Regulatory Reform Subcommittee

Tuesday, February 8, 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

Tuesday, February 8, 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 721 Authorization of Restrictions Concerning Dangerous Dogs by Local Administration & Veterans Affairs Subcommittee, Buchanan

HB 763 Tax Exemption for Charges for Private Investigations by Casello, Caruso

HB 1429 City of Ocala, Marion County by McClain

Consideration of the following proposed committee substitute(s):

PCS for HB 375 -- Structural Engineering Recognition Program for Professional Engineers

PCS for HB 529 -- Yacht and Ship Brokers Located out of State

PCS for CS/HB 583 -- Limitations of Actions Other Than for the Recovery of Real Property

PCS for HB 1259 -- Criminal Records

V. Closing Remarks
VI. Adjournment

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 721 Authorization of Restrictions Concerning Dangerous Dogs
SPONSOR(S): Local Administration & Veterans Affairs Subcommittee, Buchanan and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 614

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration & Veterans Affairs Subcommittee	16 Y, 0 N, As CS	Leshko	Miller
2) Regulatory Reform Subcommittee		Thompson	Anstead
3) State Affairs Committee			

SUMMARY ANALYSIS

Public housing authorities (PHAs) are created pursuant to Florida law at municipal, county, and regional levels, and become active through resolution by the applicable governing body. Among other powers, PHAs may administer fair housing ordinances and other ordinances as adopted by municipalities, counties, or other authorities contracting for administrative services.

PHAs must file annual agency plans with the U.S. Department of Housing and Urban Development which must include their policies on public housing occupancy, including pet ownership. These policies may include reasonable requirements such as prohibitions on types of animals that are classified as dangerous and restrictions on individual animals based on certain factors including size and weight. Currently, the policies of some PHAs prohibit pets based on the breed, behavior, or training of the pet. However, some regulations based on breed do not depend on a finding that the pet is vicious or dangerous. Additionally, the definition of "dangerous dog" under Florida law is not uniformly applied in all PHA policies.

Local governments may adopt ordinances addressing the safety and welfare concerns stemming from dog attacks on people or domestic animals, placing restrictions and additional requirements on owners of dangerous dogs, provided that no such regulations may be breed specific. However, ordinances adopted prior to October 1, 1990 are exempt from these statutory requirements.

The bill authorizes PHAs to adopt rules or policies imposing restrictions or further requirements on owners of dogs deemed dangerous, as defined by Florida law. The bill further allows PHAs to develop procedures or criteria to aid in the implementation of these rules and policies. Additionally, the bill removes the current exception for local ordinances adopted prior to October 1, 1990, bringing such ordinances under the requirements of the statute.

This bill is projected to have no fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Creation of Housing Authorities

Public housing authorities (PHA) are created at municipal, county[1], and regional levels.[2] While authorized by statute, said housing authorities may not transact any business or exercise their statutory powers until such time as the governing body of the municipality or county declares by resolution that there is a need for a housing authority to function in the jurisdiction. This determination may be made by the governing body of the municipality or county on its own motion or upon the filing of a petition signed by 25 residents of the jurisdiction asserting that there exists a need for such an authority and requesting that the governing body so declare.[3] The governing body may adopt such a resolution if it finds the following:

- Insanitary or unsafe inhabited dwelling accommodations exist in the city or county; or
- There is a shortage of safe or sanitary dwelling accommodations in the city or county available to persons of low income at rentals they can afford.[4]

Upon notification of the adoption of such a resolution, the mayor of a city, or the Governor, shall appoint commissioners of the housing authority for the city or county, respectively.[5]

Additionally, if the governing body of two or more contiguous counties each declares by resolution the need for one housing authority to exercise powers and other functions for all such counties, a regional housing authority will be created; and any housing authorities created, for each individual county, shall cease to exist except for the purpose of winding up their respective affairs and executing a deed to the regional housing authority. The governing body of a county shall not adopt a resolution of this kind if its current county housing authority has any outstanding obligations, unless:

- All obligees of such county housing authority and any parties to any contracts, bonds, notes, or other obligations of such county housing authority agree to substitute the regional housing authority in lieu of the county housing authority on all such contracts, bonds, notes, or other obligations; and
- The commissioners of such county housing authority adopt a resolution consenting to the transfer of all the rights, contracts, obligations, and property, real and personal, of such county housing authority to the regional housing authority.[6]

Furthermore, the governing body of each of two or more contiguous counties must declare by resolution that:

- Insanitary or unsafe inhabited dwelling accommodations exist in such county or there is a shortage of safe and sanitary dwelling accommodations in such county available to persons of low income at rentals they can afford; and

[1] A county housing authority shall operate in all areas of the county except those portions that lie within the territorial boundaries of any city (defined as any city or town having a population of more than 2,500 according to the last state or federal census). Ss. 421.27(3) and 421.03(2), F.S.

[2] Ss. 421.04, 421.27, and 421.28, F.S.; A regional housing authority shall operate in all counties for which the regional housing authority was created except the portions of the counties that lie within the territorial boundaries of cities. Ss. 421.29(1) and 421.03(2), F.S.

[3] Ss. 421.04(1) and 421.27(1), F.S.

[4] S. 421.04(2), F.S.; In determining whether dwelling accommodations are unsafe or insanitary the governing body may take into consideration the following: the degree of overcrowding, the percentage of land coverage, the light, air, space and access available to the inhabitants, the size and arrangements of the rooms, the sanitary facilities, and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes. S. 421.04(2)(b), F.S.

[5] S. 421.27(2), F.S.

[6] S. 421.28(1), F.S.

- A regional housing authority would be a more efficient or economical administrative unit than the housing authority of such county to carry out the purposes of this Housing Authorities Law in such county.[7]

Powers of Housing Authorities

PHAs are authorized to administer fair housing ordinances and other ordinances adopted by municipalities, counties, or other authorities contracting for administrative services.[8]

Public Housing Authority Agency Plans

PHAs must submit annual plans to the U.S. Department of Housing and Urban Development (HUD) for approval. These plans must include a statement of the PHA's policies and rules regarding ownership of pets in public housing.[9]

PHAs may impose reasonable requirements on residents of public housing regarding pet ownership, which may include prohibitions against types of animals that are classified as dangerous[10] and individual animals based on certain factors, such as the size and weight of the animal.[11]

Currently, some PHAs include provisions in their policies prohibiting pets based on breed, behavior, or training of the pet.[12] However, some regulations based on breed do not depend on a finding that the pet is vicious or dangerous. Additionally, the definition of "dangerous dog" under Florida law is not uniformly applied in all PHA policies.[13]

Local Restrictions Regarding Dangerous Dogs

Local governments may adopt ordinances to address safety and welfare concerns stemming from dog attacks on people or domestic animals, placing restrictions and additional requirements on owners of dangerous dogs, provided that no regulations may be breed specific.[14] Ordinances adopted prior to October 1, 1990, are exempt from these statutory requirements.[15]

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[7] S. 421.28(3), F.S.; No governing body shall adopt a resolution of this kind unless a public hearing has first been held. S. 421.29(7), F.S.

[8] S. 421.08(6), F.S.

[9] 42 U.S.C.A. §1437c-1; *See also* 24 C.F.R. §903.7(n) (The policies must be in accordance with section 31 of the 1937 Act (42 U.S.C. §1437z-3)).

[10] Classifications must comply with state and local law. 24 C.F.R. §960.707(b)(3).

[11] 42 U.S.C.A. §1437z-3(b)(3); *See generally* Federal H.R. 5828 – Pets Belong With Families Act was introduced on November 2, 2021, and is still pending. This resolution seeks to amend 42 U.S.C.A. §1437z-3 in order to prohibit PHAs from imposing breed restrictions on household pets owned by residents of dwelling units in public housing, and for other purposes. The proposed amendment allows for "prohibitions on types of animals that are classified as dangerous, provided that classification is based on specific behaviors or actions by the animal and is not based on the breed of the animal," and further clarifies that reasonable requirements imposed by PHAs may not include prohibitions on breeds of animals. https://www.congress.gov/bill/117th-congress/house-bill/5828/text?q=%7B%22search%22%3A%5B%22breed+restrictions%22%2C%22breed%22%2C%22restrictions%22%5D%7D&r=1&s=9 (last visited Jan. 3, 2022).

[12] *See e.g.*, Tampa Housing Authority, https://www.thafl.com/Departments/Real-Estate-Development/library/PHA-PLAN.pdf (last visited Jan. 3, 2022) (forbidding "Pit bull, Rottweiler, German Shepherd, Chow, Doberman Pinscher or any species considered vicious, intimidating, or kept for the purpose of training for fighting or wagering of bets"); St. Petersburg Housing Authority, https://www.stpeteha.org/plugins/show_image.php?id=1912 (last visited Jan. 3, 2022) (prohibiting "any animal deemed to be potentially harmful to the health or safety of others, including attack or fight trained dogs . . . certain breeds may be prohibited at the discretion of [St. Petersburg Housing Authority]"); Key West Housing Authority, https://www.kwha.org/egov/documents/1614973714_73249.pdf (last visited Jan. 3, 2022) (prohibiting "vicious or intimidating pets. Dog breeds including pitbull, rottweiler, Doberman, are considered vicious or intimidating breeds").

[13] *See* S. 767.11(1), F.S.

[14] A local government may only enact additional restrictions or requirements on the owners of dogs who have already been declared "dangerous" as defined in s. 767.11, F.S. This section does not authorize or prohibit additional restrictions or requirements on owners of dogs who have not been declared "dangerous." *Hoesch v. Broward County*, 53 So. 3d 1177 (Fla. 4th DCA 2011).

[15] S. 767.14, F.S.

Florida law defines a "dangerous dog" as any dog that according to the records of the appropriate authority:[16]

- Has aggressively bitten, attacked, or endangered or inflicted severe injury[17] on a human being on public or private property;
- Has more than once severely injured or killed a domestic animal while off the owner's property; or
- Has, when unprovoked[18], chased or approached a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, provided that such actions are attested to in a sworn statement by one or more persons and dutifully investigated by the appropriate authority.[19]

Effect of Proposed Changes

The bill authorizes PHAs to adopt rules or policies imposing restrictions or further requirements on owners of dogs deemed dangerous, as defined by Florida law. The bill authorizes PHAs to develop procedures or criteria to aid in the implementation of these rules and policies. Additionally, the bill removes the exemption for local ordinances adopted prior to October 1, 1990, requiring those ordinances must now comply with these statutory restrictions.

B. SECTION DIRECTORY:

Section 1: Amends s. 767.14, F.S., providing housing authorities the power to adopt rules or policies addressing dangerous dogs and removing the exemption for local ordinances adopted prior to October 1, 1990.

Section 2: Provides an effective date of October 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

[16] Local governments may not alter the statutory definition of "dangerous dog." *See Hoesch*, 53 So. 3d at 1180-1181.

[17] "Severe injury" is defined as any physical injury resulting in broken bones, multiple bites, or disfiguring lacerations requiring sutures or reconstructive surgery. S. 767.11(3), F.S.

[18] "Unprovoked" is defined as a victim who conducted himself or herself peacefully and lawfully was bitten or chased in a menacing fashion or attacked by a dog. S. 767.11(2), F.S.

[19] S. 767.11(1), F.S.

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 neither requires nor authorizes administrative rulemaking by executive agencies..

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 13, 2022 the Local Administration & Veterans Affairs Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS clarifies that local governments have the authority to adopt ordinances and housing authorities have the authority to adopt rules or policies related to dangerous dogs.

This analysis is drafted to the committee substitute adopted by the Local Administration & Veterans Affairs Subcommittee.

A bill to be entitled

An act relating to the authorization of restrictions concerning dangerous dogs; amending s. 767.14, F.S.; authorizing certain housing authorities to adopt certain rules or policies relating to dangerous dogs; removing an exemption for local ordinances adopted before a specified date which pertain to dogs that have bitten or attacked persons or domestic animals; providing an effective date.

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

Section 1. Section 767.14, Florida Statutes, is amended to read:

767.14 Additional local restrictions authorized.—This act does not limit any local government from adopting an ordinance or any housing authority created by or pursuant to s. 421.04, s. 421.27, or s. 421.28 from adopting a rule or a policy to address the safety and welfare concerns caused by attacks on persons or domestic animals, placing further restrictions or additional requirements on owners of dogs that have bitten or attacked persons or domestic animals, or developing procedures and criteria for the implementation of this act, provided that no such regulation is specific to breed and that the provisions of this act are not lessened by such additional regulations or

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

requirements. ~~This section does not apply to any local ordinance adopted prior to October 1, 1990.~~

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

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

HB 763

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 763 Tax Exemption for Charges for Private Investigations
SPONSOR(S): Casello and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1146

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

SUMMARY ANALYSIS

Florida levies a six percent sales and use tax on the sale or rental of most tangible personal property, admissions, transient rentals, and a limited number of services.

The state of Florida does not usually collect sales tax from the vast majority of services performed. An example of taxed services would be investigative and crime protection services, interior nonresidential cleaning services, nonresidential pest control services, or a service which includes repairing or creating a product. This means that a yoga instructor would not be required to collect sales tax, while a janitor or private investigator may be required to collect sales tax.

Chapter 212, F.S., contains provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.

Currently, charges for detective, burglar protection, and other protection services listed under the North American Industry Classification System (NAICS), including investigative services, security guards and patrol services, armored car services, and security systems services, except locksmiths, are subject to the 6 percent sales and use tax.

The bill exempts charges for private investigations provided by a small private investigative agency from the sales and use tax.

The bill defines the term "small private investigative agency" as a person licensed as a private investigator that employs three or fewer employees and that received less than $50,000 in compensation during the preceding calendar year for providing private investigations for all businesses that are related through common ownership.

The Revenue Estimating Conference estimated that the bill will have a negative cash and recurring impact on General Revenue of $0.3 million in FY 2022-23, and a negative cash and recurring impact on local government revenues of $0.1 million in FY 2022-23.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Sales and Use Tax

Florida levies a six percent sales and use tax on the sale or rental of most tangible personal property,[1] admissions,[2] transient rentals,[3] and a limited number of services. Chapter 212, F.S., authorizes the levy and collection of Florida's sales and use tax and provides the exemptions and credits applicable to certain items or uses under specified circumstances. Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.[4]

The state of Florida does not usually collect sales tax from the vast majority of services performed. An example of taxed services would be investigative and crime protection services, interior nonresidential cleaning services, nonresidential pest control services, or a service which includes repairing or creating a product. This means that a yoga instructor would not be required to collect sales tax, while a janitor or private investigator may be required to collect sales tax.[5]

Counties are authorized to impose local discretionary sales surtaxes in addition to the state sales tax.[6] A surtax applies to "all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions by [ch. 212, F.S.], and communications services as defined in ch. 202, F.S."[7] The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold or delivered. Discretionary sales surtax rates currently being levied vary by county in a range of 0.5 to 2.5 percent.[8]

Currently, charges for detective, burglar protection, and other protection services listed under the North American Industry Classification System (NAICS) National Numbers 561611 (investigative services), 561612 (security guards and patrol services), 561613 (armored car services), and 561621 (security systems services, except locksmiths) are subject to the 6 percent sales and use tax.[9] Fingerprint services required under s. 790.06, F.S., or s. 790.062, F.S., are not subject to the tax.

Law enforcement[10] and public safety services are not subject to tax irrespective of whether the duty is characterized as "extra duty," "off-duty," or "secondary employment," and irrespective of whether the officer is paid directly or through the officer's agency by an outside source.

Charges for detective, burglar protection, and other protection security services performed in this state but used outside this state are exempt from taxation. Charges for detective, burglar protection, and other protection security services performed outside this state and used in this state are subject to tax.[11]

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[1] S. 212.05(1)(a)1.a., F.S.
[2] S. 212.04(1)(b), F.S.
[3] S. 212.03(1)(a), F.S.
[4] S. 212.07(2), F.S.
[5] Sales Tax Handbook, Florida Sales Tax, https://www.salestaxhandbook.com/florida (last visited Feb. 4, 2022).
[6] S. 212.055, F.S.
[7] Section 212.054(2)(a), F.S.
[8] Office of Economic and Demographic Research, *Florida Tax Handbook*, 227-228 (2021), http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2021.pdf (last visited Feb. 02, 2022).
[9] S. 212.05(1)(i)1., F.S.
[10] S. 943.10(1), F.S., defines "law enforcement officer" as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.
[11] S. 212.05(1)(i)3., F.S.

Private Investigative Services

The Division of Licensing within the Department of Agriculture and Consumer Services (DACS) oversees the regulation of licensing of private investigative services.[12] As of December 31, 2021, the Division has issued 2,627 private investigative agency licenses and 6,992 private investigator licenses.[13]

A "private investigator" is defined as any individual who, for consideration, advertises as providing or performs private investigations.[14] A "private investigative agency" means any person who, for consideration, advertises as providing or is engaged in the business of furnishing privation investigations.[15] "Private investigation" is defined as an investigation to obtain information on any of the following matters:

- Crime or wrongs done or threatened against the United States or any state or territory of the United States, when operating under express written authority of the governmental official responsible for authorizing such investigation.
- The identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons.
- The credibility of witnesses or other persons.
- The whereabouts of missing persons, owners of unclaimed property or escheated property, or heirs to estates.
- The location or recovery of lost or stolen property.
- The causes and origin of, or responsibility for, fires, libels, slanders, losses, accidents, damage, or injuries to real or personal property.
- The business of securing evidence to be used before investigating committees or boards of award or arbitration or in the trial of civil or criminal cases and the preparation thereof.[16]

Applicants for licensure as a private investigator must complete and submit an application to DACS and meet certain requirements. An applicant must:

- Be at least 18 years old;
- Be one of the following:
  - A United States citizen,
  - A permanent legal resident, or
  - A holder of a work visa from the United States Citizenship and Immigration Service;
- Have no disqualifying criminal history;
- Be of good moral character;
- Have no history of:
  - Mental illness,
  - Alcohol abuse, or
  - Substance abuse; and
- Submit an application with certain identifying information;[17] and
- Complete 40 hours of required training and submit proof thereof to DACS.[18]

To become a private investigator in Florida, a Class "C" Private Investigator license is required.[19] An applicant for the Class "C" Private Investigator license must have two years of lawfully gained, verifiable, full-time experience to qualify for the license.[20] In order to carry a firearm in the course of

[12] Ch. 493, F.S.
[13] Department of Agriculture and Consumer Services, *Division of Licensing Statistical Reports* (as of December 31, 2021), *available at* https://www.fdacs.gov/Divisions-Offices/Licensing/Statistical-Reports (last visited Jan. 28, 2022).
[14] Section 493.6101(16), F.S.
[15] Section 493.6101(15), F.S.
[16] Section 493.6101(17), F.S.
[17] S. 493.6105, F.S.
[18] S. 493.6303(4)(a), F.S.
[19] S. 493.6201(5), F.S.
[20] S. 493.6203, F.S.

performing such duties, the licensee must also obtain a Class "G" Statewide Firearm license in addition to the Class "C" Private Investigator license.[21]

Effect of the Bill

The bill exempts charges for private investigations provided by a "small private investigative agency" from the sales and use tax.

The bill defines the term "small private investigative agency" as:

> a person as defined in s. 212.02(12), F.S.,[22] licensed as a private investigator under s. 493.6201, F.S., that employs three or fewer employees and that received less than $50,000 in compensation during the preceding calendar year for providing private investigations, as that term is defined in s. 493.6101(17), F.S., for all businesses that are related through common ownership.

The bill defines the term "employees" as:

> all full-time and part-time employees currently employed by a small private investigative agency at all of its business locations, wherever they are located, including any person performing services for the small private investigative agency under an arrangement for employee leasing as that term is defined in s. 468.520(4), F.S.[23]

B. SECTION DIRECTORY:

Section 1: Amends s. 212.05, F.S., relating to sales, storage, use tax.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating conference estimated that the bill will have a negative cash and recurring impact on General Revenue of $0.3 million in FY 2022-23.[24]

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating conference estimated that the bill will have a negative cash and recurring impact on local government revenues of $0.1 million in FY 2022-23.[25]

2. Expenditures:

[21] S. 493.6115(2), F.S.

[22] S. 212.02(12), F.S., defines "person" as any individual, firm, copartnership, joint adventure, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit and also any political subdivision, municipality, state agency, bureau, or department and includes the plural as well as the singular number.

[23] S. 468.520(4), defines "employee leasing" as an arrangement whereby a leasing company assigns its employees to a client and allocates the direction of and control over the leased employees between the leasing company and the client.

[24] 2022 Regular Session Revenue Estimating Conference, Impact Conference Results (Jan. 07, 2022), ps. 173-175, http://edr.state.fl.us/content/conferences/revenueimpact/archives/2022/_pdf/Impact0107.pdf (last visited Feb. 02, 2022).

[25] *Id.*

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Charges for private investigations provided by small private investigative agencies will be exempt from sales tax.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill may reduce revenues collected by counties and municipalities related to taxes and private investigative services; however, an exemption may apply. The insignificant fiscal impact exemption may apply because the statewide fiscal impact to counties and municipalities is approximately $100,000.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department of Revenue may be required to undergo rulemaking to update Rule 12A-1.0092 of the Florida Administrative Code.[26]

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[26] Fla. Dept. of Revenue, Agency Analysis of 2022 HB 763, p.2 (Dec. 16, 2021).

A bill to be entitled

An act relating to tax exemption for charges for private investigations; amending s. 212.05, F.S.; providing that charges for private investigations by private investigative agencies are not subject to the sales and use tax; defining terms related to such agencies and investigations; providing an effective date.

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

Section 1. Paragraph (i) of subsection (1) of section 212.05, Florida Statutes, is amended to read:

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making or facilitating remote sales; who rents or furnishes any of the things or services taxable under this chapter; or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

(i)1. At the rate of 6 percent on charges for all:

a. Detective, burglar protection, and other protection services (NAICS National Numbers 561611, 561612, 561613, and 561621). However, charges for private investigations provided by a small private investigative agency are not subject to the tax. Fingerprint services required under s. 790.06 or s. 790.062 are not subject to the tax. Any law enforcement officer, as defined in s. 943.10, who is performing approved duties as determined by his or her local law enforcement agency in his or her capacity as a law enforcement officer, and who is subject to the direct and immediate command of his or her law enforcement agency, and in the law enforcement officer's uniform as authorized by his or her law enforcement agency, is performing law enforcement and public safety services and is not performing detective, burglar protection, or other protective services, if the law enforcement officer is performing his or her approved duties in a geographical area in which the law enforcement officer has arrest jurisdiction. Such law enforcement and public safety services are not subject to tax irrespective of whether the duty is characterized as "extra duty," "off-duty," or "secondary employment," and irrespective of whether the officer is paid directly or through the officer's agency by an outside source. The term "law enforcement officer" includes full-time or part-time law enforcement officers, and any auxiliary law enforcement officer, when such auxiliary law enforcement officer is working

under the direct supervision of a full-time or part-time law enforcement officer.

(I) For purposes of this paragraph, the term "small private investigative agency" means a person as defined in s. 212.02(12), licensed as a private investigator under s. 493.6201, that employs three or fewer employees and that received less than $50,000 in compensation during the preceding calendar year for providing private investigations, as that term is defined in s. 493.6101(17) for all businesses that are related through common ownership.

(II) For purposes of this paragraph, the term "employees" means all full-time and part-time employees currently employed by a small private investigative agency at all of its business locations, wherever they are located, including any person performing services for the small private investigative agency under an arrangement for employee leasing as that term is defined in s. 468.520(4).

b. Nonresidential cleaning, excluding cleaning of the interiors of transportation equipment, and nonresidential building pest control services (NAICS National Numbers 561710 and 561720).

2. As used in this paragraph, "NAICS" means those classifications contained in the North American Industry Classification System, as published in 2007 by the Office of Management and Budget, Executive Office of the President.

3. Charges for detective, burglar protection, and other protection security services performed in this state but used outside this state are exempt from taxation. Charges for detective, burglar protection, and other protection security services performed outside this state and used in this state are subject to tax.

4. If a transaction involves both the sale or use of a service taxable under this paragraph and the sale or use of a service or any other item not taxable under this chapter, the consideration paid must be separately identified and stated with respect to the taxable and exempt portions of the transaction or the entire transaction shall be presumed taxable. The burden shall be on the seller of the service or the purchaser of the service, whichever applicable, to overcome this presumption by providing documentary evidence as to which portion of the transaction is exempt from tax. The department is authorized to adjust the amount of consideration identified as the taxable and exempt portions of the transaction; however, a determination that the taxable and exempt portions are inaccurately stated and that the adjustment is applicable must be supported by substantial competent evidence.

5. Each seller of services subject to sales tax pursuant to this paragraph shall maintain a monthly log showing each transaction for which sales tax was not collected because the services meet the requirements of subparagraph 3. for out-of-

state use. The log must identify the purchaser's name, location and mailing address, and federal employer identification number, if a business, or the social security number, if an individual, the service sold, the price of the service, the date of sale, the reason for the exemption, and the sales invoice number. The monthly log shall be maintained pursuant to the same requirements and subject to the same penalties imposed for the keeping of similar records pursuant to this chapter.

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

REGULATORY REFORM SUBCOMMITTEE

HB 763 by Rep. Casello
Tax Exemption for Charges for Private Investigations

AMENDMENT SUMMARY
February 8, 2022

Amendment 1 by Rep. Casello (lines 53-60):

- Clarifies that the sales tax exemption applies to “private investigative agencies.”
- Applies the $50,000 compensation threshold to “each” of the three or less employees, instead of to the businesses, and specifies that it must be “taxable” compensation.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Regulatory Reform Subcommittee

Representative Casello offered the following:

Amendment

Remove lines 53-60 and insert:

(I) For purposes of this paragraph, the term "small private investigative agency" means a person as defined in s. 212.02(12), licensed as a private investigative agency under s. 493.6201, that employs three or fewer employees that each received less than $50,000 in taxable compensation during the preceding calendar year for providing private investigations, as that term is defined in s. 493.6101(17).

HB 1429

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1429 City of Ocala, Marion County
SPONSOR(S): McClain
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration & Veterans Affairs Subcommittee	17 Y, 0 N	Mwakyanjala	Miller
2) Regulatory Reform Subcommittee		Thompson	Anstead
3) State Affairs Committee			

SUMMARY ANALYSIS

Florida's Beverage Law limits the number of "quota licenses" that the Department of Business and Professional Regulation (DBPR) may issue per county. A quota license allows a business to serve any alcoholic beverage regardless of alcoholic content, including liquor. DBPR is not limited by the Beverage Law on the number of licenses it may issue for businesses serving only malt beverages and wine.

The bill creates an exception to ch. 561, F.S., permitting licensed vendors located within the Downtown Ocala Event Zone that are licensed to sell alcoholic beverages to patrons for consumption on the licensed premises to receive a special permit during special events approved or declared by the Ocala City Council to allow for the sale of alcoholic beverages in open containers for consumption off the licensed premises but still within the entertainment district. The special permit will only be valid for the duration of each special event approved by the city manager.

According to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. Since this bill creates an exemption to general law, the provisions of House Rule 5.5(b) apply.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Beverage Law

The Division of Alcoholic Beverages and Tobacco (Division) within the Department of Business and Professional Regulation (DBPR) is responsible for regulating the conduct, management, and operation of the manufacturing, packaging, distribution, and sale of alcoholic beverages within the state.[1] Chapters 561-565 and 567-568, F.S., comprise Florida's Beverage Law.

Under the Beverage Law, DBPR is not limited on the number of licenses it issues to businesses selling malt beverages or wine. However, statute limits the number of licenses that may be issued under s. 565.02(1)(a)-(f), F.S., to one license per 7,500 residents per county with a minimum of three licenses per county that has approved the sale of intoxicating liquors.[2] This license, often referred to as a "quota license," allows a business to sell any alcoholic beverage regardless of alcoholic content, including liquor or distilled spirits.[3]

There are several exceptions to the quota license limitation,[4] and businesses that meet the requirements set out in one of the exceptions may be issued a special license by DBPR allowing the business to serve any alcoholic beverages regardless of alcohol content.

Alcoholic beverages sold for consumption on premises must be consumed inside the licensed premises.[5] DBPR may approve a temporary expansion of the licensed premises to include a sidewalk or other outdoor area for special events.[6] The business must pay an application fee of $100, stipulate the timeframe for the special event, submit a sketch outlining the expanded premises, and submit written approval from the county or municipality.

Effect of the Bill

The bill creates an exception to ch. 561, F.S., permitting licensed vendors located within the Downtown Ocala Event Zone that are licensed to sell alcoholic beverages to patrons for consumption on the licensed premises to receive a special permit during special events approved or declared by the Ocala City Council to allow for the sale of alcoholic beverages in open containers for consumption off the licensed premises but still within the entertainment district. The special permit will only be valid for the duration of each special event approved by the city manager.

B. SECTION DIRECTORY:

Section 1: Creates the Downtown Ocala Event Zone in the City of Ocala and provides a property description of the district.

Section 2: Creates an exception to general law; upon adoption of a resolution approving a special event and street closure by the Ocala City Council, allows licensed vendors within the Downtown Ocala Event Zone authorized to sell alcoholic beverages for consumption on the licensed premises to sell alcoholic beverages for consumption off the licensed premises but still within the zone during approved special events.

[1] S. 561.02, F.S.
[2] S. 561.20(1), F.S.
[3] S. 565.02, F.S.
[4] S. 561.20(2), F.S.
[5] *See* s. 561.01(11), F.S. (defining "licensed premises" and requiring written approval from the county or municipality to include a sidewalk or any other outside area as part of the licensed premise).
[6] S. 561.01(11), F.S.

Section 3: Provides that any special permit authorized under this act shall be granted in addition to any other temporary permits authorized pursuant to ch. 561, F.S.

Section 4: Requires that vendors comply with all other requirements of ch. 561, F.S., while operating pursuant to any special permit.

Section 5: Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? December 3, 2021.

WHERE? *The Star Banner*, a newspaper printed and published in Ocala, Marion County, Florida.

B. REFERENDUM(S) REQUIRED? Yes [] No [X]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes [X] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. Since this bill creates an exemption to general law, the provisions of House Rule 5.5(b) apply.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to City of Ocala, Marion County; creating and designating boundaries of an entertainment event zone within the downtown area of the city; providing an exception to general law; requiring the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to issue a special permit to bona fide licensed vendors operating within the entertainment event zone for the sale of alcoholic beverages for consumption off the licensed premises and on public rights-of-way and public park property during city-approved special events; requiring adoption of a resolution approving such special events by the Ocala City Council during an advertised public hearing; providing that special permits are in addition to certain other authorized temporary permits; requiring bona fide licensed vendors to comply with all other statutory requirements; providing an exemption from general law; providing an effective date.

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

Section 1. There is created a special zone in the City of Ocala to be known as the "Downtown Ocala Event Zone," more

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

particularly described as follows:

Commencing at the corner of NW 2nd Avenue and NW 1st Street; thence east along the center line of NW and NE 1st Street to the center line of NE Watula Avenue; thence south along the center line of NE and SE Watula Ave to the center line of SE 5th Street; thence west along the center line of SE 5th Street to the center line of SE Osceola Avenue; thence north along the center line of SE Osceola Avenue to the center line of SE 3rd Street; thence west along the center line of SE and SW 3rd Street to the center line of SW 2nd Avenue; thence north along Center line of SW and NW 2nd Avenue to the point of beginning.

Section 2. Notwithstanding chapter 561, Florida Statutes, the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation shall issue a special permit to bona fide licensed vendors for consumption on the premises, operating a licensed premises within the Downtown Ocala Event Zone, upon adoption of a resolution approving a special event and street closure by the Ocala City Council during an advertised public hearing, to temporarily sell alcoholic beverages for consumption on the premises in open containers that may be removed from the premises by patrons and

consumed within the Downtown Ocala Event Zone. The type and color of the open container shall be identified in the resolution approved by the Ocala City Council. Such special permit may be authorized for no more than 12 outdoor events per calendar year and is valid only for the duration of each special event approved by the Ocala City Council.

Section 3. The special permits authorized by this act shall be granted in addition to any other temporary permits authorized pursuant to chapter 561, Florida Statutes.

Section 4. Bona fide licensed vendors shall comply with all other requirements of chapter 561, Florida Statutes, while conducting business pursuant to special permits authorized by this act.

Section 5. This act shall take effect upon becoming a law.

PCS for HB 375

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 375 Structural Engineering Recognition Program for Professional Engineers
SPONSOR(S): Regulatory Reform Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Regulatory Reform Subcommittee		Thompson	Anstead

SUMMARY ANALYSIS

The practice of engineering is regulated by the Florida Board of Professional Engineers (Board) under the Department of Business and Professional Regulation (DBPR) Division of Professions. The Board is responsible for reviewing applications, administering exams, licensing qualified applicants, and regulating and enforcing the proper practice of engineering in the state. The administrative, investigative, and prosecutorial services for the Board are administered by the Florida Engineers Management Corporation (FEMC). FEMC is a non-profit, single purpose corporation that operates through a contract with DBPR.

Current law requires that applicants for licensure as a professional engineer have certain qualifications, including passing a fundamentals examination and a principles and practice examination, having good moral character, obtaining a degree from a four year engineering curriculum, and having four years of engineering experience.

The bill:

- Establishes the "Structural Engineering Recognition Program for Professional Engineers" (Program).
- Requires the Board to recognize any licensed professional engineer who:
  - Has successfully passed the National Council of Examiners for Engineering and Surveying Structural Engineering 16-hour PE Structural examination or any other examination approved by the Board.
  - Specializes in structural engineering based on alternative criteria determined by the Board.
- Provides that upon application to the Board, a professional engineer who has the minimum program requirements must be recognized as a professional engineer who has gone above and beyond in the field of structural engineering.
- Prohibits the Board from collecting a fee for the application or for recognition by the Program.
- Authorizes a professional engineer who is recognized by the Program to identify the recognition in her or his professional practice, including in marketing and advertising materials.
- Provides that recognition by the Program is not required for a professional engineer to practice structural engineering.
- Requires the Board to adopt rules to implement these requirements.

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

Professional Engineering

The practice of engineering[1] is regulated by the Florida Board of Professional Engineers (Board) under the Department of Business and Professional Regulation (DBPR) Division of Professions.[2] The Board is responsible for reviewing applications, administering exams, licensing qualified applicants, and regulating and enforcing the proper practice of engineering in the state. The administrative, investigative, and prosecutorial services for the Board are administered by the Florida Engineers Management Corporation (FEMC).[3] FEMC is a non-profit, single purpose corporation that operates through a contract with DBPR.

There were 62,909 licensed professional engineers in Fiscal Year 2020-2021.[4] The FEMC processed 231 complaints regarding engineering practices during that period, with 137 of the complaints found to be legally sufficient to proceed, and filed 68 administrative complaints in cases where probable cause was found relating to a violation of the practice act.[5]

License Qualifications and Exemptions

Current law provides for license qualifications for a professional engineer to practice in the state.[6] In order to be licensed as a professional engineer, a person must successfully pass two examinations: the fundamentals examination and the principles and practices examination. Prior to being permitted to sit for the fundamentals examination, an applicant must have graduated from:[7]

- An approved engineering science curriculum of four years or more in a board-approved school, college, or university; or
- An approved engineering technology curriculum of four years or more in a board-approved school, college, or university.

The FEMC is required to issue a license to any applicant who the board certifies is qualified to practice engineering and who has passed the fundamentals and the principles and practice examination.[8]

The board is required to certify for licensure any applicant who has submitted proof of being at least 18 years old and has the required engineering experience.[9] For graduates of an approved engineering science curriculum, the applicant must have a record of at least four years of active engineering experience sufficient to indicate competence to be in responsible charge of engineering. Graduates of

[1] Ch. 471, F.S., governs the licensing and regulation of professional engineers.
[2] S. 20.165(4)(a)11., F.S.
[3] S. 471.038(3), F.S.
[4] Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2020-2021, for the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation* (2020-2021 Annual Report) at p. 20, http://www.myfloridalicense.com/DBPR/os/documents/DivisionAnnualReport_FY2021.pdf (last visited Feb. 02, 2022).
[5] *See* the Annual Report of the FEMC for FY 2020-2021, available at https://fbpe.org/wp-content/uploads/2021/10/2020-21-FEMC-Annual-Report.pdf, at p. 2 (last visited Jan. 19, 2022). The FEMC also filed 89 Final Orders with the DBPR; entered into three negotiations, and tried one administrative hearing; dismissed two cases after re-consideration; issued 16 reprimands, three suspensions, four probations, three project reviews, and three license restrictions; and imposed $44,765.23 in administrative costs and $58,500 in fines. The board also issued 88 Final Orders against licensees.
[6] S. 471.013, F.S.,
[7] S. 471.013(1), F.S.
[8] S. 471.015(1), F.S.
[9] S. 471.015(2), F.S.

an approved engineering technology curriculum must have a record of at least six years of such qualified experience.[10]

The law also identifies certain persons who are exempted from the licensing requirements.[11]

Special Inspectors of Threshold Buildings

The board is authorized to establish by rule the qualifications for certification of licensees as inspectors of threshold buildings.[12] A "threshold building" is "any building which is greater than three stories or 50 feet in height, or which has an assembly occupancy classification as defined in the Florida Building Code which exceeds 5,000 square feet in area and an occupant content of greater than 500 persons."[13]

The board is also authorized to establish minimum qualifications for the qualified representative of the special inspector who is authorized to perform inspections of threshold buildings on behalf of the special inspector.[14]

The agency charged with enforcing the building code (enforcing agency)[15] must require a special inspector to perform structural inspections on a threshold building pursuant to a structural inspection plan prepared by the engineer or architect of record.[16]

Engineer Seals

The board is authorized to prescribe, by rule, one or more forms of seal to be used by licensed engineers.[17] Each licensee must obtain at least one seal.[18] All final drawings, specifications, plans, reports, or documents prepared or issued by the licensee and filed for public record and all final documents provided to the owner or the owner's representative must be signed by the licensee, dated, and sealed with the seal.[19] The signature, date, and seal are evidence of the authenticity of the document to which they are affixed.[20]

A licensee may not affix or permit to be affixed his or her seal, name, or digital signature to any plan, specification, drawing, final bid document, or other document that depicts work which he or she is not licensed to perform or which is beyond his or her profession or specialty.[21]

A successor engineer seeking to reuse documents previously sealed by another engineer must be able to independently re-create all of the work done by the original engineer, and assumes full professional and legal responsibility by signing and affixing his or her seal to the assumed documents.[22]

Descriptive Titles

Current law sets forth the permissible and prohibited titles for persons licensed under ch. 471, F.S., and for persons who are otherwise exempted from such licensure.[23] With certain exceptions for persons

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[10] *See* ss. 471.015(2)(a)1. and 2., F.S.
[11] S. 471.003(2), F.S.
[12] S. 471.015(7), F.S.
[13] *See* s. 553.71(12), F.S.
[14] *See* s. 471.015(7), F.S.
[15] *See* s. 553.71(5), F.S., which defines the term "local enforcement agency" to mean "an agency of local government, a local school board, a community college board of trustees, or a university board of trustees in the State University System with jurisdiction to make inspections of buildings and to enforce the codes which establish standards for design, construction, erection, alteration, repair, modification, or demolition of public or private buildings, structures, or facilities."
[16] S. 553.79(5)(a), F.S.
[17] S. 471.025(1), F.S.
[18] S. 471.025(1), F.S.
[19] *Id*.
[20] *Id*.
[21] S. 471.025(3), F.S.
[22] S. 471.025(4), F.S. The original engineer is released from any professional responsibility or civil liability for work that is assumed.
[23] S. 471.031, F.S.

exempted from licensure, the use of the name "professional engineer" or any other title, designation, abbreviation, or indication that a person holds an active license as an engineer when the person is not licensed under ch. 471, F.S., is prohibited, along with use of the following titles:

- Agricultural engineer;
- Air-conditioning engineer;
- Architectural engineer;
- Building engineer;
- Chemical engineer;
- Civil engineer;
- Control systems engineer;
- Electrical engineer;
- Environmental engineer;
- Fire protection engineer;
- Industrial engineer;
- Manufacturing engineer;
- Mechanical engineer;
- Metallurgical engineer;
- Mining engineer;
- Minerals engineer;
- Marine engineer;
- Nuclear engineer;
- Petroleum engineer;
- Plumbing engineer;
- Structural engineer;
- Transportation engineer;
- Software engineer;
- Computer hardware engineer; and
- Systems engineer.[24]

Violations are a first degree misdemeanor punishable as provided in ss. 775.082 or 775.083, F.S.[25]

Discipline by the Board

Current law outlines the conduct that constitutes grounds for the imposition of discipline by the board.[26] Such discipline includes denial of an application for licensure, suspension or revocation of a license, imposition of fines, reprimands, probation, or restitution, and restriction of the authorized scope of practice of a licensee.

Voluntary Structural Engineer Associations

The Florida Structural Engineers Association (FSEA) provides input on building codes and enforcement and sponsors technical seminars to address common concerns of the profession.[27] Members of FSEA become members of the National Council of Structural Engineers Associations (NCSEA).[28] The NCSEA was formed to improve the standard level of practice of the structural engineering profession and provide an identifiable resource for seeking communication with the profession.[29] It advocates for the practice of structural engineering on behalf of its 44 member organizations.[30] According to the

[24] *See* s. 471.031(1)(b), F.S.
[25] See s. 471.031(2), F.S.
[26] S. 471.033, F.S.
[27] Facebook, Florida Structural Engineers Association, https://www.facebook.com/pages/category/Local-business/Florida-Structural-Engineering-Association-242110399280593/ (last visited Feb. 02, 2022).
[28] National Council of Structural Engineers Associations, About Us, http://www.ncsea.com/about/ (last visited Feb. 02, 2022).
[29] *See* http://www.ncsea.com/about/ (last visited Jan. 19, 2022).
[30] *Id*.

NCSEA, two states restrict who may use the title "structural engineer,"[31] eight states have a partial practice act for structural engineers,[32] and two states have a full practice act for structural engineers.[33]

The National Council of Examiners for Engineering and Surveying is a nonprofit organization composed of 69 engineering and surveying licensing boards from all 50 states, the District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.[34] It provides services including engineering examinations, surveying examinations, exam preparation materials, records programs, and credentials evaluations among other services to licensing jurisdictions.[35]

Legislative History Related to Structural Engineers

In 2015, the Governor vetoed[36] legislation that created a separate license type for "structural engineers." Under the proposed legislation, structural engineers would have been licensed and regulated similar to licensed professional engineers.

The veto letter pointed out that the bill:

- Contained additional requirements and a new license for current and future engineers who wish to practice structural engineering.
- Required passing 16 hours of exams, and an unwarranted mechanism to exempt currently licensed engineers from having to take and pass the qualifying exams.

Effect of the Bill

The bill establishes the Structural Engineering Recognition Program for Professional Engineers (Program).

The bill requires the Board to:

- Recognize professional engineers who specialize in structural engineering and have gone above and beyond the required minimum professional engineer licensing standards.
- Establish minimum requirements to receive recognition through the Program.
- Recognize any licensed professional engineer who has successfully passed the National Council of Examiners for Engineering and Surveying Structural Engineering 16-hour PE Structural examination or any other examination approved by the Board.

The bill authorizes the Board to recognize any licensed professional engineer who specializes in structural engineering based on alternative criteria determined by the Board.

The bill prohibits the Board from collecting a fee for the application or for recognition by the Program.

The bill authorizes a professional engineer who is recognized by the Program to identify the recognition in her or his professional practice, including in marketing and advertising materials.

Recognition by the Program is not required for a professional engineer to practice structural engineering.

The bill requires the Board to adopt rules to implement these requirements.

B. SECTION DIRECTORY:

[31] Idaho and Nebraska. *See* http://www.ncsea.com/resources/licensure/ (last visited Jan. 19, 2022).
[32] Alaska, California, Georgia, Nevada, Oklahoma, Oregon, Utah, and Washington.
[33] Illinois and Hawaii.
[34] *See* The National Council of Examiners for Engineering and Surveying (ncees.org) (last visited Jan. 19, 2022).
[35] *Id*.
[36] Veto Letter from Governor Rick Scott to Secretary of State Kenneth W. Detzner, House Bill 217 (2015), https://www.flgov.com/wp-content/uploads/2015/06/Transmittal-Letter-6.11.15-HB-217.pdf (last visited Feb. 02, 2022).

Section 1: Creates s. 471.055, F.S., relating to the Structural Engineering Recognition Program for Professional Engineers.

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:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill requires the Board to adopt rules to implement the provisions in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to Structural Engineering Recognition Program for Professional Engineers; creating s. 471.055, F.S.; establishing the Structural Engineering Recognition Program for Professional Engineers; requiring the Board of Professional Engineers to recognize a licensed professional engineer who has successfully passed a specified examination; providing requirements for application and recognition; prohibiting a fee for such application or for recognition; authorizing a professional engineer recognized by the program to identify such recognition in her or his professional practice and marketing and advertising materials; providing that recognition by the program is not required to practice structural engineering; requiring rulemaking; providing an effective date.

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

Section 1. Section 471.055, Florida Statutes, is created to read:

471.055 Structural Engineering Recognition Program for Professional Engineers.—

(1) The board shall establish the Structural Engineering

Recognition Program for Professional Engineers to recognize professional engineers who specialize in structural engineering and have gone above and beyond the required minimum professional engineer licensing standards. The board shall establish minimum requirements to receive recognition through the program. The board must recognize any licensed professional engineer who has successfully passed the National Council of Examiners for Engineering and Surveying Structural Engineering 16-hour PE Structural examination or any other examination approved by the board. In addition, the board may recognize any licensed professional engineer who specializes in structural engineering based on alternative criteria determined by the board.

(2) Upon application to the board, a professional engineer who has the minimum program requirements shall be recognized as a professional engineer who has gone above and beyond in the field of structural engineering. The board may not collect a fee for such application or for recognition by the program.

(3) A professional engineer who is recognized by the program may identify such recognition in her or his professional practice, including in marketing and advertising materials.

(4) Recognition by the program is not required for a professional engineer to practice structural engineering.

(5) The board shall adopt rules to implement this section.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 529 Yacht and Ship Brokers Located out of State
SPONSOR(S): Regulatory Reform Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Regulatory Reform Subcommittee		Wright	Anstead

SUMMARY ANALYSIS

The Florida Department of Business and Professional Regulation (DBPR) regulates and licenses various businesses and professionals in Florida through 12 divisions, including the Division of Florida Condominiums, Timeshares, and Mobile Homes (division), which regulates yacht and ship brokers and salespersons. A person may not act as a broker or salesperson in Florida unless they are licensed by the division.

For the purposes of the practice act, "yacht" means any vessel which is propelled by sail or machinery in the water which exceeds 32 feet in length, and which weighs less than 300 gross tons.

A yacht and ship "broker" is a person who, for or in expectation of compensation: sells, offers, or negotiates to sell; buys, offers, or negotiates to buy; solicits or obtains listings of; or negotiates the purchase, sale, or exchange of, yachts for other persons. A person may not be licensed as a broker unless they have been a salesperson for at least 2 consecutive years.

A license is not required for:
- A person who sells his or her own yacht,
- An attorney at law for services rendered in his or her professional capacity,
- A receiver, trustee, or other person acting under a court order,
- A transaction involving the sale of a new yacht, or
- A transaction involving the foreclosure of a security interest in a yacht.

The PCS provides that a license is not required for a person who regularly conducts business as a yacht or ship broker or salesperson in another state who engages in the purchase or sale of a yacht under this act, if the transaction is executed with a broker or salesperson licensed in this state. This limitation does not apply to a duly licensed attorney.

The bill may have a minimal indeterminate fiscal impact on state government, and no fiscal impact on local governments.

The PCS is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Yacht and Ship Brokers

The Florida Department of Business and Professional Regulation (DBPR) regulates and licenses various businesses and professionals in Florida through 12 divisions, including the Division of Florida Condominiums, Timeshares, and Mobile Homes (division).[1]

The division provides consumer protection for Florida residents through education, complaint resolution, mediation and arbitration, and developer disclosure.[2] The division has limited 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.[3]

For the purposes of the practice act, "yacht" means any vessel which is propelled by sail or machinery in the water which exceeds 32 feet in length, and which weighs less than 300 gross tons.[4]

A yacht and ship "broker" is a person who, for or in expectation of compensation: sells, offers, or negotiates to sell; buys, offers, or negotiates to buy; solicits or obtains listings of; or negotiates the purchase, sale, or exchange of, yachts for other persons.[5] A person may not be licensed as a broker unless they have been a salesperson for at least 2 consecutive years.[6]

A yacht and ship "salesperson" is a person who, for or in expectation of compensation, is employed by a broker to perform any acts of a broker.[7]

Yacht and ship brokers, salespersons, and related business organizations are regulated under ch. 326, F.S., and by the division.[8] A person may not act as a broker or salesperson in Florida unless they are licensed by the division.[9]

An applicant for a license as a broker or salesperson must demonstrate or provide the following to the division:[10]

- Proof of good moral character.
- Proof that they have never been convicted of a felony.
- A $25,000 bond for broker or a $10,000 bond for salespersons to the division.
- Proof that they are a resident of Florida or that they conduct business in Florida.
- A full set of fingerprints taken within the 6 months immediately preceding the submission of the application.
- Proof that they have not operated as a broker or salesperson without a license.

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[1] S. 20.165, F.S.
[2] Department of Business and Professional Regulation, *Division of Florida Condominiums, Timeshares, and Mobile Homes*, http://www.myfloridalicense.com/DBPR/condos-timeshares-mobile-homes/ (last visited Feb. 4, 2022).
[3] *Id*.
[4] S. 326.002(4), F.S.
[5] S. 326.002(1), F.S.
[6] S. 326.004(8), F.S.
[7] S. 326.002(3), F.S.
[8] Ch. 326, F.S.
[9] S. 326.004(1), F.S.
[10] S. 326.004(6), F.S.

A license is not required for:[11]

- A person who sells his or her own yacht,
- An attorney at law for services rendered in his or her professional capacity,
- A receiver, trustee, or other person acting under a court order,
- A transaction involving the sale of a new yacht, or
- A transaction involving the foreclosure of a security interest in a yacht.

There are no provisions for a license by endorsement, or licensure for persons who are licensed in another jurisdiction.

Effect of the Bill

The PCS provides that a license is not required for a person who regularly conducts business as a yacht or ship broker or salesperson in another state who engages in the purchase or sale of a yacht under this act, if the transaction is executed with a broker or salesperson licensed in this state. This limitation does not apply to a duly licensed attorney.

The PCS is effective upon becoming law.

B. SECTION DIRECTORY:

Section 1: Amends s. 326.004, F.S.; relating to a licensure exception.
Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The PCS may have a minimal decrease in licensing fees to the division due to less out-of-state yacht and ship brokers needing to have a Florida license to do business in Florida in certain circumstances.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The PCS may allow more out-of-state yacht and ship brokers to do business in Florida.

D. FISCAL COMMENTS:

None.

[11] S. 362.004(3), F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

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 yacht and ship brokers located out of state; amending s. 326.004, F.S.; exempting a person who conducts business as a broker or salesperson in another state from licensure for specified transactions; providing an exception; providing an effective date.

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

Section 1. Section 326.004, Florida Statutes, is amended, to read:

326.004 Licensing.—

(3) A license is not required for:

(f) A person who regularly conducts business as a yacht or ship broker or salesperson in another state who engages in the purchase or sale of a yacht under this act, if the transaction is executed with a broker or salesperson licensed in this state. This limitation does not apply to a duly licensed attorney.

Section 2. This act shall take effect upon becoming a law.

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

PCS for CS/HB 583

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 583 Limitations of actions other than for the recovery of real property
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

Florida law sets forth time periods within which claims must be made based on deficiencies in construction or flaws in materials used during construction, known as construction defects. If a lawsuit is not filed related to a defect within the given time frames, any claims regarding the defect will be barred. Chapter 95, F.S., provides guidelines for how property owners and contractors should handle cases where a suspected defect is involved.

In Florida, a lawsuit for construction defects must be brought to court within **four years** from the end of the project. Specifically, the clock for the statute of limitations for construction defects typically **begins to run** from the latest date of:

- Actual possession by the owner;
- Issuance of a certificate of occupancy;
- Abandonment of construction if not completed; or
- Completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer.

If the defect is **latent,** hidden, or unable to be ascertained, the time frame for the statute of limitations begins on the date the defect was discovered or should have reasonably been discovered with due diligence.

However, under no circumstances may a lawsuit be brought after ten years. Under the **ten-year statute of repose,** actions must be commenced within ten years after the latest of the above listed events. The bill **repeals** the 10-year statute of repose.

The bill revises the statute of limitations for actions founded on the design, planning, or construction of an improvement to real property. The bill provides that the four-year time period for the statute of limitations **begins to run 45 days after** the date of:

- Completion of the improvement, which is defined to include the date of issuance of the certificate of completion or occupancy, or the closing of the building permit; or
- Abandonment of the improvement, if the improvement is not completed.

The bill provides that if an action involves a **latent defect** the action must be commenced within **seven years,** instead of four years, with the time beginning 45 days after completion or abandonment, and **repeals** the provision that allowed the time to begin on date the defect was discovered or should have reasonably been discovered with due diligence.

If an action alleges a **material violation** and the person alleging the material violation can show by clear and convincing evidence that the engineer, architect, or contractor or his or her employer knew of the material violation at the time of construction, the action must be commenced within **15 years**, with the time beginning 45 days after completion or abandonment.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Statutes of Limitations and Repose

A statute of limitations is an absolute bar to the filing of a lawsuit after a date set by law. A law creating a statute of limitations specifies when the time period begins, how long the limitations period runs, and circumstances by which the running of the statutes may be tolled. A statute of limitations usually begins to run when a cause of action accrues, which is generally when the harm occurs.

Current law provides that actions founded on the **design, planning, or construction of an improvement to real property** are subject to a **four-year statute of limitations**. The four-year time period of the statute of limitations begins to run from the latest date of:[1]

- Actual possession by the owner;
- Issuance of a certificate of occupancy;
- Abandonment of construction if not completed; or
- Completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer.

In actions involving a **latent defect**, the four-year statute of limitations does not begin to run until the defect is discovered or should have been discovered with the exercise of due diligence.[2]

A patent defect is a defect that would have been obvious to the owner had the owner exercised reasonable care.[3] A latent defect is a hidden flaw or imperfection that cannot be discovered by reasonable and customary inspection, and of which the owner has no knowledge.[4]

Statute of Repose

A statute of repose is similar to a statute of limitations. A statute of repose bars a suit after a fixed period of time after the defendant acts in some way, even if this period ends before the plaintiff has suffered any injury. Although phrased in similar language, a statute of repose is not a true statute of limitations because it begins to run from an established or fixed event, such as the delivery of a product or the completion of work, which is unrelated to accrual of the cause of action, discovery of the defect or when harm occurs.[5]

Unlike a statute of limitations, a statute of repose eliminates the underlying substantive right of action, not just the remedy available to the plaintiff, upon expiration of the period specified in the statute.[6] Courts construe a cause of action rescinded by a statute of repose as if the right to sue never existed. Statutes of repose are designed to encourage diligence in the prosecution of claims, eliminate the potential of abuse from a stale claim, and foster certainty and finality in liability.[7]

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[1] S. 95.11(3)(c), F.S.
[2] *Id.*
[3] *McIntosh v. Progressive Design and Engineering, Inc.*, 166 So. 3d 823, 828-29 (Fla. 4th DCA 2015); *Florida Dept. of Transp. v. Capeletti Bros., Inc.*, 743 So. 2d 150, 152 (Fla. 3rd DCA 1999); *Brady v. State Paving Corp.*, 693 SO. 2d 612, 613 (Fla. 4th DCA 1997).
[4] *Alexander v. Suncoast Builders, Inc.,* 837 So. 2d 1056, 1058 (Fla. 3d DCA 2003).
[5] *Kush v. Lloyd*, 616 So.2d 415 (Fla. 1992).
[6] *Beach v. Great Western Bank*, 692 So.2d 146 (Fla. 1997)
[7] *Lamb By and Through Donaldson v. Volkswagenwerk Aktiengesellschaft*, 631 F. Supp. 1144, 1148 (S.D. Fla. 1986), judgment aff'd, 835 F.2d 1369 (11th Cir. 1988).

In addition to the four-year statute of limitations, there is a **10-year statute of repose** for an action founded on the design, planning, or construction of an improvement to real property. Such actions must be commenced, **regardless of the time the cause of action accrued**, within 10 years after latest date of:[8]

- Actual possession by the owner;
- Issuance of a certificate of occupancy;
- Abandonment of construction if not completed; or
- Completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer.

Thus, the statute of repose may bar an action even though the injured party is unaware of the existence of the cause of action.

Florida Building Code

The Florida Building Code (Building Code) is the statewide building code for all construction in the state. The Florida Building Commission (Commission), housed within the Department of Business and Professional Regulation (DBPR), implements the Building Code. The Commission reviews the International Code Council's I-Codes and the National Electric Code every three years to determine if it needs to update the Building Code.[9]

Part IV of ch. 553, F.S., is known as the "Florida Building Codes Act," which provides a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code that must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.[10] The Building Code is adopted, updated, and interpreted by the Commission, and is enforced by local governments.[11]

The main purpose of the Building Code is to regulate new construction or proposed modifications to existing structures in order to give the occupants the highest level of safety and the least amount of defects.[12] The Building Code sets minimum standards for the design, construction, erection, alteration, modification, repair, and demolition of buildings, structures, and facilities in the state.

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.[13] Every local government must enforce the Building Code and issue building permits.[14]

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.[15]

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.[16] A building official is a local government employee or a person contracted by a government entity who supervises building code activities, including plans review,

[8] S. 95.11(3)(c), F.S.
[9] S. 553.73(7), F.S.
[10] *See* s. 553.72(1), F.S.
[11] Ss. 553.72, & 553.73, F.S.
[12] Florida Building Commission, *Advanced Florida Building Code Principals*, http://www.floridabuilding.org/Upload/Courses_trp/421-2-MATERIAL-Adv%20FL%20Bldg%20Code%20-%20Course%20PDF%20version%207.0.pdf (last visited Feb. 4, 2022).
[13] S. 553.72, F.S.
[14] Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.
[15] *See* ss. 125.56(4)(a) and 553.79(1), F.S.
[16] S. 468.603(2), F.S; S. 202 of the Seventh edition of the Florida Building Code (Building).

enforcement, and inspection.[17] 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.[18] A permit for construction work that passes the required inspections and meets the requirements of the permit receives a **certificate of completion** or is considered **closed**.[19]

After a new building or structure[20] is completed and passes the required inspections and permit requirements, the local building official will issue a **certificate of occupancy**. A new building or structure may not be used or occupied until the local building official issues a certificate of occupancy for the building or structure.[21]

Construction and Electrical Contractors

The Legislature has determined that it is "necessary in the interest of the public health, safety, and welfare" to regulate the construction, electrical, and alarm system industry.[22]

Construction contractors are either certified by or registered with the Construction Industry Licensing Board (CILB). The CILB is housed in DBPR and consists of 18 members who are appointed by the Governor and confirmed by the Senate. The CILB is responsible for licensing, regulating, and disciplining certified construction contractors. Electrical contractors and alarm system contractors are certified by or registered with the Electrical Contractors' Licensing Board (ECLB). The ECLB is also housed in DBPR consists of 11 members who are appointed by the Governor and confirmed by the Senate. The ECLB is responsible for licensing, regulating, and disciplining certified electrical and alarm system contractors.[23]

The CILB and the ECLB may take action[24] against a certified contractor if they find the contractor is guilty of violating the contractor's practice act. Violations include:[25]

- Abandoning a construction project;
- Committing financial mismanagement that causes financial harm to a customer;
- Failing to perform any statutory or legal obligation placed upon a licensee;
- Falsely indicating that payment has been made for all subcontracted work, labor, and materials which results in a financial loss to the owner, purchaser, or contractor;
- Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of contracting or the ability to practice contracting; or
- Proceeding on a job without obtaining applicable local building department permits and inspections.

In addition to the CILB or ECLB disciplining a contractor, any licensee responsible for a material Florida Building Code violation who failed to correct the violation within a reasonable time may be fined by a

[17] S. 468.603(2), F.S.; S. 202 of the Seventh edition of the Florida Building Code (Building).
[18] Ss. 107, 110.1, and 110.3 of the Seventh edition of the Florida Building (Building).
[19] S. 553.79(17)(a), F.S.; section 5-110.4, Doug Wise, *Closing Inactive & Excluded Building Permits*, Palm Beach County Planning, Zoning & Building Department, Building Division, http://discover.pbcgov.org/pzb/building/BuildingCodes/PBO-126%20%E2%80%93%20Closing%20Inactive%20and%20Excluded%20Building%20Permits.pdf (last visited Feb. 3, 2022).
[20] This includes an existing building or structure that is changing its occupancy classification.
[21] S. 111 of the Seventh edition of the Florida Building (Building).
[22] s. 489.101, F.S.
[23] *See generally* Ch. 489, F.S.
[24] The CILB and the ECLB may place a contractor on probation, reprimand him or her, revoke or suspend the contractor's certificate or registration, or deny the issuance of a renewal certificate or registration. The CILB and the ECLB may also require financial restitution to a consumer for financial harm directly related to a violation, require continuing education, or assess costs associated with investigation and prosecution. Ss. 489.129(1), 489.533(1), F.S.
[25] Ss. 455.227(1)(k), 489.129(1)(o), and 489.533(1), F.S.

local jurisdiction at least $500 but no more than $5,000. A failure to pay the fine will result in a suspension of the licensee's ability to pull building permits.[26]

A "material violation" is a violation existing within a completed building, structure, or facility which may reasonably result, or has resulted, in physical harm to a person or significant damage to the performance of a building or its systems.[27]

Professional Engineers

The practice of engineering is regulated by ch. 471, F.S., and by the Florida Board of Professional Engineers (FBPE). DBPR contracts with the Florida Engineers Management Corporation to provide the administrative, investigative, and prosecutorial services for FBPE.[28]

Architects

Chapter 481, Part I, F.S., governs the licensing and regulation of architects and related business organizations. The Board of Architecture and Interior Design (Board) housed within DBPR. The Board processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the architecture and interior design industries.

Effect of the Bill

The bill revises the statute of limitations for actions founded on the design, planning, or construction of an improvement to real property, which are subject to a four-year statute of limitations. The bill provides that the four-year time period of the statute of limitations begins to run from **45 days after** the date of:

- Completion of the improvement (as defined in the bill); or
- Abandonment of the improvement if the improvement is not completed.

The bill provides that if an action involves a **latent defect** the action must be commenced within **seven years** after 45 days of the completion of the improvement or abandonment of the improvement if the improvement is not completed. The bill **repeals** the provision that allowed the time to begin on date the defect was discovered or should have reasonably been discovered with due diligence.

The bill also provides that if an action alleges a **material violation** and the person alleging the material violation can show by **clear and convincing evidence**[29] that the engineer, architect, or contractor or his or her employer **had actual knowledge** of the material violation at the time of construction, the action must be commenced within **15 years** after 45 days of the completion of the improvement or abandonment of the improvement if the improvement is not completed.

The bill **repeals** the 10-year statute of repose for an action founded on the design, planning, or construction of an improvement to real property.

[26] S. 553.781, F.S.
[27] *Id.*
[28] S. 471.038(3), F.S.
[29] Clear and convincing is "an intermediate standard of proof between the 'preponderance of the evidence' standard used in most civil cases, and the 'beyond a reasonable doubt standard' of criminal cases, requiring the evidence "[to] be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established. *Reid v. Estate of Sonder*, 63 So.3d 7, 10 (Fla. 3rd DCA 2011).

The bill provides definitions for the following terms:

- "**Completion of the improvement"** means the issuance of the certificate of occupancy or certificate of completion for the improvement, or closing of the building permit for the improvement if the improvement is not required to have a certificate of occupancy or certificate of completion.
- "**Material violation"** means a violation of the Building Code that exists within a completed building, structure, or facility which may reasonably result, or has resulted, in death or personal injury to a person or significant damage to the building, structure, facility, its systems or to the performance of a building, structure, facility, or its system.
- **"Performance**" means that the building, structure, facility or system functions as it is intended and is able to be used for its designed purpose.
- "**Significant damage**" means a level of adverse impact to a building, structure, facility, or its system that results or could reasonably result in economic damage or loss that exceeds the common expectations, and the cost of restoring the damage or preventing such damage to the building, structure, facility, or its system would equal or exceed 25 percent of the market value of the building, structure, facility, or its system if built in accordance with the Building Code.
    - It does not include Building Code violations that are cosmetic, minimal, or inconsequential to the overall performance of a building, structure, facility, or its systems.

The bill's provisions apply to any action commenced on or after July 1, 2022, regardless of when the cause of action accrued. Any action that would not have been barred prior to the bill's enactment may be commenced before July 1, 2023. However, such action is barred if the action is not commenced by July 1, 2023, and the action is barred by the bill's provisions.

B. SECTION DIRECTORY:

Section 1. Amends s. 95.11, F.S., relating to limitations other than for the recovery of real property.

Section 2. Providing applicability.

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:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown. It is unclear what the economic impact will be from revising the statute of limitations for actions founded on the design, planning, or construction of an improvement to real property. While some consumers may not be able to bring a claim based on the shortening of some time periods, other consumers under different circumstances may be able to bring a claim based on the changes made to the bill.

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:

Although the right to commence an action is a valid and protected property interest,[30] a plaintiff has no vested right in a statute of repose in effect when his or her cause of action accrues.[31] Thus, the time allowed for a suit may be either initially imposed or reduced by legislation enacted after the cause of action arose, provided the litigant still has a reasonable time left in which to enforce his or her right.[32] The amendment to s. 95.11(3)(c), F.S., made in this bill may reduce the time allowed for a suit after the cause of action arose, but the bill appears to give a litigant reasonable time to enforce his or her right before being completely barred.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[30] *See Polk Cty. BOCC v. Special Disability Trust Fund*, 791 So. 2d 581, 583 (Fla. 1st DCA 2001).
[31] *Lamb By and Through Donaldson v. Volkswagenwerk Aktiengesellschaft*, 631 F. Supp. 1144 (S.D. Fla. 1986), judgment aff'd, 835 F.2d 1369 (11th Cir. 1988).
[32] *Bauld v. J.A. Jones Const. Co*., 357 So. 2d 401, 403 (Fla. 1978), quoting *Hart v. Bostick*, 14 Fla. 162, 181 (1872); *Walter Denson & Son v. Nelson*, 88 So. 2d 120 (Fla. 1956).

A bill to be entitled

An act relating to limitations of actions other than for the recovery of real property; amending s. 95.11, F.S.; revising the period to bring actions for certain improvements to real property; providing exceptions; providing definitions; providing applicability; providing an effective date.

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

Section 1. Paragraph (c) of subsection (3) of section 95.11, Florida Statutes, is amended to read:

95.11 Limitations other than for the recovery of real property.—Actions other than for recovery of real property shall be commenced as follows:

(3) WITHIN FOUR YEARS.—

(c) An action founded on the design, planning, or construction of an improvement to real property:~~, with~~

1. the time running from ~~the date of actual possession by the owner,~~ 45 days after the date of completion of the improvement ~~the issuance of a certificate of occupancy,~~ or the date of abandonment of construction if the improvement is not completed, except: ~~, or the date of completion of the contract or termination of the contract between the professional engineer, registered architect, or licensed contractor and his~~

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

~~or her employer, whichever date is latest; except that, when the action involves a latent defect, the time runs from the time the defect is discovered or should have been discovered with the exercise of due diligence. In any event, the action must be commenced within 10 years after the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion of the contract or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest~~.

a. If the action involves a latent defect, the action must be commenced within 7 years, and the time begins to run 45 days after the completion of the improvement or the date of abandonment of construction if the improvement is not completed.

b. If the action alleges a material violation and the person alleging the material violation can show by clear and convincing evidence that the engineer, architect, or contractor or his or her employer had actual knowledge of the material violation at the time of the design, planning, or construction of the improvement, the action must be commenced within 15 years, and the time begins to run 45 days after the completion of the improvement or the date of abandonment of construction, if the improvement is not completed.

2. ~~However,~~ counterclaims, cross-claims, and third-party

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

claims that arise out of the conduct, transaction, or occurrence set out or attempted to be set out in a pleading may be commenced up to 1 year after the pleading to which such claims relate is served, even if such claims would otherwise be time barred.

3. As used in this paragraph:

a. "Completion of an improvement" means issuance of the certificate of occupancy or certificate of completion for the improvement, or closing of the building permit for the improvement, as defined in s. 553.79(17)(a), if the improvement is not required to have a certificate of occupancy or certificate of completion.

b. "Material violation" means a violation of the Florida Building Code that exists within a completed building, structure, or facility which may reasonably result, or has resulted, in death or personal injury to a person or significant damage to the building, structure, facility, or its system, or the performance of a building, structure, facility, or its system.

c. "Performance" means that the building, structure, facility or system functions as it is intended and is able to be used for its designed purpose.

d. "Significant damage" means a level of adverse impact to a building, structure, facility, or its system that results or could reasonably result in economic damage or loss that

exceeds the common expectations, and the cost of restoring the damage or preventing such damage to the building, structure, facility, or its system would equal or exceed 25 percent of the market value of the building, structure, facility, or its system if built in accordance with the Florida Building Code. It does not include Florida Building Code violations that are cosmetic, minimal, or inconsequential to the overall performance of a building, structure, facility, or its systems. ~~With respect to actions founded on the design, planning, or construction of an improvement to real property, if such construction is performed pursuant to a duly issued building permit and if a local enforcement agency, state enforcement agency, or special inspector, as those terms are defined in s. 553.71, has issued a final certificate of occupancy or certificate of completion, then as to the construction which is within the scope of such building permit and certificate, the correction of defects to completed work or repair of completed work, whether performed under warranty or otherwise, does not extend the period of time within which an action must be commenced. Completion of the contract means the later of the date of final performance of all the contracted services or the date that final payment for such services becomes due without regard to the date final payment is made~~.

Section 2. The amendments to s. 95.11(3)(c), Florida Statutes, made by this act shall apply to any action commenced

on or after July 1, 2022, regardless of when the cause of action accrued, except that any action that would not have been barred under s. 95.11(3)(c), Florida Statutes, prior to the amendments made by this act may be commenced before July 1, 2023, and if it is not commenced by that date and is barred by the amendments to s. 95.11(3)(c), Florida Statutes, made by this act, it shall be barred.

Section 3. This act shall take effect July 1, 2022.

PCS for HB 1259

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1259 Criminal Records
SPONSOR(S): Regulatory Reform Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Regulatory Reform Subcommittee		Wright	Anstead

SUMMARY ANALYSIS

A criminal history record includes any nonjudicial record maintained by a criminal justice agency that contains criminal history information. Such information may be collected by criminal justice agencies related to identifiable descriptions of individuals and notations of arrests, detentions, indictments, informations, other formal criminal charges, and criminal dispositions. A court may order a criminal history record sealed, rendering it confidential and exempt from Florida's public records laws.

To obtain a court sealing, a person must first apply to the Department of Law Enforcement (FDLE) for a certificate of eligibility, which FDLE must issue to a person who, among other statutory qualifiers, is not seeking to seal a criminal history record relating to a violation of certain enumerated offenses, and has never secured a prior sealing or expunction.

Upon receiving a certificate of eligibility from FDLE, a person must petition the court to seal the record. It is solely within the court's discretion to grant or deny a petition to seal.

In 2019, an additional process for sealing of criminal records was adopted, providing for the automatic sealing of records by FDLE. A criminal history record that does not relate to a forcible felony or an offense which requires the offender to register as a sexual offender, must be automatically sealed by FDLE when:

- Charges were not filed;
- Charges were dismissed, unless the dismissal was due to incompetency to proceed; or
- The defendant was acquitted, by either a verdict of not guilty or a judgment of acquittal.

Unlike the court-ordered sealing process, there no limit on the number of criminal records a person may seal by the automatic sealing process by FDLE.

Currently, a criminal justice agency or a court is not required to seal its records as a result of automatic sealing by FDLE. Thus, prosecutors, law enforcement, and judges retain access to certain records automatically sealed by FDLE.

The PCS provides that a person is eligible to petition a court to seal a criminal history record when the criminal history record was automatically sealed by FDLE, and the subject of the sealed record presents proof of the sealing by FDLE to the court.

The PCS allows the court to grant the sealing of a criminal history record that was automatically sealed by FDLE at any time and without limitation based on any prior sealing of a subject's criminal records.

The PCS requires FDLE to issue a certificate of eligibility for sealing upon request to a person who is the subject of a criminal history record automatically sealed by FDLE.

The bill may have an indeterminate fiscal impact on state and local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Sealing of Criminal History Records

A criminal history record includes any nonjudicial record maintained by a criminal justice agency[1] that contains criminal history information.[2] Criminal history information is information collected by criminal justice agencies consisting of identifiable descriptions of individuals and notations of arrests, detentions, indictments, informations, other formal criminal charges, and criminal dispositions.[3]

Sealing

A court may order a criminal history record sealed,[4] rendering it confidential and exempt from Florida's public records laws.[5] Only the following may access a sealed criminal history record:

- The subject of the record;
- His or her attorney;
- Criminal justice agencies for criminal justice purposes;
- Judges in the state courts system for assisting in their case-related decision-making responsibilities; and
- Certain enumerated entities[6] for licensing, access authorization, and employment purposes.[7]

Upon sealing of a criminal history record, the subject of the record may lawfully deny or fail to acknowledge the arrests covered by the sealed record, with exceptions for certain state employment positions, professional licensing purposes, purchasing a firearm, applying for a concealed weapons permit, seeking expunction, or if the subject is a defendant in a criminal prosecution.[8]

A criminal history record is not eligible for court-ordered sealing if it relates to:

- Sexual misconduct;[9]
- Illegal use of explosives;[10]
- Terrorism;[11]
- Murder;[12]
- Manslaughter or homicide;[13]

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[1] Criminal justice agencies include the court, the Department of Law Enforcement (FDLE), the Department of Juvenile Justice (DJJ), components of the Department of Children and Families (DCF), and other governmental agencies that administrate criminal justice. S. 943.045(11), F.S.

[2] S. 943.045(6), F.S.

[3] S. 943.045(5), F.S.

[4] S. 943.059, F.S.

[5] Ss. 943.059(4) and 119.07(1), F.S.; Art. I, s. 24(a), Fla. Const.

[6] Enumerated entities include criminal justice agencies, The Florida Bar, the Department of Children and Families, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, the Department of Juvenile Justice, the Department of Education, a district school board, a university laboratory school, a charter school, a private or parochial school, a local governmental entity that licenses child care facilities, the Division of Insurance Agent and Agency Services within the Department of Financial Services, and the Bureau of License Issuance of the Division of Licensing within the Department of Agriculture and Consumer Services.

[7] S. 943.059(4)(a), F.S.

[8] *Id.*

[9] Ss. 393.135, 394.4593, and 916.1075, F.S.

[10] Ch. 552, F.S.

[11] S. 775.30, F.S.

[12] Ss. 782.04, 782.065, and 782.09, F.S.

[13] Ss. 782.07, 782.071, and 782.072, F.S.

- Assault[14] or battery[15] of one family or household member by another family or household member;[16]
- Aggravated assault;[17]
- Felony battery, domestic battery by strangulation, or aggravated battery;[18]
- Stalking or aggravated stalking;[19]
- Luring or enticing a child;[20]
- Human trafficking;[21]
- Kidnapping or false imprisonment;[22]
- Sexual battery, unlawful sexual activity with a minor, or female genital mutilation;[23]
- Procuring a person under the age of 18 for prostitution;[24]
- Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age;[25]
- Arson;[26]
- Burglary of a dwelling;[27]
- Voyeurism or video voyeurism;[28]
- Robbery or robbery by sudden snatching;[29]
- Carjacking;[30]
- Home invasion robbery;[31]
- A violation of the Florida Communications Fraud Act;[32]
- Abuse of an elderly person or disabled adult or aggravated abuse of an elderly person or disabled adult;[33]
- Lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person;[34]
- Child abuse or aggravated child abuse;[35]
- Sexual performance by a child;[36]
- Offenses by public officers and employees;[37]
- Certain acts in connection with obscenity;[38]
- A violation of the Computer Pornography and Child Exploitation Prevention Act;[39]
- Selling or buying of minors;[40]

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[14] S. 784.011, F.S.
[15] S. 784.03, F.S.
[16] S. 741.28(3), F.S.
[17] S. 784.021, F.S.
[18] Ss. 784.03, 784.041, and 784.045, F.S.
[19] S. 784.048, F.S.
[20] S. 787.025, F.S.
[21] S. 787.06, F.S.
[22] Ss. 787.01 and 787.02, F.S.
[23] Ch. 794, F.S.
[24] S. 796.03, F.S. (2013) (repealed by ch. 2014-160, §10, Laws of Fla.).
[25] S. 800.04, F.S.
[26] S. 806.01, F.S.
[27] S. 810.02, F.S.
[28] Ss. 810.14 and 810.145, F.S.
[29] Ss. 812.13 and 812.131, F.S.
[30] S. 812.133, F.S.
[31] S. 812.135, F.S.
[32] S. 817.034, F.S.
[33] S. 825.102, F.S.
[34] S. 825.1025, F.S.
[35] S. 827.03, F.S.
[36] S. 827.071, F.S.
[37] Ch. 839, F.S.
[38] S. 847.0133, F.S.
[39] S. 893.0135, F.S.
[40] S. 847.0145, F.S.

- Aircraft piracy;[41]
- Manufacturing a controlled substance;[42]
- Drug trafficking;[43] or
- Any violation specified as a predicate offense for registration as a sexual predator[44] or sexual offender.[45]

To obtain a court-ordered sealing, a person must first apply to the Department of Law Enforcement (FDLE) for a certificate of eligibility, which FDLE must issue to a person who:

- Has submitted a certified copy of the charge disposition he or she seeks to seal;
- Is not seeking to seal a criminal history record relating to a violation of certain enumerated offenses;
- Has never, prior to filing the application for a certificate of eligibility, been either:
  - Adjudicated guilty of any criminal offense or comparable ordinance violation; or
  - Adjudicated delinquent of certain enumerated crimes as a juvenile.
- Has not been adjudicated guilty or delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to seal pertains;
- Has never secured a prior sealing or expunction; and
- Is no longer under court supervision related to the disposition of the arrest or alleged criminal activity to which the petition to seal pertains.[46]

Upon receiving a certificate of eligibility from FDLE, a person must petition the court to seal the record.[47] A complete petition contains both a valid certificate of eligibility, issued within the previous 12 months, and a sworn statement from the petitioner attesting to his or her eligibility.[48] It is solely within the court's discretion to grant or deny a petition to seal.[49]

Automatic Sealing by FDLE

In 2019, an additional process for sealing of criminal records was adopted by the Florida Legislature. It provides for the automatic sealing of certain criminal history records by FDLE.

FDLE must automatically seal a criminal history record if the record does not result from an indictment, information, or other charging document for a forcible felony[50] or for an offense which requires the offender to register as a sexual offender[51] when:[52]

- Charges were not filed;
- Charges were dismissed, unless the dismissal was due to incompetency to proceed;[53] or
- The defendant was acquitted, by either a verdict of not guilty or a judgment of acquittal.

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[41] S. 860.16, F.S.
[42] Ch. 893, F.S.
[43] S. 893.135, F.S.
[44] S. 775.21, F.S.
[45] S. 943.0535, F.S.
[46] S. 943.059(2), F.S.
[47] *Id.*
[48] S. 943.059(1), F.S.
[49] S. 943.059, F.S.
[50] Forcible felonies include treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual. S. 776.08, F.S.
[51] Conviction for an offense enumerated in s. 943.0435(1)(h)1.a.(I), F.S., requires the offender to register as a sexual offender.
[52] S. 943.0595(2)(a), F.S.
[53] A defendant is incompetent to proceed when he or she is unable to consult with counsel with a reasonable degree of rational understanding or does not have a rational and factual understanding of the pending proceedings. Fla. R. Crim. P. 3.211; *Dusky v. United States*, 362 U.S. 402 (1960). Section 916.145, F.S., requires a court to dismiss the charges against a defendant who has been adjudicated incompetent to proceed due to mental illness under certain circumstances. Section 985.19, F.S., requires a court to dismiss the delinquency petition of a minor under certain circumstances.

Unlike the court-ordered sealing process, automatic sealing is not contingent on the person's prior criminal history. A prior adjudication of guilt does not disqualify an applicant. Additionally, there is no limit on the number of sealings a person may receive by this process.[54]

However, if the criminal history record is an indictment, information, or other charging document for a forcible felony or a sexual offender offense, the record is not eligible for automatic sealing.[55]

Currently, a criminal justice agency or a court is not required to seal its records as a result of automatic sealing.[56] Thus, certain government agencies, prosecutors, law enforcement, and judges retain access to a record automatically sealed by FDLE.[57]

Separation of Powers

Article II, section 3 of the Florida Constitution, known as the "separation of powers doctrine," provides that "no person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided [in the constitution]." The Florida Constitution vests legislative power in the legislative branch, executive power in the executive branch, and judicial power in the judicial branch.[58]

Generally, the legislature has the power to enact substantive law for which courts are established to administer, while the Florida judiciary has the power to enact procedural law.[59] Substantive law is that which defines, creates, or regulates rights, which may be enforced by the judiciary.[60] In contrast, procedural law is the form, manner, or means by which substantive law is implemented, including all rules governing the parties, their counsel and the court throughout the progress of the case from the time of its initiation until final judgment and its execution; it may be described as the "machinery of the judicial process as opposed to the product thereof."[61] However, the legislature can repeal rules of court by general law enacted by a two-thirds vote of the members of each house, but the legislature may not amend or supersede such rules.[62]

Effect of the PCS

The PCS provides that a person is eligible to petition a court to seal a criminal history record when the criminal history record was automatically sealed by FDLE, and the subject of the sealed record presents proof of the sealing by FDLE to the court.

The PCS allows the court to grant the sealing of a criminal history record that was automatically sealed by FDLE at any time and without limitation based on any prior sealing by FDLE of a subject's criminal records.

The PCS requires FDLE to issue a certificate of eligibility for sealing upon request to a person who is the subject of a criminal history record automatically sealed by FDLE.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 943.059, F.S.; relating to when a court may seal a record.

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[54] S. 943.0595(2)(b), F.S.
[55] S. 943.0595(2)(a), F.S.
[56] S. 943.0595(3)(b), F.S.
[57] S. 943.0595(3)(c), F.S.
[58] Art. III, IV, and V, Fla. Const.
[59] Art. III and V, Fla. Const.; *DeLisle v. Crane Co.*, 258 So. 3d 1219 (Fla. 2018).
[60] *DeLisle*, 259 So. 3d at 1224.
[61] *Id.* at 1224; *In re Florida Rules of Criminal Procedure*, 272 So. 2d 65 (Fla. 1972).
[62] *In re Clarification of Fla. Rules of Practice and Procedure,* 281 So. 2d 204 (Fla. 1973).

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   FDLE provided the following estimate based on a similar Senate bill:[63]

   Requiring FDLE to issue a certificate of eligibility would result in an application process. Assuming FDLE adopts the same application rules as outlined for relief under court-ordered sealing laws, there would be a processing fee of $75 per application. Based on 24,015 estimated new applications for processing, FDLE would collect approximately $1.8 million in new fees. If there is no application fee applied, there no revenue would be generated.

2. Expenditures:

   FDLE provided the following estimate based on a similar Senate bill:[64]

   FDLE estimated that it will need 60 additional full time employees (FTEs) totaling $4,142,020 ($3,869,260 recurring) and approximately $147,000 to modify existing IT systems necessary to implement the changes related to a similar Senate bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   There may be an increase in requests to courts for sealing of records, and therefore an increase in workload.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

[63] Florida Department of Law Enforcement, Agency Analysis of 2022 Senate Bill 1302, p. 3 (Jan. 13, 2022).
[64] *Id*. at 3-5.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to criminal records; amending s. 943.059, F.S.; providing that a court may grant the sealing of a criminal record based on the sealing of a criminal record sealed by the Department of Law Enforcement under certain circumstances; requiring the Department of Law Enforcement to provide a certificate of eligibility under certain circumstances; providing an effective date.

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

Section 1. Paragraph (f) is added to subsection (1) of section 943.059, Florida Statutes, to read:

943.059 Court-ordered sealing of criminal history records.—

(1) ELIGIBILITY.—A person is eligible to petition a court to seal a criminal history record when:

(f) The criminal history record was automatically sealed pursuant to s. 943.0595 and the subject of the sealed record presents proof of the sealing by the department to the court. The court may grant the sealing of a criminal history record that was sealed by the department pursuant to s. 943.0595 at any time and without limitation based on any prior sealing of a subject's criminal records. The department shall issue a

certificate of eligibility for sealing upon request to a person who is the subject of a criminal history record sealed by the department pursuant to s. 943.0595.

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

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