call Delivery*, https://www.insidearm.com/news/00047073-latest-developments-world-call-delivery/ (last visited Jan. 15, 2022).

[42] USTelecom, Enforcement Bureau Requests Information on the Status of Private-Led Traceback Efforts of Suspected Unlawful Robocalls, EB Docket No. 20-195, Nov. 13, 2020, https://docs.fcc.gov/public/attachments/DOC-368957A2.pdf (last visited Jan. 15, 2022).

[43] InsideArm, *The Latest Developments in the World of Call Delivery*, https://www.insidearm.com/news/00047073-latest-developments-world-call-delivery/ (last visited Jan. 15, 2022).

[44] Federal Communications Commission, Fourth Report and Order, Dec. 29, 2020, https://docs.fcc.gov/public/attachments/FCC-20-187A1.pdf (last visited Jan. 15, 2022).

[45] TRACED Act, § 13(d)(2).

[46] Federal Communications Commission, Report and Order DA 21-1047, Aug. 25, 2021, https://www.fcc.gov/document/fcc-retains-industry-traceback-group-robocall-consortium (last visited Jan. 15, 2022).

[47] At least 28 states, starting with Florida in 1987, have implemented Do Not Call registries.

[48] Federal Trade Commission, *National Do Not Call Registry*, https://www.donotcall.gov/ (last visited Jan. 15, 2022).

[49] Donald Peterson, *TCPA – Telephone Consumer Protection Act, State Do Not Call Lists*, https://tcpa.mobi/state-do-not-call-list/#:~:text=Today%20(September%2C%202017)%2C,and%20Wyoming, (last visited Jan. 15, 2022).

Do Not Call registries have been subject to numerous state and federal lawsuits challenging their constitutionality. These suits have failed and the National Registry has been upheld. The courts have found that the Do Not Call Registry is a reasonable restriction on commercial speech and that the FTC is authorized to promulgate rules for the registry. The Tenth Circuit Court of Appeals has stated, "the do-not-call registry prohibits only telemarketing calls aimed at consumers who have affirmatively indicated that they do not want to receive such calls and for whom such calls would constitute and invasion of privacy." Thus, the government may have a role in restricting the ability of a telemarketer to reach a household via telephone, and because the government has left the ultimate decision of whether or not to be placed on the registry up to the individual, the government did not restrict the First Amendment rights of the solicitor.[50]

Claims of preemption have also been unsuccessful. The TCPA's non-preemption clause,[51] often referred to as the savings clause, has been relied upon by courts to uphold states' Do Not Call Registries. The clause states that: "[n]othing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive intrastate requirements or regulation." The clause indicates specific types of actions that a state may prohibit or place more restrictive regulations on, such as sending unsolicited advertisements via fax, regulation of the use of automatic dialing systems and prerecorded messages, and the making of telephone solicitations.[52]

The TPCA is silent on a state's ability to place regulations that are more stringent than the TCPA requirements for interstate calls.[53] However, at least one court has held that state regulations and prohibitions of telemarketing can cross state lines.[54]

Caller ID and "Spoofing"

"Spoofing" is the practice of altering or manipulating the caller ID information that is received in conjunction with an incoming telephone call. In the past, caller ID services were not common and spoofing required special equipment or a relatively high degree of technical sophistication. However, advances in technology, such as the proliferation of cellular phones, cell phone applications, and the widespread availability of Voice over Internet Protocol (VoIP) allows anyone to inexpensively spoof his or her caller ID using the services of a third-party spoofing provider.[55] For example, one such spoofing provider allows a consumer to download an app on their smartphone, purchase credits towards call time, and simply input the number that they want displayed on the receiving end in order to place an untraceable, spoofed call.[56]

In response to the growing practice of spoofing, Congress amended the TCPA to add the Truth in Caller ID Act of 2009. Under the Act and FCC rules, a person or entity is prohibited from transmitting false or misleading caller ID information "**with the intent to defraud**, cause harm, or wrongly obtain anything of value," and carries a penalty of up to $10,000 for each violation.[57] However, spoofing is not illegal when no harm is intended or caused, or if the caller has legitimate reasons to hide his or her information. Examples may include law enforcement agencies working on cases, victims of domestic abuse, or doctors who wish to discuss private medical matters.[58]

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[50] *Mainstream Marketing Services Inc v. Federal Trade Commission*, 358 F.3d 1228 (10th Cir. 2004).
[51] 47 U.S.C. § 227(f)(1).
[52] National Association of Attorneys General, *Do Not Call: The History of Do Not Call and How Telemarketing Has Evolved*, NAGTRI Journal, Vol. 1 No. 4.
[53] 47 U.S.C. s. 227 (f)(1).
[54] *See Patriotic Veterans, Inc. v. Indiana*, 736 F.3d 1041 at 1044-45 (7th Cir. 2013) and *Patriotic Veterans, Inc. v. State of Indiana*, No. 16-2059 (7th Cir. 2017)("Preventing automated messages to persons who don't want their peace and quiet disturbed is a valid time, place, and manner restriction.").
[55] *See* FCC 11-100, *Rules and Regulations Implementing the Truth in Caller ID Act of 2009*, WC Docket No. 11-39, (June 22, 2011), at 9116, https://apps.fcc.gov/edocs_public/attachmatch/FCC-11-100A1_Rcd.pdf (last visited Jan. 15, 2022).
[56] Business Insider, *It's Surprisingly Easy for a Hacker to Call Anyone From Your Personal Phone Number* (March 1, 2016), http://www.businessinsider.com/phone-number-spoofing-2016-2 (last visited Jan. 15, 2022).
[57] 47 U.S.C. § 227(e).
[58] Federal Communications Commission, *Caller ID Spoofing*, https://www.fcc.gov/consumers/guides/spoofing-and-caller-id (last visited Jan. 15, 2022).

In 2008, Florida passed its own anti-spoofing legislation, The Florida Caller ID Anti-Spoofing Act (2008).[59] The Act prohibits **any person** from:

- Making a call with knowledge that false information was entered into a telephone caller ID system with the intent to deceive, defraud, or mislead the call's recipient; and
- Entering false information into a telephone caller ID system "with the intent to deceive, defraud, or mislead" the call's recipient.

However, a U.S. District Court in Miami found that Florida's Caller ID Anti-Spoofing Act (2008) violated the Commerce Clause of the United State Constitution because it had the effect of controlling spoofing practices that took place entirely outside the state, wherein individuals or companies could not ascertain what telephone numbers are subject to Florida law, and would have to subject all of their call practices to Florida law to avoid liability.[60] Similarly, in 2011, a federal court in Mississippi struck Mississippi's anti-spoofing law, which was substantially similar to Florida's.[61]

Spam Robocalls

According to the American Association of Retired Persons (AARP), robocalls have become an epidemic. YouMail, a company that provides call-blocking and call-management services, estimates that there were 58.5 billion robocalls in the U.S. in 2019 and that 44 percent of them were placed by scammers.[62]

A February 2021 survey found that 46 percent of Americans reported receiving spam phone calls on their cell phone every day, and another 24 percent receiving them multiple times per week.[63]

Scammers often use caller ID spoofing to mask their true location and make it appear the call is from a legitimate or local number to raise the odds of the called party to answer. What follows is a robotic voice on the other end claiming to represent a utility, a name-brand company or a government agency (such as the Social Security Administration or the Internal Revenue Service). It might offer a free cruise, inexpensive health insurance or a low-interest loan. Answering and/or engaging with the call may lead to a live scammer, who realizes they have found a "live" number, and thus may call repeatedly.[64]

Many robocalls are legal. The FCC allows such robocalls for informational or noncommercial purposes, such as polling, political campaigning and outreach by nonprofit groups.

Advances in technology have magnified fundamental flaws in the American phone system, enabling unrelenting robocalls from untraceable origins. As a result, it is incredibly profitable to use spam calls to drive business whether the caller is a scammer or an actual business using telemarketing to increase sales.[65]

Consent and Revocation

The TCPA prohibits a telemarketer from using an automatic telephone dialing system (ATDS) to place

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[59] S. 817.487, F.S. (2008).
[60] *TelTech Systems, Inc. v. McCollum*, No. 08-61664-CIV-MARTINEZ-BROWN (S.D. Fla. Filed Oct. 16, 2008).
[61] *TelTech Systems, Inc. v. Barbour*, 866 F. Supp. 2d 571 (S.D. Miss. 2011), *aff'd sub nom Teltech Systems, Inc. v. Bryant*, 702 F. 2d 232 (5th Cir. 2012).
[62] American Association of Retired Persons, *Robocalls*, https://www.aarp.org/money/scams-fraud/info-2019/robocalls.html?CMP=KNC-DSO-Adobe-Google-FRD-Ongoing-Robocalls-NonBrand-Exact-Robocalls&gclid=EAIaIQobChMIlvmq_4Sr7wIVFYvICh2RAwjqEAAYAiAAEgJD4vD_BwE&gclsrc=aw.ds (last visited Jan. 15, 2022).
[63] Simon van Zuylen-Wood, *How Robo-Callers Outwitted the Government and Completely Wrecked the Do Not Call List* (Jan. 11, 2018), https://www.washingtonpost.com/lifestyle/magazine/how-robo-call-moguls-outwitted-the-government-and-completely-wrecked-the-do-not-call-list/2018/01/09/52c769b6-df7a-11e7-bbd0-9dfb2e37492a_story.html?utm_term=.8a6e6ea55f32 (Last visited Jan. 15, 2022).
[64] AARP, *supra* note 62.
[65] AARP, *supra* note 62.

a call or send a text message to a cell phone without the recipient's "**prior express consent**."[66] The type of consent depends on the nature of the call or text. Consent generally can be revoked by any reasonable method. However, some courts recently have considered whether revocation may be restricted in circumstances where the consent is included on a bilateral agreement.[67]

There are two types of prior consent provided under the TCPA:

- **Prior express consent** is required to place autodialed, non-solicitation calls or texts to a cell phone.
- **Prior express written consent** is a heightened form of consent, must be evidenced by a written agreement signed by the call recipient, and is required to place autodialed telemarketing or advertising calls or texts to a cell phone. The written agreement must include a clear and conspicuous disclosure informing the consumer signing that:
    - By signing the agreement, the consumer is authorizing autodialed telemarketing or advertising calls or texts; and
    - The consumer is not required to sign the agreement as a condition of purchasing any property, goods, or services.[68]

Prior express consent can be written or verbal. Voluntarily providing one's cellular number also constitutes prior express consent where:

- The individual gives "prior express consent" to be called or texted at the number provided;
- The individual has provided his or her number to the party calling or texting; and
- There is some relation between the communications and the reason for which an individual provided his or her number.[69]

Prior express written consent is required for calls or texts to cell phones that introduce an advertisement,[70] or constitute "telemarketing"[71] and are sent using an ATDS. The TCPA's advertising prong merely requires introducing at the most basic level the commercial availability of a service. In similar fashion, telemarketing occurs when the context of a text or call indicates that it was initiated and transmitted to a person for promoting property, goods, or services. Neither the TCPA nor its implementing regulations require an explicit mention of a good, product, or service where the implication of an improper purpose is clear from the context.[72]

Revocation of consent is controlled by the consenting party, and may be communicated orally or in writing by any reasonable means. However, where consent is contractually provided, as in credit agreements, the parties can bargain to require mutuality or particular revocation methods. Recently, a number of courts have addressed whether a consumer may unilaterally revoke consent when it is a term in a bargained-for contract.[73]

In 2017, the Second Circuit Court of Appeal held that a consumer **may not unilaterally revoke** consent in a bargained-for, bilateral contract.[74] The court based its decision on "black-letter" contract law, referring to a fundamental aspect of contractual relationships that one party may not alter or revoke a term of a bilateral agreement without the other party's consent. The court found that a consumer, having consented to be contacted via an auto-dialer, could not unilaterally revoke consent without the caller's permission. Notably, the court distinguished case law from the Third and Eleventh

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[66] 47 U.S.C. § 227(b)(1)(A)(iii).
[67] The National Law Review, *Consent and Revocation Under the TCPA*, https://www.natlawreview.com/print/article/consent-and-revocation-under-tcpa (last visited Jan. 15, 2022).
[68] *Id*.
[69] Federal Communications Commission, Rules & Regulations Implementing the TCP Act of 1991 et al., 30 FCC Rcd at 7991–92.
[70] 47 C.F.R. § 64.1200(f)(1), defines an "advertisement" as "any material advertising the commercial availability or quality of any property, goods, or services," and "telemarketing" is defined as "the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person."
[71] 47 C.F.R. § 64.1200(f)(12).
[72] The National Law Review, *supra* note 67.
[73] *Id*.
[74] *Reyes v. Lincoln Auto. Fin. Servs.*, 861 F.3d 51, 53 (2d Cir. 2017).

Circuit Courts of Appeal, where consumers retained their ability to revoke consent because it was given in credit applications, rather than as part of a bilateral contract.[75]

In 2018, a United States District Court in Florida also held that consent provided by contract **cannot be unilaterally revoked**.[76] The court noted that no provision in the TCPA indicates that contractually-granted consent can be unilaterally revoked where it would contradict black-letter contract law. The court held that a consumer who has consented to auto-dialed communication in a contract for services cannot later revoke such consent.[77]

However, other courts have disagreed, rejecting the argument that consent is irrevocable. In 2018, a United States District Court in Tennessee adopted the general rule that consumer consent **may be revoked** at any time by "any reasonable means."[78] The court held that consumers **retain the ability to revoke** their prior consent despite having a bilateral agreement with the caller. Other courts have also allowed for revocation of consent by any means in the absence of a contractual restriction on the means by which a consumer may revoke consent.[79]

In December 2020, the U.S. Supreme Court heard oral arguments in a landmark case regarding whether consumers can sue a company for using an ATDS to text or call the consumers at a phone number saved in the company's system. At issue was the meaning of the TCPA's prohibition on using an ATDS to transmit communications to cell phones. The question before the Supreme Court was "whether the definition of ATDS in the TCPA encompasses any device that can 'store' and 'automatically dial' telephone numbers, even if the device does not use a random or sequential number generator."[80]

On April 1, 2021, the U.S. Supreme Court issued its decision. The Court ruled that to qualify as an ATDS under the TCPA, a device must have the capacity to either store a telephone number using a random or sequential number generator or produce a telephone number using a random or sequential number generator. The Court concluded that merely having the capacity to store numbers and dial them automatically is not enough to make a device qualify as an ATDS.[81]

Currently, the TCPA rules require telemarketers to:

- Obtain prior express written consent from consumers before robocalling them;
- No longer be able to use an "established business relationship" to bypass the consent requirement; and
- Provide an automated, interactive "opt-out" mechanism during each robocall so consumers can immediately tell the telemarketer to stop calling.[82]

The TCPA includes a private right of action.[83] A caller who places a call to a cell phone without consent using an ATDS is subject to $500 in damages per call. The damages amount is $1,500 per call if the court finds that the defendant willfully or knowingly committed the violation.[84]

The Florida telephone solicitation law prohibits robocalls without the prior express written consent of the called party.[85] When the called party has given such consent, robocalls are only allowed in certain circumstances through the use of an "automated system for the selection **or** dialing of telephone numbers or the playing of a recorded message" when a connection is completed to a number called.[86]

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[75] The National Law Review, *supra* note 67.
[76] *Medley v. Dish Network, LLC*, Case No. 8:16-cv-2534-T-36TBM, 2018 WL 4092120, at *10 (M.D. Fla. Aug. 27, 2018).
[77] The National Law Review, *supra* note 67.
[78] *Ammons v. Ally Fin., Inc*., Case No. 3:17-cv-00505, 2018 WL 3134619, at *15 (M.D. Tenn. June 27, 2018).
[79] *Few v. Receivables Performance Mgmt*., Case No. 1:17-CV-2038-KOB, 2018 WL 5923765 at *1 (N.D. Ala. Nov. 13, 2018).
[80] *Facebook, Inc., Petitioner vs. Noah Duguid*, et al., U.S., No. 19-511.
[81] *Id*.
[82] FCC, *supra* note 32.
[83] 47 U.S.C. § 227(b)(3).
[84] *Id*. at § 227(b)(3)(B)-(C).
[85] S. 501.059(8), F.S.
[86] *Id*.

Effect of the Bill

The bill makes the following changes to the law governing telephone solicitations:

- Revises the description, in the definition of "prior express written consent," of the type of automated calling system that must be used, to specifically be an automated system for the selection "and" dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called.
- Revises the definition of "unsolicited telephonic sales call" to mean a telephonic sales call other than a call made within 120 days after an express request of the called party.
- Clarifies that the provisions requiring prior express written consent do not prohibit the use of an automated telephone dialing system with live messages if the call is made or message is given solely in response to an inquiry initiated by the called party.
    - However, the bill specifies that only two calls may be made or messages given in response to each such inquiry.
- Clarifies that in order for a prevailing party to be awarded attorney fees and costs from a non prevailing party in civil litigation cases, such litigation must result from a violation, instead of a transaction involving a violation.

B. SECTION DIRECTORY:

Section 1: Amends s. 501.059, F.S., 501.059, F.S.; revising definitions; conforming a provision; authorizing the use of automated telephone dialing systems with live messages in response to certain inquiries; providing a limitation; revising provisions for the award of attorney fees and costs.

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 have an indeterminate negative fiscal impact on legitimate telemarketers to the extent they do not currently engage in business practices consistent with the requirements in the bill.

The bill may protect consumers from unwanted and fraudulent telephone solicitations.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill 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 telephone solicitation; amending s. 501.059, F.S.; revising definitions; conforming a provision; authorizing the use of automated telephone dialing systems with live messages in response to certain inquiries; providing a limitation; revising provisions for the award of attorney fees and costs; providing an effective date.

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

Section 1. Paragraphs (g) and (k) of subsection (1), paragraph (a) of subsection (8), and subsection (11) of section 501.059, Florida Statutes, are amended, and paragraph (e) is added to subsection (8) of that section, to read:

501.059 Telephone solicitation.—

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

(g) "Prior express written consent" means a written agreement that:

1. Bears the signature of the called party;

2. Clearly authorizes the person making or allowing the placement of a telephonic sales call by telephone call, text message, or voicemail transmission to deliver or cause to be delivered to the called party a telephonic sales call using an automated system for the selection and ~~or~~ dialing of telephone

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

numbers, the playing of a recorded message when a connection is completed to a number called, or the transmission of a prerecorded voicemail;

3. Includes the telephone number to which the signatory authorizes a telephonic sales call to be delivered; and

4. Includes a clear and conspicuous disclosure informing the called party that:

a. By executing the agreement, the called party authorizes the person making or allowing the placement of a telephonic sales call to deliver or cause to be delivered a telephonic sales call to the called party using an automated system for the selection and ~~or~~ dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called; and

b. He or she is not required to directly or indirectly sign the written agreement or to agree to enter into such an agreement as a condition of purchasing any property, goods, or services.

(k) "Unsolicited telephonic sales call" means a telephonic sales call other than a call made:

1. Within 120 days after ~~In response to~~ an express request of the ~~person~~ called party;

2. Primarily in connection with an existing debt or contract, if payment or performance of such debt or contract has not been completed at the time of such call;

3. To a person with whom the telephone solicitor has a prior or existing business relationship; or

4. By a newspaper publisher or his or her agent or employee in connection with his or her business.

(8)(a) A person may not make or knowingly allow a telephonic sales call to be made if such call involves an automated system for the selection and ~~or~~ dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called without the prior express written consent of the called party.

(e) This subsection does not prohibit the use of an automated telephone dialing system with live messages if the call is made or message is given solely in response to an inquiry initiated by the called party. However, only two calls may be made or messages given in response to each such inquiry.

(11)(a) In any civil litigation resulting from a ~~transaction involving a~~ violation of this section, the prevailing party, after judgment in the trial court and exhaustion of all appeals, if any, shall receive his or her reasonable attorney ~~attorney's~~ fees and costs from the nonprevailing party.

(b) The attorney for the prevailing party shall submit a sworn affidavit of his or her time spent on the case and his or her costs incurred for all the motions, hearings, and appeals to the trial judge who presided over the civil case.

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(c) The trial judge shall award the prevailing party the sum of reasonable costs incurred in the action plus a reasonable legal fee for the hours actually spent on the case as sworn to in an affidavit.

(d) Any award of attorney ~~attorney's~~ fees or costs shall become a part of the judgment and subject to execution as the law allows.

(e) In any civil litigation initiated by the department or the Department of Legal Affairs, the court may award to the prevailing party reasonable attorney ~~attorney's~~ fees and costs if the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party or if the court finds bad faith on the part of the losing party.

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

REGULATORY REFORM SUBCOMMITTEE

HB 1095 by Rep. Beltran
Telephone Solicitation

AMENDMENT SUMMARY
January 20, 2022

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

- Provides for the use of an automated system for the selection ***and*** dialing of telephone numbers instead of one or the other.
- Revises the definition of “Unsolicited telephonic sales call" to exclude a telephonic sales call made: Within 120 days after an express request of the called party.
- Limits the number of calls and messages to two calls or messages in response to each response to an inquiry initiated by a called party.
- Provides for retroactive application of the bill.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Regulatory Reform Subcommittee

Representative Beltran offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraphs (g) and (k) of subsection (1), paragraph (a) of subsection (8), and subsection (11) of section 501.059, Florida Statutes, are amended, and paragraph (e) is added to subsection (8) of that section, to read:

501.059 Telephone solicitation.—

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

(g) "Prior express written consent" means a written agreement that:

1. Bears the signature of the called party;

2. Clearly authorizes the person making or allowing the placement of a telephonic sales call by telephone call, text message, or voicemail transmission to deliver or cause to be delivered to the called party a telephonic sales call using an automated system for the selection and ~~or~~ dialing of telephone numbers, the playing of a recorded message when a connection is completed to a number called, the transmission of a text message or the transmission of a prerecorded voicemail;

3. Includes the telephone number to which the signatory authorizes a telephonic sales call to be delivered; and

4. Includes a clear and conspicuous disclosure informing the called party that:

a. By executing the agreement, the called party authorizes the person making or allowing the placement of a telephonic sales call to deliver or cause to be delivered a telephonic sales call to the called party using an automated system for the selection and ~~or~~ dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called; and

b. He or she is not required to directly or indirectly sign the written agreement or to agree to enter into such an agreement as a condition of purchasing any property, goods, or services.

(k) "Unsolicited telephonic sales call" means a telephonic sales call other than a call made:

1. Within 120 days after ~~In response to~~ an express request of the ~~person~~ called party;

2. Primarily in connection with an existing debt or contract, if payment or performance of such debt or contract has not been completed at the time of such call;

3. To a person with whom the telephone solicitor has a prior or existing business relationship; or

4. By a newspaper publisher or his or her agent or employee in connection with his or her business.

(8)(a) A person may not make or knowingly allow a telephonic sales call to be made if such call involves an automated system for the selection and ~~or~~ dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called without the prior express written consent of the called party.

(e) This subsection does not prohibit the use of an automated telephone dialing system with live messages, or for the transmission of text messages through an automated telephone dialing system, if the call, live message or text message is made or message is given solely in response to an inquiry initiated by the called party. However, only two calls may be made or messages given in response to each such inquiry.

(11)(a) In any civil litigation resulting from a ~~transaction involving a~~ violation of this section, the prevailing party, after judgment in the trial court and

exhaustion of all appeals, if any, shall receive his or her reasonable attorney ~~attorney's~~ fees and costs from the nonprevailing party.

(b) The attorney for the prevailing party shall submit a sworn affidavit of his or her time spent on the case and his or her costs incurred for all the motions, hearings, and appeals to the trial judge who presided over the civil case.

(c) The trial judge shall award the prevailing party the sum of reasonable costs incurred in the action plus a reasonable legal fee for the hours actually spent on the case as sworn to in an affidavit.

(d) Any award of attorney ~~attorney's~~ fees or costs shall become a part of the judgment and subject to execution as the law allows.

(e) In any civil litigation initiated by the department or the Department of Legal Affairs, the court may award to the prevailing party reasonable attorney ~~attorney's~~ fees and costs if the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party or if the court finds bad faith on the part of the losing party.

Section 2. The amendments to s. 501.59, Florida Statutes are intended to be remedial in nature, apply retroactively to July 1, 2021, and to any proceeding or commenced on or after July 1, 2021.

Section 3. This act shall take effect July 1, 2022.

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

Remove lines 6-7 and insert:
certain inquiries; providing a limitation; providing for retroactive application; revising provisions for

HB 1185

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1185 Legislative Review of Proposed Regulation of Unregulated Functions
SPONSOR(S): Plakon
TIED BILLS: **IDEN./SIM. BILLS:** SB 1276

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

SUMMARY ANALYSIS

A sunrise review is a formal process of review requiring a cost-benefit analysis be conducted before legislation proposing to regulate an unregulated profession or occupation is enacted.

Florida's sunrise review, which was enacted in 1991, is called the Sunrise Act. The Sunrise Act requires the Legislature to consider certain factors before determining whether to regulate an unregulated profession or occupation. Those factors include:

- Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare;
- Whether the practice of the profession or occupation requires specialized skill or training;
- Whether the regulation will have an unreasonable effect on job creation or job retention in the state;
- Whether the public is or can be effectively protected by other means; and
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

The bill amends the Sunrise Act to:

- Provide that in addition to applying to legislation that regulates an unregulated profession or occupation, the Sunrise Act also applies to legislation that substantially expands regulation of an already regulated profession or occupation;
- Require proponents of a regulation to provide certain information to the President of the Senate, the Speaker of the House of Representatives, and the state agency that is proposed to have jurisdiction of the regulation, no later than 30 days prior to the session in which the legislation is to be filed; and
- Require the state agency proposed to have jurisdiction to provide certain information to the President of the Senate, the Speaker of the House of Representatives, and the proponents of the regulation within 25 days after receiving the legislation.

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

Occupational Licensing

An occupational or professional license is a form of regulation that requires individuals who want to perform certain types of work, such as contractors and cosmetologists, to obtain permission from the government to perform the work.[1] Generally, an individual obtains permission from the government to perform a certain type of work by demonstrating that they have the designated knowledge, skills, and abilities to perform the work by meeting pre-determined criteria established by the government, such as work experience and exams. If the individual successfully completes the pre-determined criteria, the government issues the individual a license, which allows them to perform the work.[2]

In the 1950s, less than five percent of U.S. workers were required to have a license to do their jobs. Since then the number of workers required to have a license has risen five-fold to more than one-quarter of U.S. workers with most of these workers being licensed by the states. Almost two-thirds of this change stems from an increase in the number of professions that require a license. The number of licensed workers is even higher in Florida, with an estimated 28.7 percent of the workforce being licensed by the state.[3]

In 2015, the White House published a report on the current state of occupational licensing in the nation. The report found that when designed and implemented carefully, requiring occupational licenses offers important health and safety protections to consumers as well as benefits to workers. However, the report also found that too often licensing requirements are inconsistent, inefficient, arbitrary, and there is evidence that the current license regime in the U.S. raises the price of goods and services, restricts employment opportunities, and makes it more difficult for workers to take their skills across state lines.[4]

The report stated that because occupations are diverse in their tasks, designing and implementing successful occupational license regulations often requires a tailored approach. However, there are a number of common factors that policymakers should consider when contemplating enacting, revising, or repealing an occupational regulation. Policymakers should:[5]

- Ensure that restrictions are closely targeted to protecting public health and safety, and are not overly burdensome;
- Facilitate a careful consideration of licensure's costs and benefits; and
- Work to reduce licensing's barriers to mobility.

Policymakers can facilitate a careful consideration of licensure costs and benefits through both sunrise and sunset reviews. However, evidence suggests that sunrise reviews are more successful at limiting the growth of licensing since removing a license is much more difficult than enacting one. Additionally, state regulators suggested that sunrise reviews may be more effective than sunset reviews.[6]

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[1] The White House, *Occupational Licensing: A Framework for Policymakers*, 6 (July 2015) https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf (last visited on Jan. 13, 2022).
[2] Bureau of Labor Statistics, *Frequently asked questions about data on certifications and licenses*, https://www.bls.gov/cps/certifications-and-licenses-faqs.htm, (last visited on Jan. 13, 2022).
[3] White House *supra* note 1 at 3 and 24.
[4] *Id*.
[5] *Id*. at 41-43
[6] *Id*. at 42, 48-49.

Sunrise Review

Generally, a sunrise review is a formal process where a legislature scrutinizes legislation proposing to regulate an unregulated profession or occupation by requiring a cost-benefit analysis before the legislation is enacted. Most sunrise reviews require the proponents of the regulation to outline the potential impacts, costs, and benefits of the proposed regulation. Some states require the proponents of the regulation to provide certain information to a legislative committee or a state agency for analysis and evaluation, which is then provided to the legislature. Policymakers can review the information provided before moving forward with the legislation.[7]

Currently 12 states, including Florida, have sunrise reviews.[8] However, states vary widely in how independently and thoroughly they administer sunrise reviews. Colorado requires proponents of regulation to submit the proposed regulation along with the potential impacts, costs, and benefits to the Colorado Department of Regulatory Agencies for analysis and evaluation.[9] Minnesota requires proponents of regulation to file a report outlining the regulation's potential impacts, costs, and benefits with the legislature within 15 days of the bill being introduced.[10] Maine requires sunrise reviews for legislation regulating an unregulated profession or occupation and legislation that substantially expands regulation of an already regulated profession or occupation.[11] Florida currently requires proponents of regulation to file information about the regulation's potential impacts, costs, and benefits upon request.[12]

Florida's Sunrise Act

Section 11.62, F.S., is Florida's sunrise review, which is called the Sunrise Act. The Sunrise Act states that regulation should not be adopted unless it is:

- Necessary to protect the public health, safety, or welfare from significant and discernible harm or damage;
- Exercised only to the extent necessary to prevent the harm; and
- Limited so as not to unnecessarily restrict entry into the practice of the profession or adversely affect public access to the professional services.

In determining whether to regulate a profession or occupation, the Sunrise Act requires the Legislature to consider the following:

- Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;
- Whether the practice of the profession or occupation requires specialized skill or training and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;
- Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment;
- Whether the public is or can be effectively protected by other means; and
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

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[7] *Id.* at 48; Iris Hentze, *Improving Occupational Licensing with Sunrise and Sunset Reviews*, National Conference of State Legislatures, (July 2018), http://www.ncsl.org/research/labor-and-employment/improving-occupational-licensing-with-sunrise-and-sunset-reviews.aspx (last visited Jan. 13, 2022); Council on Licensure & Regulation, *Sunrise, Sunset and State Agency Audits*, https://www.clearhq.org/page-486181 (last visited Jan. 13, 2022).

[8] Council on Licensure & Regulation *supra* note 5.

[9] Colo. Rev. Stat. § 24-34-104.1.

[10] Minn. Stat. § 214.002.

[11] ME. Rev. Stat. Ann. Tit. 32-1A, § 60-J.

[12] S. 11.62(4), F.S.

The Sunrise Act requires proponents of legislation that propose new regulation on professions or occupations to provide the following information, **upon request,** by the agency proposed to have jurisdiction or the legislative committee to which the legislation is referred, to document the need for regulation:

- The number of individuals or businesses that would be subject to the regulation;
- The name of each association that represents members of the profession or occupation, together with a copy of its codes of ethics or conduct;
- Documentation of the nature and extent of the harm to the public caused by the unregulated practice of the profession or occupation, including a description of any complaints that have been lodged against persons who have practiced the profession or occupation in this state during the preceding three years;
- A list of states that regulate the profession or occupation, and the dates of enactment of each law providing for such regulation and a copy of each law;
- A list and description of state and federal laws that have been enacted to protect the public with respect to the profession or occupation and a statement of the reasons why these laws have not proven adequate to protect the public;
- A description of the voluntary efforts made by members of the profession or occupation to protect the public and a statement of the reasons why these efforts are not adequate to protect the public;
- A copy of any federal legislation mandating regulation;
- An explanation of the reasons why other types of less restrictive regulation would not effectively protect the public;
- The cost, availability, and appropriateness of training and examination requirements;
- The cost of regulation, including the indirect cost to consumers, and the method proposed to finance the regulation;
- The cost imposed on applicants or practitioners or on employers of applicants or practitioners as a result of the regulation;
- The details of any previous efforts in this state to implement regulation of the profession or occupation; and
- Any other information the agency or the committee considers relevant to the analysis of the proposed legislation.

The Sunrise Act requires the agency proposed to have jurisdiction over the regulation to provide the Legislature with the following information:

- The resources required to implement and enforce the regulation;
- The technical sufficiency of the proposal, including its consistency with the regulation of other professions; and
- Any alternatives that may result in less restrictive or more cost-effective regulation.

In determining whether to recommend regulation, the legislative committee reviewing the proposal must assess whether the proposed regulation is:

- Justified based on the statutory criteria and the information provided by both the proponents of regulation and the agency responsible for its implementation;
- The least restrictive and most cost-effective regulatory scheme necessary to protect the public; and
- Technically sufficient and consistent with the regulation of other professions under existing law.

State Agency Rulemaking and Statements of Estimated Regulatory Costs (SERC)

The Administrative Procedure Act (APA)[13] sets forth a uniform set of procedures that agencies must follow when exercising authority to make rules delegated to the agency by the Legislature. Rulemaking authority is delegated by the Legislature through statute and authorizes agencies to "adopt, develop, establish, or otherwise create" rules.[14]

The APA requires an agency to complete a statement of estimated regulatory costs (SERC) in certain circumstances. A SERC is an agency estimate of the potential impact of a proposed rule on the public, particularly the potential costs to the public of complying with the proposed rule, as well as to the agency and other governmental entities to implement the rule. Agencies are encouraged to prepare a SERC before adopting, amending, or repealing any rule. A SERC is required, however, if the proposed rule will have a negative impact on small businesses or increase regulatory costs by more than $200,000 in the aggregate within one year after implementation of the rule.[15] A SERC must include:[16]

- Good faith estimates of the number of people and entities affected by the proposed rule;
- Good faith estimates of the cost to the agency and other governmental entities to implement the proposed rule;
- Good faith estimates of the transactional costs likely to be incurred by people, entities, and governmental agencies for compliance. Transactional costs is defined to mean direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs;
- An analysis of the proposed rule's impact on small businesses, counties, and cities; and
- Any additional information that the agency determines may be useful.

The SERC must also include an economic analysis on the likelihood that the proposed rule will have an adverse impact in excess of $1 million within the first 5 years of implementation on:[17]

- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness, productivity, or innovation; or
- Regulatory costs, including any transactional costs.

Effect of the Bill

The bill provides that in addition to applying to legislation that regulates an unregulated profession or occupation, the Sunrise Act also applies to legislation that substantially expands regulation of an already regulated profession or occupation.

The bill defines the term "substantial expansion of regulation" to mean to expand the scope of practice for current practitioners of a profession or occupation by regulating an activity that is not regulated by the state.

The bill requires proponents of legislation proposing regulation to provide the Legislature and the state agency proposed to have jurisdiction certain information documenting the need for regulation by a certain time, instead of doing so only upon request. The proponents must also file a draft of the legislation and a summary of any bills on the same subject that have been filed with the Legislature in the preceding five years. The proponents must provide this information to the President of the Senate, the Speaker of the House of Representatives, and the agency proposed to have jurisdiction over the regulation at least 30 days before the session in which the legislation is filed.

[13] Ch. 120, F.S.
[14] Ss. 120.52(16)-(17) and 120.54(1)(a), F.S; Ch. 120, F.S.
[15] Ss. 120.54(3)(b) and 120.541(2), F.S.
[16] S. 120.541(2), F.S.
[17] *Id.*

In addition to the current information an agency must provide to the Legislature, the bill provides that an agency must also provide the Legislature with the following information:

- Good faith estimates of the number of persons affected by the proposed regulation;
- Good faith estimates of transactional costs likely to be incurred by people, entities, and governmental agencies for compliance.
    - "Transactional costs" are defined to mean direct costs that are ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, regulatory compliance costs, operating costs, the cost of monitoring and reporting, and any other costs necessary to comply with the rule;
- The anticipated costs to implement and enforce the proposed regulation, and any anticipated license fees necessary to cover the anticipated costs;
- Whether additional statutory or rulemaking authority is necessary to implement and enforce the proposed regulation;
- A comparison of similarly situated professions and occupations regulated by the agency;
- The anticipated impact of the proposed regulation on small businesses, counties, and cities;
- The anticipated impact of the proposed regulation on economic growth, private-sector job creation or employment, and business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets; and
- Any other information the agency determines relevant to the analysis of the proposed regulation.

The bill provides that the state agency proposed to have jurisdiction must provide the information to the President of the Senate, the Speaker of the House of Representatives, and the proponents of the legislation within 25 days of receiving the draft legislation from the proponents. If a state agency fails to provide the required information, they must notify the proponents of the legislation, the President of the Senate, and the Speaker of the House of Representatives that they could not comply with the Sunrise Act's requirements because the agency was unable to acquire sufficient information.

B. SECTION DIRECTORY:

Section 1. Amends s. 11.62, F.S., revising the requirements of the Sunrise Act.

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:

   Indeterminate. The bill will require agencies to provide certain information to the Legislature. The cost to provide the information is indeterminate but may be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate, positive impact on the private sector.

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. The bill does not require agency rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to legislative review of proposed regulation of unregulated functions; amending s. 11.62, F.S.; defining terms; providing that certain requirements must be met before the adoption of a regulation of an unregulated profession or occupation or the substantial expansion of the regulation of a regulated profession or occupation; requiring the proponents of legislation that proposes such regulation to provide certain information to the state agency proposed to have jurisdiction over the regulation and the Legislature by a certain date; requiring such state agency to provide certain information to the Legislature within a certain time period; providing an exception; revising information that a legislative committee must consider when determining whether a regulation is justified; providing an effective date.

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

Section 1. Section 11.62, Florida Statutes, is amended to read:

11.62 Legislative review of proposed regulation of unregulated functions.—

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

(1) This section may be cited as the "Sunrise Act."

(2) It is the intent of the Legislature:

(a) That a ~~no~~ profession or occupation may not be subject to regulation by the state unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage and that the police power of the state shall be exercised only to the extent necessary for that purpose.~~; and~~

(b) That a ~~no~~ profession or occupation may not be regulated by the state in a manner that unnecessarily restricts entry into the practice of the profession or occupation or adversely affects the availability of the professional or occupational services to the public.

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

(a) "Substantial expansion of regulation" means to expand the scope of practice for current practitioners of a profession or occupation by regulating an activity that is not regulated by the state.

(b) "Transactional costs" means direct costs that are ascertainable based upon standard business practices, including filing fees, license fees, regulatory compliance costs, operating costs, monitoring and reporting costs, and any other costs necessary to comply with the proposed regulation.

(4) In determining whether to regulate a profession or occupation, the Legislature shall consider the following

factors:

(a) Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote.~~;~~

(b) Whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability.~~;~~

(c) Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment.~~;~~

(d) Whether the public is or can be effectively protected by other means.~~; and~~

(e) Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

(5) In order to ensure that the Legislature only adopts those regulations that are necessary to protect the public and are the least restrictive regulatory alternative consistent with the public interest, the requirements of this section must be met before the adoption of:

(a) Any regulation of a profession or occupation that is not already expressly subject to state regulation; or

(b) Any regulation that substantially expands the regulation of a regulated profession or occupation.

(6) ~~(4)~~ The proponents of legislation, including any individual, group, or entity, that proposes ~~provides for~~ the regulation of an unregulated profession or occupation or the substantial expansion of the regulation of a regulated profession or occupation ~~not already expressly subject to state regulation~~ shall provide~~, upon request,~~ the following information in writing to the state agency that is proposed to have jurisdiction over the regulation, the President of the Senate, and the Speaker of the House of Representatives at least 30 days before the regular session of the Legislature in which the legislation is to be filed ~~and to the legislative committees to which the legislation is referred~~:

(a) A copy of the draft legislation proposing to regulate an unregulated profession or occupation or the substantial expansion of the regulation of a regulated profession or occupation.

(b) ~~(a)~~ The number of individuals or businesses that would be subject to the regulation.~~;~~

(c) ~~(b)~~ The name of each association that represents members of the profession or occupation, together with a copy of its codes of ethics or conduct.~~;~~

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

(d) ~~(c)~~ Documentation of the nature and extent of the harm to the public caused by the unregulated practice of the profession or occupation, including a description of any complaints that have been lodged against persons who have practiced the profession or occupation in this state during the preceding 3 years.~~;~~

(e) ~~(d)~~ A list of states that regulate the profession or occupation, and the dates of enactment of each law providing for such regulation and a copy of each law.~~;~~

(f) ~~(e)~~ A list and description of state and federal laws that have been enacted to protect the public with respect to the profession or occupation and a statement of the reasons why these laws have not proven adequate to protect the public.~~;~~

(g) ~~(f)~~ A description of the voluntary efforts made by members of the profession or occupation to protect the public and a statement of the reasons why these efforts have not proven ~~are not~~ adequate to protect the public.~~;~~

(h) ~~(g)~~ A copy of any federal legislation mandating regulation.~~;~~

(i) ~~(h)~~ An explanation of the reasons why other types of less restrictive regulation would not effectively protect the public.~~;~~

(j) ~~(i)~~ The cost, availability, and appropriateness of training and examination requirements.~~;~~

(k) ~~(j)~~ The cost of regulation, including the indirect cost

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

to consumers, and the method proposed to finance the regulation.~~;~~

(l)~~(k)~~ The cost imposed on applicants or practitioners or on employers of applicants or practitioners as a result of the regulation.~~;~~

(m)~~(l)~~ The details of any previous efforts in this state to implement regulation of the profession or occupation, including a summary of bills filed in the Legislature on the same subject in the preceding 5 years.~~; and~~

(n)~~(m)~~ Any other information the proponents of the legislation consider ~~agency or the committee considers~~ relevant to the analysis of the proposed legislation.

(7)~~(5)~~ The state agency proposed to have jurisdiction over the regulation shall provide the President of the Senate and the Speaker of the House of Representatives with the following information within 25 days after the proponents of the legislation submit the draft legislation to the state agency in accordance with subsection (6) ~~The agency shall provide the Legislature with information concerning the effect of proposed legislation that provides for new regulation of a profession or occupation regarding~~:

(a) The departmental resources necessary to implement and enforce the proposed regulation, including, but not limited to, the anticipated costs to implement and enforce the proposed regulation and any anticipated license fees necessary to cover

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

the anticipated costs.~~;~~

(b) Whether additional statutory or rulemaking authority is necessary to implement and enforce the proposed regulation.

(c) A comparison of similarly situated professions and occupations regulated by the state agency.

(d) The anticipated impact on small businesses as defined in s. 288.703 and small counties and small cities as those terms are defined in s. 120.52.

(e) The anticipated impact on business competitiveness, including the ability of persons who are doing business in the state to compete with persons who are doing business in other states or domestic markets.

(f) The anticipated impact on economic growth and private sector job creation or employment.

(g) The technical sufficiency of the proposal for regulation, including its consistency with the regulation of other professions and occupations under existing law.~~; and~~

(h)~~(c)~~ If applicable, any alternatives to the proposed regulation which may result in a less restrictive or more cost-effective regulatory scheme.

(i) A good faith estimate of the number of persons who would be subject to the proposed regulation.

(j) A good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, that would be required to comply with

the proposed regulation.

(k) Any other information the state agency determines relevant to the analysis of the proposed regulation.

(8) If the state agency that is proposed to have jurisdiction over the regulation is unable to provide the information required by subsection (7), such state agency shall notify the proponents of the legislation, the President of the Senate, and the Speaker of the House of Representatives that the agency was unable to acquire sufficient information to comply with that subsection.

(9) ~~(6)~~ When making a recommendation concerning proposed legislation providing for new or expanded regulation of a profession or occupation, a legislative committee shall determine:

(a) Whether the regulation is justified based on the criteria ~~specified in subsection (3), the information submitted pursuant to request under subsection (4),~~ and ~~the~~ information provided under subsections (4), (6), and (7) ~~subsection (5)~~;

(b) The least restrictive and most cost-effective regulatory scheme that will adequately protect the public; and

(c) The technical sufficiency of the proposed legislation, including its consistency with the regulation of other professions and occupations under existing law.

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

PCS for HB 635

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 635 Building Permits
SPONSOR(S): Regulatory Reform Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Regulatory Reform Subcommittee		Brackett	Anstead

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 by local governments through the issuance of permits and completion of inspections.

It is unlawful to construct, erect, alter, repair, secure, or **demolish** any building without first obtaining a building permit. Any construction work that requires a building permit also requires plan reviews and inspections by the building official to ensure the work complies with the Building Code.

The state's Chief Financial Officer, as the State Fire Marshal, is required to adopt the Florida Fire Prevention Code (Fire Prevention Code), which sets forth fire safety standards for property, and is enforced by local fire safety officials within each local government in the state.

If a building is subject to the Fire Prevention Code, a building permit also requires plan reviews and inspections by the local fire safety official.

If the local building official or plans examiner finds that building plans do not comply with the Building Code, the local building official or inspector must identify the specific plan features that do not comply with the Building Code, identify the specific chapters and sections upon which the finding is based, and provide this information to the local enforcing agency. The local enforcing agency must provide this information to the permit applicant.

The bill:

- Requires local governments that make substantive changes to building plans to notify the permitholder of the specific reasons for changes.
- Prohibits local governments from making substantive changes to plans after a permit has been issued unless the changes are required for compliance with the Building Code or the Fire Prevention Code.
- Requires a building official or inspector who requests another person review building plans, notify the local government if such person determines the plans do not comply with the Building Code.
- Requires a local fire official to notify the permit applicant if building plans do not comply with the Fire Prevention Code and give specific reasons why the plans are not in compliance.
- Allows a plans reviewer, inspector, building official or fire safety inspector to be disciplined for failure to notify the appropriate person of the reasons for making substantive changes to building plans.
- Prohibits local governments from prohibiting or restricting private property owners from demolishing single-family buildings that are in certain flood zones, while exempting certain historic buildings.
- Limits the review process for applications for such demolition permits and provides that such applications may not be subject to additional local regulations or public hearings.
- Prohibits local governments from requiring additional building requirements for new homes built on the construction site of such demolished single-family buildings.

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:

Florida Building Code and Fire Prevention 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 (Building Commission) was statutorily created to implement the Building Code. The Building 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, 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.[5]

Building Code Administrators, Inspectors, and Plans Examiners

Building code administrators, inspectors, and plans examiners are regulated by the 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. The BCAIB meets to approve or deny applications for licensure, review disciplinary cases, and conduct informal hearings relating to discipline.[6]

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.[7]

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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 Jan. 4, 2022).
[2] *Id.*
[3] Florida Building Commission Homepage, https://floridabuilding.org/c/default.aspx (last visited Jan. 4, 2022).
[4] *See* s. 553.72(1), F.S.
[5] Ss. 553.73, and 553.74, F.S.
[6] *See* Ss. 120.569, 120.57(1)-(2), 468.605, 468.606, and 468.621, F.S.
[7] S. 468.603(2), F.S.

A building code inspector (inspector) is a local government employee or a person contracted by a local government who inspects construction that requires permits to determine compliance with the Building C ode and state accessibility laws. Inspectors are divided into several different categories. An inspector's ability to practice is limited to the category or categories for which the inspector has been licensed. The inspector categories are:[8]

- Building inspector;
- Coastal construction inspector;
- Commercial electrical inspector;
- Residential electrical inspector;
- Mechanical inspector;
- Plumbing inspector;
- Residential inspector; and
- Electrical inspector.

A plans examiner reviews plans submitted for building permits to determine design compliance with the Building Code. 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 plans examiner's ability to practice is limited to the category or categories for which the examiner is licensed. The plans examiner categories are:[9]

- Building plans examiner;
- Plumbing plans examiner;
- Mechanical plans examiner; and
- Electrical plans examiner.

Florida Fire Prevention Code

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal within the Department of Financial Services (DFS), is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety, and has the responsibility to minimize the loss of life and property in this state due to fire.[10] Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel and fire safety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts fire safety inspections of state property; and operates the Florida State Fire College.

The State Fire Marshal also adopts by rule the Florida Fire Prevention Code (Fire Prevention Code), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities, and the enforcement of such fire safety laws and rules, at ch. 69A-60, F.A.C.

The State Fire Marshal adopts a new edition of the Fire Prevention Code every three years.[11] When adopting the Fire Prevention Code the Fire Marshal is required to adopt the most current version of the national fire and life safety standards set forth by the National Fire Protection Association (NFPA) including the:[12]

- NFPA's Fire Code (1);
- Life Safety Code (101); and

[8] S. 468.603(4) and (5), F.S.
[9] S. 468.603(8), F.S.
[10] S. 633.104, F.S.
[11] S. 633.202, F.S.
[12] S. 633.202(2), F.S. Founded in 1896, the National Fire Protection Association delivers information and knowledge through more than 300 consensus codes and standards, research, training, education, outreach and advocacy; and by

- Guide on Alternative Approaches to Life Safety (101A).

The State Fire Marshal may modify the national fire safety and life safety standards as needed to accommodate the specific needs of the state.[13]

The most recent Fire Prevention Code is the 7th edition, which is referred to as the 2020 Florida Fire Prevention Code. The 7th edition of the Fire Prevention Code took effect on December 31, 2020.[14]

The Building Code and the Fire Prevention Code

The Building Code and the Fire Prevention Code work parallel, but are independent of each other. The Building Commission updates and adopts the Building Code, which must reference the Fire Prevention Code. However, the Fire Prevention Code is adopted, modified, interpreted, and maintained by DFS. The Building Commission may not adopt a fire prevention or life safety code, and nothing in the Building Code may affect the statutory powers, duties, and responsibilities of any local fire safety official or DFS.[15]

Conflicting requirements between the Building Code and the Fire Prevention Code must be resolved by agreement between the Building Commission and the State Fire Marshal. The agreement must be in favor of the requirement that offers the greatest degree of life safety or alternatives that would provide an equivalent degree of life safety and an equivalent method of construction.[16]

If the Building Commission and State Fire Marshal are unable to agree on a resolution, the question must be referred to a mediator, mutually agreeable to both parties, to resolve the conflict in favor of the provision that offers the greatest life safety, or alternatives that would provide an equivalent degree of life safety and an equivalent method of construction.[17]

Fire Safety Enforcement by Local Governments

State law requires all municipalities, counties, and special districts with fire safety responsibilities to enforce the Fire Prevention Code as the minimum fire prevention code to operate uniformly among local governments and in conjunction with the Building Code.[18] These local enforcing authorities may adopt more stringent fire safety standards, subject to certain requirements in s. 633.208, F.S., but may not enact fire safety ordinances that conflict with ch. 633, F.S., or any other state law.[19]

The chiefs of local government fire service providers (or their designees) are authorized to enforce ch. 633, F.S., and rules within their respective jurisdictions as agents of those jurisdictions, not agents of the State Fire Marshal.[20]

Each county, municipality, and special district with fire safety enforcement responsibilities is also required to employ or contract with a fire safety inspector to conduct all fire safety inspections required by law.[21]

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partnering with others who share an interest in furthering the mission. NFPA, *About NFPA*, http://www.nfpa.org/about-nfpa (last visited on Jan. 4, 2022).

[13] *Id.*

[14] Division of State Fire Marshal, *Florida Fire Prevention Code (FFPC)*, https://www.myfloridacfo.com/division/sfm/bfp/floridafirepreventioncodepage.htm (last visited Jan. 4, 2022).

[15] S. 553.73(1), F.S.; Florida Department of Financial Services, Agency Analysis of 2022 House Bill 635, p.3 (Jan. 4, 2022).

[16] S. 553.73(1), F.S. Similar provisions apply if a local building official and local fire safety official cannot agree. *See* s. 553.73(11), F.S.

[17] *Id.*

[18] Ss. 633.108 and 633.208, F.S.

[19] Ss. 633.208 and 633.214(4), F.S.

[20] S. 633.118, F.S.

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

A fire safety inspector is a person who is officially assigned the duties of conducting fire safety inspections of buildings and facilities on a recurring or regular basis on behalf of the state or any county, municipality, or special district with fire safety responsibilities. Fire safety inspectors are certified and regulated by the State Fire Marshal and are separate from building officials, inspectors, and plans examiners who are regulated by the BCAIB.[22]

Building Permits

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.[23] Every local government must enforce the Building Code and issue building permits.[24]

It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a building permit from the local government 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.[25] A building permit is not valid until the fees for the permit have been paid.[26]

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.[27] Any construction work that requires a building permit also requires plan reviews and inspections by the building official to ensure the work complies with the Building Code.[28]

Building Plans – Current Situation

To obtain a permit an applicant must complete an application for the proposed work on the form furnished by the local enforcing agency, which must be posted on its website.[29]

An application for a permit must include building plans. A local enforcing agency may not issue a permit until the building official or plans examiner has reviewed the building plans and determined that they comply with the Building Code.[30]

A building official or plans examiner does not review building plans to determine if they comply with the Fire Prevention Code. If the building or structure is subject to the Fire Prevention Code, the local fire safety official must also review the building plans.[31] A local enforcing agency may not issue the permit until the local fire safety official has approved the plans. However, if the building or structure is not subject to the Fire Prevention Code, the local enforcing agency may not require the local fire safety inspector to review the plans.[32]

When the building official issues the permit, the building official must also approve the plans by writing or stamping, "Reviewed for Code Compliance" on the plans. The local building official must keep one set of plans and another set must be returned to the applicant, who must keep the set at the work site.[33]

[22] Ss. 633.102(12) and 633.216, F.S.
[23] S. 553.72, F.S.
[24] Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.
[25] *See* ss. 125.56(4)(a) and 553.79(1), F.S.
[26] S. 109.1 of the Seventh edition of the Florida Building Code (Building).
[27] S. 468.603(2), F.S; S. 202 of the Seventh edition of the Florida Building Code (Building).
[28] Ss. 107, 110.1, and 110.3 of the Seventh edition of the Florida Building (Building).
[29] Ss. 125.56(4)(b), 553.79(1), and 713.135(5) and (6), F.S.
[30] S. 553.79(2), F.S.
[31] *Id.*
[32] *Id.*
[33] S. 107.3.1 of the Seventh edition of the Florida Building Code (Building).

Construction work must be in accordance with the approved plans, and any changes made during construction that are not in compliance with the approved plans must be resubmitted for approval as an amended set of construction documents.[34]

If the **local building official or plans examiner** finds that building plans do not comply with the Building Code, the local building official or inspector must **identify the specific plan features** that do not comply with the **Building Code**, identify the specific chapters and sections upon which the finding is based, and provide this information to the local enforcing agency. The local enforcing agency must provide this information to the permit applicant.[35]

If a building official or plans reviewer **denies a permit** application, revokes, or requests a modification of a building permit, the building official or plans reviewer must give the permit applicant a **reason for denying**, revoking, or requesting a modification of the permit. The reason must be based on compliance with the Building Code or a local ordinance. Failing to provide a reason for denying or revoking a building permit, which is based on compliance with the **Building Code** or a local ordinance, is grounds for discipline against the building official or plans reviewer's license.[36] The Fire Prevention Code is not currently included in these provisions.

However, current law is not clear on whether local governments must notify permitholders about the specific reasons why buildings plans do not comply with the Building Code or the Fire Prevention Code, if they make or require **substantive changes** to building plans after the permit is issued.

According to the sponsor, there have been industry reports that building inspectors and local fire officials are making substantive changes to building plans after the building permit has been issued, which deviate from the Building Code or Fire Prevention Code. These changes can lead to delays in construction and can also increase the costs of construction.[37]

Building Plans – Effect of the Bill

The bill provides that if a building official or inspector requests another person to review building plans and that person identifies specific plan features that do not comply with the Building Code, the building official or inspector must provide this information to the local enforcing agency.

If a local government determines that building plans in an application for a building permit do not comply with the **Fire Prevention Code**, the local fire official must identify the specific plan features that do not comply with the applicable codes, identify the specific code chapters and sections upon which the determination is based, and provide this information to the permit applicant. If the local fire official is a certified fire safety inspector, failing to provide such information to the permit applicant is grounds for discipline against the local fire official's certificate.

The bill provides that after a local government issues a building permit, the local government may not make or require any **substantive changes** to the building plans unless the changes are required for compliance with the Building Code, the Fire Prevention Code, or local amendments to such codes.

If a local government makes substantive changes to building plans after the permit is issued, the local government must identify the specific plan features that do not comply with the applicable codes, identify the specific code chapters and sections upon which the finding is based, and provide this information to the permitholder. If the changes are required to comply with the Fire Prevention Code, the local fire official must also provide this information to the permitholder.

The bill provides that a plans reviewer or inspector who fails to provide a building official with the reasons for making or requiring substantive changes to building plans is subject to discipline against

[34] S. 107.4 of the Seventh edition of the Florida Building Code (Building).
[35] S. 553.79(2), F.S.
[36] S. 553.79(1), F.S.
[37] Testimony from Representative Randall Scott Maggard, *1/12/2022 House Regulatory Reform Subcommittee*, https://thefloridachannel.org/videos/1-12-22-house-regulatory-reform-subcommittee/ (last visited Jan. 17, 2022).

their license. Failing to provide a permit applicant or permitholder with the reasons for making or requiring substantive changes to building plans is grounds for discipline against a building official's license.

The bill also provides that a local fire official, who is a certified fire safety inspector, who fails to provide a permitholder with the specific reasons for making or requiring substantive changes to building plans is subject to discipline against their certification.

Demolition Building Permits – Current Situation

It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or **demolish** any building without first obtaining a building permit from the local government 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.[38]

According to news reports, since 2019, there has been an uptick in permits to demolish older single-family homes in South Florida in order to build new single-family homes.[39]

Some local governments in Florida have adopted land development regulations that determine certain older single-family buildings to be historic. Some local governments have placed restrictions on property owners from obtaining permits for the demolition of the older single- family buildings that the local governments have deemed historic. Below are examples of such regulations:

- Prohibiting certain building permits, such as demolition permits, for buildings that are being considered for historic designation.[40]
- Requiring a public hearing before a preservation board.[41]
- Requiring a special demolition permit.[42]
- Requiring new construction on the site of the demolished structure to be subject to certain architectural regulations, related to:[43]
    - The colors, pattern, and trim used in the building's façade.
    - Design of the roof.
    - The proportions and relationships between doors and windows.

Proponents to these land development regulations argue that people buy property in order to demolish homes that are designed by noteworthy architects, owned by famous people, or reflect Florida's history. Proponents argue these regulations are needed to protect Florida's history and preserve Florida's character and architectural style.[44]

Opponents of these regulations argue that these older homes are damaged, do not meet the Building Code's minimum flood elevation requirements, and can be demolished for a new home that meets the requirements of the current Building Code.[45]

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[38] S. 553.79(1), F.S.
[39] Pedro Portal, *More demolition applications for historic houses in Miami Beach*, Miami Herald (Jan. 9, 2022) https://www.miamiherald.com/news/business/real-estate-news/article257166757.html (last visited Jan. 12, 2022).
[40] *Id.*
[41] Article 8, Coral Gables Zoning Code; *Preserving Our Past*: A Guide to Historic Preservation in Coral Gables, https://evogov.s3.amazonaws.com/media/91/media/52093.pdf (last visited Jan. 17, 2022).
[42] Sec. 54-71., Town of Palm Beach Code of Ordinances.
[43] Sec. 54-122., Town of Palm Beach Code of Ordinances.
[44] Miami Herald Editorial Board, *Historic-home teardowns risk washing away Miami Beach's character in a flood of cash*, Miami Herald (Jan. 11, 2022) https://www.miamiherald.com/opinion/editorials/article257198932.html (last visited Jan. 17, 2022).
[45] Pedro Portal, *Miami Beach older homes demolished in part because of 'flood requirements'*, Miami Herald (Jan. 9, 2022) https://www.miamiherald.com/news/business/real-estate-news/article257166737.html (last visited Jan. 12, 2022); CBS Miami, *Miami Beach Waterfront Home Of Notorious Prohibition-Era Gangster Al Capone Slated For Demolition*, https://miami.cbslocal.com/video/5955888-miami-beach-waterfront-home-of-notorious-prohibition-era-gangster-al-capone-slated-for-demolition/ (last visited Jan. 17, 2022).

Demolition Building Permits – Effect of the Bill

The bill provides that a local law, ordinance, or **regulation may not prohibit** or otherwise restrict the ability of a private property owner to obtain **a building permit to demolish** his or her single-family residential structure provided that:

- Such structure Is located in a coastal high-hazard area, moderate flood zone, or special flood hazard area according to a Flood Insurance Rate Map issued by the Federal Emergency Management Agency for the purpose of participating in the National Flood Insurance Program;[46]
- The lowest finished floor elevation of such structure is at or below base flood elevation as established by the Building Code or a higher base flood elevation as may be required by local ordinance, whichever is higher; and
- Such permit complies with all applicable Building Code, Fire Prevention Code, and local amendments to such codes.

An application for a demolition permit for such single-family structure may only be reviewed administratively for compliance with the Building Code, Fire Prevention Code, local amendments to such codes, and any regulations applicable to a similarly situated parcel. Such applications may not be subject to any additional local land development regulations or public hearings.

A local government may not penalize a private property owner for a demolition that is in compliance with the demolition permit.

If a single-family residential structure is demolished pursuant to a demolition permit, a local government may not impose additional regulatory or building requirements on the new single-family residential structure constructed on the site of the demolished structure that would not otherwise be applicable to a similarly situated vacant parcel.

The bill provides that this does not apply to a:

- Structure designated on the National Register of Historic Places;[47]
- Privately owned single-family residential structure designated historic by a local, state, or federal governmental agency on or before January 1, 2022; or
- Privately owned single-family residential structure designated historic after January 1, 2022, by a local, state, or federal governmental agency with the consent of its owner.

B. SECTION DIRECTORY:

Section 1. Amends s. 553.79, F.S., relating to permits; applications; issuance; inspections.

Section 2. Amends s. 633.208, relating to minimum fire safety standards.

Section 3. Provides an effective date of July 1, 2022.

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[46] In order to support the National Flood Insurance Program, FEMA identifies, publishes, and periodically updates flood hazard data nationwide. This data is provided to communities in the form of a Flood Insurance Rate Map and Flood Insurance Study report, typically prepared in a countywide format. FEMA, *Adoption of Flood Insurance Rate Maps by Participating Communities, FEMA 495 January 2019*, https://www.fema.gov/sites/default/files/2020-07/fema_adoption-flood-insurance-rate-maps-participating-communities_bulletin.pdf (last visited Jan. 17, 2022).

[47] The National Register of Historic Places is the federal government's official list of historic places in the United States. The National Historic Preservation Act of 1966 authorized the register, which is administered by the National Park Service. In order to be listed on the register the owner of the property must not object. National Park Service, *What is the National Register of Historic Places*, https://www.nps.gov/subjects/nationalregister/what-is-the-national-register.htm (last visited Jan. 17, 2022); National Park Service, *How to List a Property*, https://www.nps.gov/subjects/nationalregister/how-to-list-a-property.htm (last visited Jan. 17, 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 impact is unknown because it is unclear how often building plans are changed by building officials and local fire safety officials after the plans are approved by the local building department. It is also unclear about how often local governments prohibit or restrict single-family property owners from demolishing the single-family structures.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to building permits; amending s. 533.79, F.S.; requiring local building code administrators or inspectors to provide certain information to the local enforcing agency; prohibiting local enforcing agencies from making or requiring substantive changes to plans or specifications after a permit has been issued; providing exceptions; requiring local enforcing agencies that require substantive changes to plans or specifications after a permit has been issued to provide certain information to the permitholder; providing that a building code administrator, inspector, or plans reviewer is subject to disciplinary action under certain circumstances; prohibiting a local government from prohibiting or restricting demolition permits for single-family residential structures located in certain areas; providing that local governments may only review demolition permits administratively for compliance with certain regulations; prohibiting a property owner from being penalized for a demolition in compliance with the demolition permit; prohibiting local governments from imposing additional requirements on certain structures; providing applicability; amending s. 633.208, F.S.; requiring local fire officials to

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

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provide certain information to a permit applicant if building plans do not comply with the Florida Fire Prevention Code or Life Safety Code; prohibiting a municipality, county, or special district from making or requiring substantive changes to building plans after a permit has been issued; providing exceptions; requiring a local fire official to provide certain information to the permitholder if a municipality, county, or special district requires substantive changes to building plans after a permit is issued; providing that a local fire official who is a certified firesafety inspector is subject to disciplinary action under certain circumstances; providing an effective date.

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

Section 1. Subsection (2) of section 553.79, Florida Statutes, is amended and subsection (25) is added to that section, to read:

553.79 Permits; applications; issuance; inspections.—

(2)(a)1. Except as provided in subsection (8), an enforcing agency may not issue any permit for construction, erection, alteration, modification, repair, or demolition of any building or structure until the local building code

administrator or inspector has reviewed the plans and specifications required by the Florida Building Code, or local amendment thereto, for such proposal and found the plans to be in compliance with the Florida Building Code. If the local building code administrator or inspector finds that the plans are not in compliance with the Florida Building Code, the local building code administrator or inspector shall identify the specific plan features that do not comply with the applicable codes, identify the specific code chapters and sections upon which the finding is based, and provide this information to the local enforcing agency. If the building code administrator or inspector requests another person to review the plans and such person identifies specific plan features that do not comply with the applicable codes, the building code administrator or inspector must provide this information to the local enforcing agency. The local enforcing agency shall provide this information to the permit applicant.

2. ~~In addition,~~ An enforcing agency may not issue any permit for construction, erection, alteration, modification, repair, or demolition of any building until the appropriate firesafety inspector certified pursuant to s. 633.216 has reviewed the plans and specifications required by the Florida Building Code, or local amendment thereto, for such proposal and found that the plans comply with the Florida Fire Prevention Code and the Life Safety Code. Any building or structure which

is not subject to a firesafety code shall not be required to have its plans reviewed by the firesafety inspector.

3. Any building or structure that is exempt from the local building permit process may not be required to have its plans reviewed by the local building code administrator. Industrial construction on sites where design, construction, and firesafety are supervised by appropriate design and inspection professionals and which contain adequate in-house fire departments and rescue squads is exempt, subject to local government option, from review of plans and inspections, providing owners certify that applicable codes and standards have been met and supply appropriate approved drawings to local building and firesafety inspectors.

4. The enforcing agency shall issue a permit to construct, erect, alter, modify, repair, or demolish any building or structure when the plans and specifications for such proposal comply with the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code as determined by the local authority in accordance with this chapter and chapter 633.

(b) After the local enforcing agency issues a permit, the local enforcing agency may not make or require any substantive changes to the plans or specifications except changes required for compliance with the Florida Building Code, the Florida Fire Prevention Code, or the Life Safety Code, or local amendments thereto. If a local enforcing agency makes or requires

substantive changes to the plans or specifications after a permit is issued, the local enforcing agency must identify the specific plan features that do not comply with the applicable codes, identify the specific code chapters and sections upon which the finding is based, and provide the information to the permitholder.

(c)1. A plans reviewer or inspector who fails to provide the building code administrator with the reasons for making or requiring substantive changes to the plans or specifications is subject to disciplinary action against his or her certificate under s. 468.621(1)(i).

2. A building code administrator who fails to provide a permit applicant or permitholder with the reasons for making or requiring substantive changes to the plans or specifications is subject to disciplinary action against his or her certificate under s. 468.621(1)(i).

(25)(a) A local law, ordinance, or regulation may not prohibit or otherwise restrict the ability of a private property owner to obtain a building permit to demolish his or her single-family residential structure located in a coastal high-hazard area, moderate flood zone, or special flood hazard area according to a Flood Insurance Rate Map issued by the Federal Emergency Management Agency for the purpose of participating in the National Flood Insurance Program if the lowest finished floor elevation of such structure is at or below base flood

elevation as established by the Florida Building Code or a higher base flood elevation as may be required by local ordinance, whichever is higher, provided that such permit otherwise complies with all applicable Florida Building Code, Florida Fire Prevention Code, and Life Safety Code requirements, or local amendments thereto.

(b) An application for a demolition permit sought under this subsection may only be reviewed administratively for compliance with the Florida Building Code, the Florida Fire Prevention Code, and the Life Safety Code, or local amendments thereto, and any regulations applicable to a similarly situated parcel. Applications may not be subject to any additional local land development regulations or public hearings. A local government may not penalize a private property owner for a demolition that is in compliance with the demolition permit.

(c) If a single-family residential structure is demolished pursuant to a demolition permit, a local government may not impose additional regulatory or building requirements on the new single-family residential structure constructed on the site of the demolished structure which would not otherwise be applicable to a similarly situated vacant parcel.

(d) This subsection does not apply to any of the following:

1. A structure designated on the National Register of Historic Places.

2. A privately owned single-family residential structure designated historic by a local, state, or federal governmental agency on or before January 1, 2022.

3. A privately owned single-family residential structure designated historic after January 1, 2022, by a local, state, or federal governmental agency with the consent of its owner.

Section 2. Subsection (2) of section 633.208, Florida Statutes, is amended to read:

633.208 Minimum firesafety standards.—

(2)(a) Pursuant to subsection (1), each municipality, county, and special district with firesafety responsibilities shall enforce the Florida Fire Prevention Code as the minimum firesafety code required by this section.

(b) If a municipality, county, or special district determines that the building plans for a building permit application do not comply with the Florida Fire Prevention Code or Life Safety Code, or local amendments thereto, the local fire official must identify the specific plan features that do not comply with the applicable codes, identify the specific code chapters and sections upon which the determination is based, and provide this information to the permit applicant.

(c) After a municipality, county, or special district issues a building permit, it may not make or require any substantive changes to the building plans except those required for compliance with the Florida Fire Prevention Code or Life

Safety Code, or local amendments thereto. If a municipality, county, or special district makes or requires substantive changes to building plans after a permit is issued, the local fire official must identify the specific plan features that do not comply with the Florida Fire Prevention Code or Life Safety Code, or local amendments thereto, identify the specific code chapters and sections upon which the finding is based, and provide this information to the permitholder.

(d) A local fire official, who is also a certified firesafety inspector, who fails to comply with paragraph (b) or paragraph (c) is subject to disciplinary action against his or her certificate under s. 633.216(6)(f).

Section 3. This act shall take effect July 1, 2022.