

Commerce Committee

Monday, March 27, 2023
2:00 PM - 6:00 PM
Webster Hall (212 Knott)

Meeting Packet

Paul Renner
Speaker

Bob Rommel
Chair

The Florida House of Representatives

Commerce Committee

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Meeting Agenda

Monday, March 27, 2023
2:00 PM – 6:00 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 89 Building Construction by Regulatory Reform & Economic Development Subcommittee, Maggard
- CS/HB 881 My Safe Florida Home Program by Insurance & Banking Subcommittee, LaMarca
- HB 1091 Licensing Fee Relief by Alvarez
- HB 1117 Medical Treatment of Animals by Buchanan
- CS/HB 1203 Registrations and Transfers of Heating, Ventilation, and Air-Conditioning System Manufacturer Warranties by Regulatory Reform & Economic Development Subcommittee, Maggard

Consideration of the following proposed committee bill(s):

- PCB COM 23-02 -- Central Bank Digital Currency

V. Closing Remarks

VI. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, FL 32399-1300
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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 89 Building Construction
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Maggard
TIED BILLS: **IDEN./SIM. BILLS:** SB 512

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	14 Y, 0 N, As CS	Larkin	Anstead
2) Local Administration, Federal Affairs & Special Districts Subcommittee	15 Y, 0 N	Burgess	Darden
3) Commerce Committee		Larkin	Hamon

SUMMARY ANALYSIS

Class A air-conditioning contractors and mechanical contractors, licensed by the Construction Industry Licensing Board, are allowed to work on central air-conditioning, refrigeration, heating, and ventilating systems. These services include installing, disconnecting, or reconnecting power wiring on the **load side** of the dedicated existing electrical disconnect switch. Currently, an electrical contractor license is required to work on the **line side**.

The bill:

- Allows class A air-conditioning contractors and mechanical contractors to work on power wiring, breakers, or fuses on the **line side** of the dedicated existing electrical disconnect switch.

The Florida Building Code is administered and enforced by local governments through the issuance of permits and completion of inspections by local building officials. Permits are generally issued prior to starting construction projects, but after plans are reviewed by local building officials. A local enforcing agency must identify the specific plan features that do not comply with the Building Code **whenever a permit is denied.** Currently, there is no similar requirement for fire safety officials related to the Fire Prevention Code.

Current law is not clear on whether local governments must notify permitholders about the specific reasons why the buildings plans do not comply with the Building Code or the Fire Prevention Code if they make or require substantive changes to building plans **after the permit is issued.**

The bill:

- Prohibits a local government from making substantive changes to plans **after a permit has been issued** unless such changes are required under the Building Code, or Fire Prevention Code.
- Requires any changes a local government makes to plans **after a permit has been issued** to identify the specific parts of the plan that do not conform to the applicable code in writing.
- Requires a building official or inspector who asks another person or employee other than a building official, plans examiner, or inspector to review the building plans to notify the local government if such person or employee determines the plans do not comply with the Building Code.
- Requires a local fire official to notify the permit applicant of specific reasons why plans do not comply with the Fire Prevention Code.
- Allows a plans examiner, inspector, building official, or fire safety inspector to have their certificate disciplined for failure to notify the appropriate person of the reasons for making substantive changes to building plans.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Class A Air-Conditioning Contractors and Mechanical Contractors – Current Situation

The Florida Department of Business and Professional Regulation (DBPR) regulates and licenses various businesses and professionals in Florida, including construction contractors. Construction contractors are certified or registered and regulated by the Construction Industry Licensing Board (CILB).[1]

Certified contractors are allowed to practice their specific license category in any jurisdiction in the state.[2] Two of the HVAC[3] license categories are Class A air-conditioning contractors and mechanical contractors.

To be eligible for licensure as a Class A air-conditioning or mechanical contractor, an applicant must complete the license application,[4] pass the certification examination, and meet certain combinations of education and experience, which consists of 4 to 5 years of college-level courses and/or HVAC work experience.[5]

Class A air-conditioning contractors[6] and mechanical contractors may install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems.[7] These services include **replacing, disconnecting, or reconnecting power wiring** on the **load** side of the dedicated existing electrical disconnect switch.[8] Mechanical contractors may also work on completing the piping and duct work in connection with the complete HVAC and gas system, but may not work on potable water lines.[9]

Generally, before working on the HVAC unit, an HVAC contractor is required to obtain a building permit.[10] After the work on the HVAC unit is finished, the HVAC contractor is required notify the building official that the work is ready for inspection to close the permit. This process ensures that the HVAC unit is properly installed in accordance with the Florida Building Code (Building Code).[11]

HVAC Electrical Disconnect Switch Installation Requirements

[1] S. 20.165, F.S, creates the divisions of Administration; Alcoholic Beverages and Tobacco; Certified Public Accounting; Drugs, Devices, and Cosmetics; Florida Condominiums, Timeshares, and Mobile Homes; Hotels and Restaurants; Pari-mutuel Wagering; Professions; Real Estate; Regulation; Service Operations; and Technology.
[2] S. 489.105, F.S.
[3] Heating, ventilation, and air conditioning.
[4] *Certified Class A Air Conditioning Contractor Application Requirements*, Florida Department of Business & Professional Regulation, https://www.myfloridalicense.com/CheckListDetail.asp?SID=&xactCode=1030&clientCode=0601&XACT_DEFN_ID=2940 (last visited March 3, 2023).
[5] *Application for Certified Class-A Air Conditioning Contractor as an Individual*, p. 7, Florida Department of Business & Professional Regulation, https://www.myfloridalicense.com/datamart/loginFLDBPR.do (last visited March 3, 2023); *Application for Certified Mechanical Contractor as an Individual*, Florida Department of Business & Professional Regulation, https://www.myfloridalicense.com/CheckListDetail.asp?SID=&xactCode=1030&clientCode=0606&XACT_DEFN_ID=3104 (last visited March 8, 2023)
[6] Class B and Class C air-conditioning contractors are HVAC contractors with a limited scope.
[7] S. 489.105(3)(f), F.S.
[8] S. 489.105(3)(f), F.S.
[9] S. 489.105(i), F.S.
[10] S. 105.1 of the Seventh edition of the Florida Building Code (Building); *see also*, s. 489.126(1), F.S.
[11] S. 110.1 of the Seventh edition of the Florida Building Code (Building).

HVAC equipment or air-conditioning units are required to be installed in accordance with manufacturer specifications, which include the electrical needs of such equipment as indicated on either the equipment or in the manual. The Building Code requires that listed or labeled equipment be installed and used in accordance with any instructions included in the listing or labeling, which includes rated-load in amperes or rated-load current for the motor-compressor.[12] This ensures the safety of both the contractor and the premises. The manufacturer establishes values for a given load, rated voltage, and rated frequency of the equipment it serves to ensure that the air conditioner disconnecting means (usually a switch) and controller have proper interrupting capacities.[13]

The Building Code specifically requires compliance with the manufacturer's nameplate markings.[14] This information is used to determine the rating or ampacity of the disconnecting means, the branch-circuit conductors, the controller, branch circuit short-circuit and ground-fault protection, and the separate motor overload protection. If the nameplate specifies fuses only, substitution of a listed circuit breaker is a violation of the Building Code and the manufacturer's warranties.

A disconnecting means is required to be located "within sight from and readily accessible" from the air-conditioning equipment[15], which is usually located on a concrete pad outside the dwelling or structure, under the building in a crawl space, or mounted on a rooftop.[16] This disconnecting means can be installed on or within the air-conditioning equipment itself.[17]

Sufficient working space in the direction of access to the equipment, or the part of the equipment, that is likely to be worked on while there are live, exposed parts, must be provided in accordance with the Building Code to access the disconnecting means for purposes of examination, adjustment, servicing, or maintenance while energized. The purpose is to provide a ready and visible means of disconnection for the person who will service or repair the equipment. Safe access must also be provided to the control equipment within the unit at the time the equipment is being installed or serviced. **It is common for service persons to examine or test HVAC equipment while it is energized.[18]**

HVAC Electrical Disconnect Switch Components

The **line side** consists of upstream components and wires coming from the main power source that supply power. **It always carries current when there is power supply from the power source**. The **load side** consists of downstream components and wires that take the electrical current and supply it to other electric devices. **It only carries current when the switch is turned on**, signaling a closed circuit that allows current to flow through.[19]

Below is an illustration of the "load" and "line" sides of an HVAC breaker:[20]

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[12] S. 301.10 of the Seventh edition of the Florida Building Code, Mechanical (Building) ("Electrical wiring, controls and connections to equipment and appliances regulated by this code shall be in accordance with National Fire Protection Association (NFPA) 70"); see also, 440.4 of NFPA 70 (2023 ed.).

[13] S. 440.11 of NFPA 70 (2023 ed.) ("Disconnecting means shall be capable of disconnecting air-conditioning and refrigerating equipment, including motor-compressors and controllers, from the circuit conductors. If the disconnecting means is readily accessible to unqualified persons, any enclosure door or hinged cover of a disconnecting means enclosure that exposes energized parts when open shall require a tool to open or be capable of being locked."); *see also*, Keith Lofland, International Association of Electrical Inspectors Magazine, *Air-Conditioning Equipment Installations*, https://iaeimagazine.org/2017/julyaugust-2017/air-conditioning-equipment-installations/ (last visited March 3, 2023).

[14] Florida Building Code, 6th ed. (2017), s. E3702.11 Branch circuits for air-conditioning and heat pump equipment.

[15] S. 440.14 of NFPA 70 (2023 ed.).

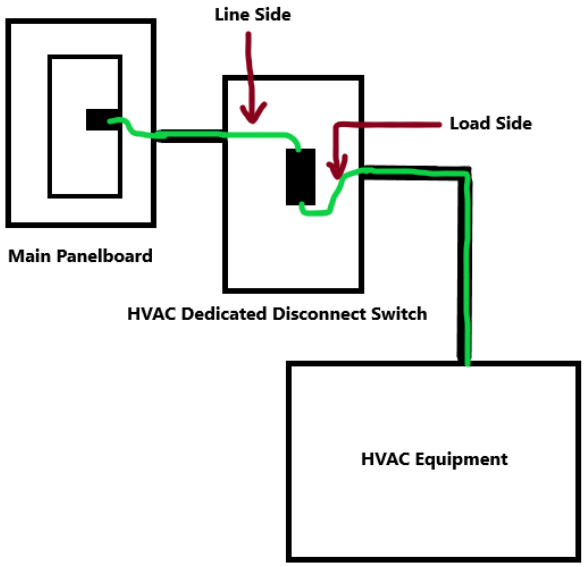
[16] Typically, a locking type of disconnecting means located out of sight from the unit is not acceptable. *Id*.

[17] Keith Lofland, International Association of Electrical Inspectors Magazine, *Air-Conditioning Equipment Installations*, https://iaeimagazine.org/2017/julyaugust-2017/air-conditioning-equipment-installations/ (last visited March 3, 2023).

[18] Keith Lofland, *supra* note 16.

[19] Alex Klein, *How to Identify Line and Load Wires*, Electro University (Aug. 16, 2022), https://electrouniversity.com/how-to-identify-line-and-load-wires/, (last visited Feb. 14, 2023).

[20] *See* Assured Electrical, *Just Answer*, https://ww2-secure.justanswer.com/uploads/AssuredElectrical/2012-05-29_153354_240acdisconnect.gif. (last visited Feb. 27, 2023).



A dedicated circuit has its own circuit breaker and only supports one outlet, which means **only one electrically powered device can draw voltage from that circuit at any given time**.[21] **A disconnect switch** is used to isolate electrical circuits by **interrupting the flow of electrical current**. By quickly stopping the flow of power, disconnect switches allow for emergency shutdowns, switching to alternate power sources, and maintenance.[22]

There are several circuit breakers in the main electrical panel, also known as a breaker box or main panelboard. **One of those circuit breakers goes to the outside air-conditioning unit and then runs to a dedicated existing electrical disconnect switch for the unit**.[23]

A circuit breaker and a fuse are both designed to interrupt the flow of electricity, but they operate through different mechanisms. The fuse works as a piece of metal that melts down when overheated, and a circuit breaker works by operating a switching mechanism when an overflow of electricity is detected. Circuit breakers generally have a higher breaking capacity than fuses.[24]

Differences Between Voltage and Amperage

Although voltage and amperage are both measurements of electricity, they measure different aspects of electricity. Amperage is the flow of the electric current. Voltage is the pressure of the electric current. These are both needed to generate power.[25]

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[21] Harrison Electric, Inc. *Dedicated Circuits: What They Are & How to Determine If You Need Them*, Aug. 16, 2021, https://harrison-electric.com/Blog/entryid/243/dedicated-circuits-what-they-are-how-to-determine-if-you-need-them (last visited Mar. 3, 2023)

[22] Bisco Industries, *What is a Disconnect Switch?*, https://press.biscoind.com/2016/08/18/what-is-a-disconnect-switch/ (last visited Mar. 3, 2023).

[23] Russell E. Smith, "Installation of Heating, Cooling, and Refrigeration Systems." *Electricity for Refrigeration, Heating, and Air Conditioning*, 10th ed., Cengage Learning, Boston, MA, 2018, p. 18 (explaining a disconnect switch allows a contractor to disconnect the power source to the heating, cooling, and refrigeration equipment being worked on). The Florida Building Code requires that a 125-volt, 15- and 20-ampere receptacle for servicing air-conditioning and refrigeration equipment is to be located not less than 7.5 m (25 ft) from, and on the same level as, the equipment itself. The receptacle must be in a readily accessible location from the equipment and must be GFCI-protected as applicable to outdoor receptacles at dwelling occupancies.)

[24] Hi-Lite Electric, Inc., *What's the Difference Between Fuses and Circuit Breakers?*, Aug. 26, 2019, https://hi-liteelectricinc.ca/about-us/blog/power-surges/whats-difference-fuses-circuit-breakers/ (last visited Mar. 4, 2023).

[25] *Electricity Explained Simple: The Difference between Voltage, Amperage and Power*, YouTube, Solar Solution, (Apr. 9, 2021), https://www.youtube.com/watch?v=CA1Y9PkHkr0 (last visited March 5, 2023).

$$Power = Amperage\ (Flow)\ x\ Voltage\ (Pressure)$$

For example, an air conditioner requires approximately 15 to 60 amps.[26] In regard to danger to people, the amperage, not voltage, is the most determinant factor in causing injury or fatality.[27] The amount of time that a person is exposed to the electric current is also a factor.[28]

Line Side Work in Florida

While Class A air-conditioning contractors and mechanical contractors may work on the **load** side, they cannot install, disconnect, or reconnect power wiring on the **line side**[29] of the dedicated existing electrical disconnect switch.[30] Only a licensed electrical contractor can work on the line side.[31] Therefore, Class A air-conditioning contractors and mechanical contractors have to refer work on the line side to an electrical contractor, which causes Class A air-conditioning contractors and mechanical contractors to stop their work until an electrical contractor completes this portion.

Line Work and Contractor Certification in Other States

HVAC licensing requirements and specialty categories differ from state to state.[32] Most states limit HVAC contractors to work on the load side.[33]

For example, in North Carolina, licensed HVAC contractors may work on the load side, but not on the line side,[34] and all licensed HVAC contractors are required to perform a room-by-room load calculation for all newly installed residential structures prior to installing heating systems, air conditioning systems, or both.[35] In Hawaii, an HVAC contractor is allowed to put together and install HVAC units including, but not limited to, piping, and controls, but are not allowed to work on the electrical controls.[36] Some other states specifically require licensing as an electrical contractor to work on HVAC systems, such as Washington state.[37]

However, there are a few states that allow HVAC contractors to work on the line side in limited ways. These states have set specific parameters for such work.

For example, in Georgia, HVAC contractors may perform limited work on the line side. Specifically, they may perform service to or installation of the electrical circuit from the main electrical panel to the air-conditioner equipment where the electrical service to the building or site is a single-phase electrical

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[26] Edwin Jones, How Many AMPS Does an Air Conditioner Use?, Galvin Power (Mar. 1, 2023), https://www.galvinpower.org/how-many-amps-does-an-air-conditioner-use/ (last visited March 5, 2023).
[27] "While any amount of current over 0.01 amp is capable of producing painful to severe shock, currents between 0.1 to 0.2 amp are lethal." *The Fatal Current*, The Ohio State University College of Arts and Sciences, https://www.asc.ohio-state.edu/physics/p616/safety/fatal_current.html (last visited March 5, 2023).
[28] Akash Peshin, *How Much Current Can the Human Body Withstand?*, Science ABC (Nov. 12, 2021), https://www.scienceabc.com/humans/how-many-volts-amps-kill-you-human.html (last visited March 5, 2023).
[29] Klein, *supra* note 19.
[30] S. 489.105(3)(f), F.S.
[31] S. 489.505(12), F.S.
[32] Hans Howk, *What Licenses Does an HVAC Contractor Need?*, Wolters Kluwer (July 1, 2021), https://www.wolterskluwer.com/en/expert-insights/hvac-contractor-licenses (last visited March 5, 2023).
[33] There are several states, such as Illinois, Indiana, Kanas, Massachusetts, Maine, Missouri, Montana, Minnesota, Colorado, and New York, that license air conditioning contractors at the local level. *Id*.
[34] N.C.G.S.A. § 87-2121 (a)(4) and N.C. Admin. Code 50.0505(e).
[35] N.C. Admin. Code 50.0505(e).
[36] "Electrical work" means the installation, alteration, reconstruction, or repair of electrical wiring. Haw. Code R. § 16-80-3; *see also*, "Any person who performs electrical work in the State is required to have a journey worker electrician's license." Haw. Code R. § 16-80-4.
[37] Wash. Admin. Code 296-200A-016(28) and 296-46B-901(c)(B); "There is no official HVAC license in Washington. However, HVAC contractors are required to have an electrical license to perform HVAC duties such as inspecting, repairing, installing, and altering heating, ventilation, air conditioning, and refrigeration units." *How to Get an HVAC License in Washington: A Complete Guide*, General Contractor License Guide (Aug. 23, 2022), https://generalcontractorlicenseguide.com/washington-hvac-license/ (last visited March 6, 2023).

circuit not exceeding 200 amperes.[38] In Alaska, HVAC contractors[39] are required to be licensed as a Mechanical Administrator, and such contractors may install control wiring that alters the electrical characteristics of the mechanical system if they are supervised by a licensed electrical administrator.[40]

Class A Air-Conditioning Contractors and Mechanical Contractors – Effect of Bill

The bill expands the scope of service that a class A air-conditioning contractor and mechanical contractor may provide. The bill allows class A air-conditioning contractors and mechanical contractors to:

- Replace, disconnect, or reconnect power wiring, **breakers, or fuses** on the **line** side of the dedicated existing electrical **circuit** disconnect switch; and
- Replace, disconnect, or reconnect air-conditioning **disconnect switches and boxes**.

Building Plans Requirements- Current Situation

Florida Building Code

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code. In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work and a study was commissioned to make recommendations. In 1998, the Legislature adopted the recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Building Code, and that first edition replaced all local codes on March 1, 2002.[41] The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.[42]

Chapter 553, part IV, F.S., is known as the "Florida Building Codes Act" (Act). The Act provides a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.[43]

The Florida Building Commission (Building Commission) implements the Building Code. The Building Commission, which is housed within DBPR, reviews several International Codes published by the International Code Council, the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every three years.[44]

A local enforcement agency is an agency of local government with jurisdiction to make inspections of buildings and to enforce the Building Code.[45]

Building Code Administrators, Inspectors, and Plans Examiners

Building code administrators, inspectors, and plans examiners are regulated by the Building Code Administrators and Inspectors Board (BCAIB) within DBPR.[46]

[38] Ga. Code Ann., § 43-14-2(3)
[39] In Alaska, a mechanical contractor is required to obtain a mechanical license as well as a mechanical administrators license to work on a HVAC unit.
[40] Alaska Admin. Code tit. 12, § 39.232(c).
[41] The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, http://www.floridabuilding.org/fbc/2006_Legislature_Rpt_rev2.pdf (last visited Feb. 13, 2023).
[42] Florida Building Commission Homepage, https://floridabuilding.org/c/default.aspxhttps://floridabuilding.org/c/default.aspx (last visited Feb. 13, 2023).
[43] *See* s. 553.72(1), F.S.
[44] Ss. 553.73, and 553.74, F.S.
[45] S. 553.71(5), F.S.
[46] *See* Ss. 120.569, 120.57(1)-(2), 468.605, 468.606, and 468.621, F.S.

A building code administrator, also known as a building official, is a local government employee or a person contracted by a local government who supervises Building Code activities, including plans review, enforcement, and inspection.[47]

A building code inspector (inspector) is a local government employee or a person contracted by a local government who inspects construction that requires permits to determine compliance with the Building Code and state accessibility laws. Inspectors are divided into several different categories. An inspector's ability to practice is limited to the category or categories for which the inspector has been licensed. The inspector categories are:[48]

- Building inspector;
- Coastal construction inspector;
- Commercial electrical inspector;
- Residential electrical inspector;
- Mechanical inspector;
- Plumbing inspector;
- Residential inspector; and
- Electrical inspector.

A plans examiner reviews plans submitted for building permits to determine design compliance with the Building Code. A plans examiner's ability to practice is limited to the category or categories for which the examiner is licensed. The plans examiner categories are:[49]

- Building plans examiner;
- Plumbing plans examiner;
- Mechanical plans examiner; and
- Electrical plans examiner.

The BCAIB may discipline building code administrators, plans examiners, and inspectors for violations of the practice act, such as violating BCAIB or DBPR rules, and failing to properly enforce applicable building codes or permit requirements.[50] Types of discipline includes:[51]

- Denial of an application for certification;
- Permanent revocation;
- Suspension of a certificate;
- Fines; and
- Probation.

Florida Fire Prevention Code

Florida law designates the state's Chief Financial Officer as the State Fire Marshal. The State Fire Marshal, within the Department of Financial Services (DFS), is charged with enforcing laws relating to fire safety, and has the responsibility to minimize the loss of life and property in this state due to fire.[52]

The State Fire Marshal regulates, trains, and certifies fire service personnel and fire safety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts fire safety inspections of state property; and operates the Florida State Fire College.

The State Fire Marshal also adopts by rule the Fire Prevention Code, which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities, and the enforcement of such fire safety laws and rules.[53]

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[47] S. 468.603(2), F.S.
[48] S. 468.603(4) and (5), F.S.
[49] S. 468.603(8), F.S.
[50] Ss. 468.601, 486.621, and 468.633, F.S.; *see also* R. 61G19-5.003, F.A.C.
[51] S. 486.621, F.S.
[52] S. 633.104, F.S.
[53] ch. 69A-60, F.A.C.

The State Fire Marshal adopts a new edition of the Fire Prevention Code every three years.[54] When adopting the Fire Prevention Code, the Fire Marshal is required to adopt the most current version of the national fire and life safety standards set forth by the National Fire Protection Association (NFPA), including the:[55]

- NFPA's Fire Code (1);
- Life Safety Code (101); and
- Guide on Alternative Approaches to Life Safety (101A).

The State Fire Marshal may modify the national fire safety and life safety standards as needed to accommodate the specific needs of the state.[56] The most recent Fire Prevention Code is the 7th edition, which is referred to as the 2020 Florida Fire Prevention Code. The 7th edition of the Fire Prevention Code took effect on December 31, 2020.[57]

State law requires all municipalities, counties, and special districts with fire safety responsibilities to enforce the Fire Prevention Code as the minimum fire prevention code.[58] These local enforcing authorities may adopt more stringent fire safety standards, subject to certain requirements, but may not enact fire safety ordinances that conflict with other state law.[59]

Fire Safety Inspectors

Each county, municipality, and special district with fire safety enforcement responsibilities is required to employ or contract with a fire safety inspector to conduct all fire safety inspections required by law.[60] A fire safety inspector is a person who is officially assigned the duties of conducting fire safety inspections of buildings and facilities on a recurring or regular basis on behalf of the state or any county, municipality, or special district with fire safety responsibilities. Fire safety inspectors are certified and regulated by the State Fire Marshal and are separate from building code administrators, inspectors, and plans examiners who are regulated by the BCAIB.[61]

The State Fire Marshal may discipline fire safety inspectors by denying, refusing to renew, suspending, or revoking their certificate if the State Fire Marshal finds that the fire safety inspector has violated the practice act, including:[62]

- Violating Fire Prevention laws or any rule or order of the State Fire Marshal, and
- Failing to properly enforce applicable fire codes or permit requirements within this state which the certificate holder knows are applicable by "committing willful misconduct, gross negligence, gross misconduct, repeated negligence, or negligence resulting in a significant danger to life or property."

[54] S. 633.202, F.S.
[55] S. 633.202(2), F.S. Founded in 1896, the National Fire Protection Association delivers information and knowledge through more than 300 consensus codes and standards, research, training, education, outreach and advocacy; and by partnering with others who share an interest in furthering the mission. NFPA, *About NFPA*, http://www.nfpa.org/about-nfpa (last visited on Feb. 13, 2023).
[56] *Id.*
[57] Division of State Fire Marshal, *Florida Fire Prevention Code (FFPC)*, https://www.myfloridacfo.com/division/sfm/bfp/florida-fire-prevention-code (last visited Feb. 13, 2023).
[58] Ss. 633.108 and 633.208, F.S.
[59] Ss. 633.208 and 633.214(4), F.S.
[60] S. 633.216(1), F.S.
[61] Ss. 633.102(12) and 633.216, F.S.
[62] S. 633.216(5)(a)-(g), F.S.; *see also*, s. 633.106, F.S.

Conflicting Requirements in The Building Code and the Fire Prevention Code

The Building Code and the Fire Prevention Code work together, but are independent of each other. The Building Commission must reference the Fire Prevention Code in the Building Code. However, the Building Commission may not adopt a fire prevention or life safety code, and nothing in the Building Code may affect the statutory powers, duties, and responsibilities of any local fire safety official or DFS.[63]

Conflicting requirements between the Building Code and the Fire Prevention Code must be resolved by agreement between the Building Commission and the State Fire Marshal, or the question must be referred to a mediator to resolve the conflict.[64]

Building Permits

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare.[65] Every local government must enforce the Building Code and issue building permits.[66]

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.[67] Any construction work that requires a building permit also requires plan reviews and inspections by the building official, inspector, or plans examiner to ensure the work complies with the Building Code.[68]

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.[69] A building permit is not valid until the fees for the permit have been paid.[70]

Building Plans

To obtain a permit an applicant must complete an application for the proposed work on the form furnished by the local enforcing agency, which must be posted on its website.[71]

An application for a permit must include building plans. Building plans are plans for construction, erection, alteration, modification, repair, or demolition of any building or structure and must comply with the applicable building, plumbing, mechanical, electrical, gas, fire prevention, energy, accessibility, and other applicable construction codes in the Building Code.[72]

A local enforcing agency may not issue a permit until the building official or plans reviewer has reviewed the building plans and determined that they comply with the Building Code.[73]

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[63] S. 553.73(1), F.S.; Florida Department of Financial Services, Agency Analysis of 2022 House Bill 635, p.3 (Jan. 4, 2022).
[64] *Id.*
[65] S. 553.72, F.S.
[66] Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.
[67] S. 468.603(2), F.S; S. 202 of the Seventh edition of the Florida Building Code (Building).
[68] Ss. 107, 110.1, and 110.3 of the Seventh edition of the Florida Building Code (Building).
[69] *See* ss. 125.56(4)(a) and 553.79(1), F.S.
[70] S. 109.1 of the Seventh edition of the Florida Building Code (Building).
[71] Ss. 125.56(4)(b), 553.79(1), and 713.135(5) and (6), F.S.
[72] Ss. 468.603(8), and 553.79(2), F.S.
[73] S. 553.79(2), F.S.

When the building official issues the permit, the building official must approve the plans by writing or stamping, "Reviewed for Code Compliance" on the plans. The local building official must keep one set of plans and another set must be returned to the applicant, who must keep the set at the work site.[74]

Fire Prevention Code Plans Review

With respect to fire inspections and review, building officials or plans examiner do not review building plans to determine if they comply with the Fire Prevention Code. If the building or structure is subject to the Fire Prevention Code, the local fire safety official must also review the building plans.[75] A local enforcing agency may not issue the permit until the local fire safety official has approved the plans. However, if the building or structure is not subject to the Fire Prevention Code, the local enforcing agency may not require the local fire safety inspector to review the plans.[76]

Changes to the Building Permit or Plans

Construction work must be in accordance with the approved plans, and any changes made during construction that are not in compliance with the approved plans must be resubmitted for approval as an amended set of construction documents.[77]

If the local building official or plans examiner finds that building plans do not comply with the Building Code, the local building official or inspector **must identify** the specific plan features that do not comply with the **Building Code**, identify the specific chapters and sections upon which the finding is based, and provide this information to the local enforcing agency. The local enforcing agency must provide this information **to the permit applicant**.[78]

Whenever a permit is denied or revoked because plans are found to not comply with the Building Code, the local enforcing agency must identify the specific plan features that do not comply with the applicable codes, identify the specific code chapters and sections upon which the finding is based, and provide this information **to the permit applicant**.[79] A plans examiner or building official who is responsible for issuing a denial, revocation, or modification request but fails to provide to the permit applicant a reason for denying, revoking, or requesting a modification, based on compliance with the Building Code, is subject to licensure disciplinary action.[80]

There is no similar requirement for fire safety officials or inspectors when they deny, revoke, or modify plans based on the Fire Prevention Code.

Current law is not clear on whether local governments must notify **permitholders** about the specific reasons why the buildings plans do not comply with the Building Code or the Fire Prevention Code, if they make or require **substantive changes to building plans after the permit is issued**.

According to construction industry representatives, there have been industry reports that building inspectors and local fire officials are making substantive changes to building plans after the building permit has been issued, which deviate from the Building Code or Fire Prevention Code. These changes can lead to delays in construction and can also increase the costs of construction.[81]

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[74] S. 107.3.1 of the Seventh edition of the Florida Building Code (Building).
[75] *Id.*
[76] *Id.*
[77] S. 107.4 of the Seventh edition of the Florida Building Code (Building).
[78] S. 553.79(2), F.S.
[79] S. 553.79(2), F.S.
[80] S. 553.79(1), F.S.
[81] Testimony from Representative Randall Scott Maggard, *1/12/2022 House Regulatory Reform Subcommittee*, https://thefloridachannel.org/videos/1-12-22-house-regulatory-reform-subcommittee/ (last visited Feb. 13, 2023); Email from Edward Briggs, Vice President of Government Relations & Community Affairs for RSA Consulting Group, LLC, Florida Refrigeration and Air Conditioning Contractors Association, RE: HB 89 Back Up HVA Training (Jan. 10, 2023).

Building Plans Requirements– Effect of the Bill

The bill provides that after a local enforcement agency or local government issues a building permit, the local government may not make or require any substantive changes to the building plans unless the changes are required for compliance with the Building Code, the Fire Prevention Code, or local amendments thereto.

If changes are needed after the permit has been issued, the local enforcement agency must identify specific parts of the plan that do not comply with the applicable codes, identify the specific code chapters and sections upon which the finding is based, and provide this information to the permitholder in writing.

The bill provides that if the building code administrator, plans examiner, or inspector requests another local enforcing agency employee or person contracted by the local enforcing agency to review the plans and such person identifies specific plan features that do not comply with the Building Code, the building code administrator, plans examiner, or inspector, must provide this information to the local enforcing agency.

The bill provides that a plans examiner or inspector who fails to provide the building code administrator with the reasons for making or requiring substantive changes to building plans is subject to discipline against their license.

The bill provides that a building code administrator who fails to provide a permit applicant or permit holder with the reasons for making or requiring substantive changes to building plans is subject to discipline against his or her license.

The bill provides that if a county, municipality, or special district concludes that the building plans for a building permit application do not comply with the Florida Fire Prevention Code or Life Safety Code or local amendments thereto, the local fire official must identify the specific parts of the plan that do not comply with the applicable codes, identify the specific chapters and sections upon which the determination is based, and provide the information to the permit applicant.

If the local fire official requires changes to a permit that has already been issued, and fails to cite specific parts in the plans that need changes to comply with the applicable codes and does not provide the information to the permit applicant, the local fire official is subject to disciplinary action against his or her license.

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

B. SECTION DIRECTORY:

Section 1. Amends s. 489.105, F.S., relating to definitions.
Section 2. Amends s. 553.79, F.S., relating to permit application and issuance.
Section 3. Amends s. 633.208, F.S., relating to minimum fire safety standards.
Section 4. Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The impact on revenues is unknown.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There would be a positive economic impact for class A air-conditioning contractors and homeowners as they would be able to complete more tasks without needing to refer homeowners to an electrical contractor.

There may be a negative economic impact for electrical contractors who work on the line side of HVAC systems.

The bill may have a positive impact on construction industry professionals and companies due to increased information on completing a permit application timely.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

According to DBPR, the BCAIB may need to engage in rulemaking to develop penalty guidelines for the new violations established by the bill.[82] In addition, the Florida Building Commission will need to engage in rulemaking to add the new permit requirements to the Florida Building Code.[83]

C. DRAFTING ISSUES OR OTHER COMMENTS:

DBPR states it may not have enough time for any necessary rulemaking by the Building Code Administrators and Inspectors Board and the Florida Building Commission to be completed by July 1, 2023.[84]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 9, 2023, the Regulatory Reform & Economic Development Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute:

[82] Florida Department of Business and Professional Regulation, Agency Analysis of 2023 House Bill 89, p. 3 (January 11, 2023); *See generally*, Rule 61G19-5.002, F.A.C.
[83] *Id.*; *See generally*, Rule 61G20-1.001, F.A.C.
[84] *Id.* at 6.

- Allows mechanical contractors to perform the same limited work on the line side as Class A air-conditioning contractors.
- Clarifies when Class A air-conditioning and mechanical contractors may work on the line side, specifying that they may work on the line side of the switch, but not the breaker.
- Clarifies that if a person contracted by the local enforcing agency or local enforcing agency employee other than a building official, plans examiner, or inspector identifies a specific issue with building plans, the information must be given to the permit applicant.
- Requires a written notice to be given to the permit applicant when the plans do not meet the Building Code.

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

A bill to be entitled

An act relating to building construction; amending s. 489.105, F.S.; revising definitions; amending s. 553.79, F.S.; requiring local building code administrators, plans examiners, or inspectors to provide certain information to the local enforcing agency under certain circumstances; prohibiting local enforcing agencies from making or requiring substantive changes to plans or specifications after a permit has been issued; providing exceptions; requiring local enforcing agencies that require substantive changes to plans or specifications after a permit has been issued to provide certain information to the permitholder in writing; providing that a building code administrator, plans examiner, or inspector is subject to disciplinary action under certain circumstances; amending s. 633.208, F.S.; requiring local fire officials to provide certain information to a permit applicant if building plans do not comply with the Florida Fire Prevention Code or Life Safety Code; prohibiting a municipality, county, or special district from making or requiring substantive changes to building plans after a permit has been issued; providing exceptions; requiring a local fire official to provide certain information to

the permitholder if a municipality, county, or special district requires substantive changes to building plans after a permit is issued; providing that a local fire official who is a certified firesafety inspector is subject to disciplinary action under certain circumstances; providing an effective date.

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

Section 1. Paragraphs (f) and (i) of subsection (3) of section 489.105, Florida Statutes, are amended to read:

489.105 Definitions.—As used in this part:

(3) "Contractor" means the person who is qualified for, and is only responsible for, the project contracted for and means, except as exempted in this part, the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others; and whose job scope is substantially similar to the job scope described in one of the paragraphs of this subsection. For the purposes of regulation under this part, the term "demolish" applies only to demolition of steel tanks more than 50 feet in height; towers more than 50 feet in height; other structures more than 50 feet in height;

and all buildings or residences. Contractors are subdivided into two divisions, Division I, consisting of those contractors defined in paragraphs (a)-(c), and Division II, consisting of those contractors defined in paragraphs (d)-(q):

(f) "Class A air-conditioning contractor" means a contractor whose services are unlimited in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system if such duct work is performed by the contractor as necessary to complete an air-distribution system, boiler and unfired pressure vessel systems, and all appurtenances, apparatus, or equipment used in connection therewith, and any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system; to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, piping, insulation of pipes, vessels and ducts, pressure and process piping, and pneumatic control piping; to replace, disconnect, or reconnect power wiring, breakers, or fuses on the load side of the dedicated existing electrical circuit disconnect switch; to replace, disconnect, or reconnect power wiring, breakers, or fuses on the line side directly connected to the dedicated existing electrical circuit disconnect switch and not the main

breaker; to replace, disconnect, or reconnect air-conditioning disconnect switches and boxes; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control wiring; and to install a condensate drain from an air-conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor also includes any excavation work incidental thereto, but does not include any work such as liquefied petroleum or natural gas fuel lines within buildings, except for disconnecting or reconnecting changeouts of liquefied petroleum or natural gas appliances within buildings; potable water lines or connections thereto; sanitary sewer lines; swimming pool piping and filters; or electrical power wiring. A Class A air-conditioning contractor may test and evaluate central air-conditioning, refrigeration, heating, and ventilating systems, including duct work; however, a mandatory licensing requirement is not established for the performance of these specific services.

(i) "Mechanical contractor" means a contractor whose services are unlimited in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system if such duct work is performed by the contractor

as necessary to complete an air-distribution system, boiler and unfired pressure vessel systems, lift station equipment and piping, and all appurtenances, apparatus, or equipment used in connection therewith, and any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system; to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, piping, insulation of pipes, vessels and ducts, pressure and process piping, pneumatic control piping, gasoline tanks and pump installations and piping for same, standpipes, air piping, vacuum line piping, oxygen lines, nitrous oxide piping, ink and chemical lines, fuel transmission lines, liquefied petroleum gas lines within buildings, and natural gas fuel lines within buildings; to replace, disconnect, or reconnect power wiring, breakers, or fuses on the load side of the dedicated existing electrical circuit disconnect switch; to replace, disconnect, or reconnect power wiring, breakers, or fuses on the line side directly connected to the dedicated existing electrical circuit disconnect switch and not the main breaker; to replace, disconnect, or reconnect air-conditioning disconnect switches and boxes; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control wiring; and to install a condensate drain from an air-conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for

such contractor also includes any excavation work incidental thereto, but does not include any work such as potable water lines or connections thereto, sanitary sewer lines, swimming pool piping and filters, or electrical power wiring. A mechanical contractor may test and evaluate central air-conditioning, refrigeration, heating, and ventilating systems, including duct work; however, a mandatory licensing requirement is not established for the performance of these specific services.

Section 2. Subsection (2) of section 553.79, Florida Statutes, is amended to read:

553.79 Permits; applications; issuance; inspections.—

(2)(a)1. Except as provided in subsection (8), an enforcing agency may not issue any permit for construction, erection, alteration, modification, repair, or demolition of any building or structure until the local building code administrator or inspector has reviewed the plans and specifications required by the Florida Building Code, or local amendment thereto, for such proposal and found the plans to be in compliance with the Florida Building Code. If the local building code administrator or inspector finds that the plans are not in compliance with the Florida Building Code, the local building code administrator or inspector shall identify the specific plan features that do not comply with the applicable codes, identify the specific code chapters and sections upon

which the finding is based, and provide this information to the local enforcing agency. If the building code administrator, plans examiner, or inspector requests another local enforcing agency employee or a person contracted by the local enforcing agency to review the plans and such employee or person identifies specific plan features that do not comply with the applicable codes, the building code administrator, plans examiner, or inspector must provide this information to the local enforcing agency. The local enforcing agency shall provide this information to the permit applicant.

2. ~~In addition,~~ An enforcing agency may not issue any permit for construction, erection, alteration, modification, repair, or demolition of any building until the appropriate firesafety inspector certified pursuant to s. 633.216 has reviewed the plans and specifications required by the Florida Building Code, or local amendment thereto, for such proposal and found that the plans comply with the Florida Fire Prevention Code and the Life Safety Code. Any building or structure which is not subject to a firesafety code shall not be required to have its plans reviewed by the firesafety inspector.

3. Any building or structure that is exempt from the local building permit process may not be required to have its plans reviewed by the local building code administrator. Industrial construction on sites where design, construction, and firesafety are supervised by appropriate design and inspection

professionals and which contain adequate in-house fire departments and rescue squads is exempt, subject to local government option, from review of plans and inspections, providing owners certify that applicable codes and standards have been met and supply appropriate approved drawings to local building and firesafety inspectors.

4. The enforcing agency shall issue a permit to construct, erect, alter, modify, repair, or demolish any building or structure when the plans and specifications for such proposal comply with the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code as determined by the local authority in accordance with this chapter and chapter 633.

(b) After the local enforcing agency issues a permit, the local enforcing agency may not make or require any substantive changes to the plans or specifications except changes required for compliance with the Florida Building Code, the Florida Fire Prevention Code, or the Life Safety Code, or local amendments thereto. If a local enforcing agency makes or requires substantive changes to the plans or specifications after a permit is issued, the local enforcing agency must identify the specific plan features that do not comply with the applicable codes, identify the specific code chapters and sections upon which the finding is based, and provide the information to the permitholder in writing.

(c)1. A plans examiner or inspector who fails to provide the building code administrator with the reasons for making or requiring substantive changes to the plans or specifications is subject to disciplinary action against his or her certificate under s. 468.621(1)(i).

2. A building code administrator who fails to provide a permit applicant or permitholder with the reasons for making or requiring substantive changes to the plans or specifications is subject to disciplinary action against his or her certificate under s. 468.621(1)(i).

Section 3. Subsection (2) of section 633.208, Florida Statutes, is amended to read:

633.208 Minimum firesafety standards.—

(2)(a) Pursuant to subsection (1), each municipality, county, and special district with firesafety responsibilities shall enforce the Florida Fire Prevention Code as the minimum firesafety code required by this section.

(b) If a municipality, county, or special district determines that the building plans for a building permit application do not comply with the Florida Fire Prevention Code or Life Safety Code, or local amendments thereto, the local fire official must identify the specific plan features that do not comply with the applicable codes, identify the specific code chapters and sections upon which the determination is based, and provide this information to the permit applicant.

(c) After a municipality, county, or special district issues a building permit, it may not make or require any substantive changes to the building plans except those required for compliance with the Florida Fire Prevention Code or Life Safety Code, or local amendments thereto. If a municipality, county, or special district makes or requires substantive changes to building plans after a permit is issued, the local fire official must identify the specific plan features that do not comply with the Florida Fire Prevention Code or Life Safety Code, or local amendments thereto, identify the specific code chapters and sections upon which the finding is based, and provide this information to the permitholder.

(d) A local fire official, who is also a certified firesafety inspector, who fails to comply with paragraph (b) or paragraph (c) is subject to disciplinary action against his or her certificate under s. 633.216(6)(f).

Section 4. This act shall take effect July 1, 2023.

COMMERCE COMMITTEE

HB 89 by Rep. Maggard
Building Construction

AMENDMENT SUMMARY
March 27, 2023

Amendment 1 by Rep. Maggard (line 240):

- Corrects a cross-reference.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee

Representative Maggard offered the following:

Amendment

Remove line 240 and insert:

her certificate under s. 633.216(5)(f).

CS/HB 881

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 881 My Safe Florida Home Program
SPONSOR(S): Insurance & Banking Subcommittee, LaMarca
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 748

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	17 Y, 0 N, As CS	Fortenberry	Lloyd
2) State Administration & Technology Appropriations Subcommittee	14 Y, 0 N	Helpling	Topp
3) Commerce Committee		Fortenberry	Hamon

SUMMARY ANALYSIS

The My Safe Florida Home (MSFH) Program was created in 2006, within the Department of Financial Services (DFS), with the intent that the Program provide inspectors to perform inspections of site-built, single-family, residential properties (inspections), and mitigation grants (grants) to eligible applicants. The purpose of the inspections is to determine: what mitigation measures are needed; what premium discounts might be available; and what improvements to existing residential properties were needed to reduce the properties' susceptibility to hurricane damage.

The purpose of the grants is to retrofit single-family homes to make them less vulnerable to hurricane damage. To be eligible for a grant, certain criteria had to be met, including having a homestead exemption and a maximum insured value of $300,000. Improvements that could be made using grant funds included opening protection, exterior doors, including garage doors, and secondary water barriers for roofs. The MSFH received $250 million in appropriations for the Fiscal Year 2006-2007, but was not funded again until 2022.

During the 2022D Session, the Legislature renewed the funding for the MSFH Program by appropriating $150 million in nonrecurring funds from General Revenue Fund for the 2022-2023 fiscal year. Between May 2022 and February 2023, 16,724 mitigation inspections were completed and 2,979 grant applications were approved. The Legislature also changed the eligibility criteria for grants to allow for homeowners with homes valued up to $500,000.

This bill makes various changes to the statutory framework for the MSFH Program, including changes to inspection and grant eligibility requirements, program management, and technical, conforming, and statutory structure. The bill requires that eligible properties be homesteaded.

The bill removes the designation of a specific portion of the grant funds for low-income recipients, but increases the overall grant award for low-income recipients from $5,000, to $10,000. The bill makes the MSFH Program statewide instead of limited to homes in the wind-borne debris region. The bill also eliminates two types of home improvements from the list of those home improvements for which MSFH Program grant funds may be used because they are no longer recognized by the Florida Building Code.

The bill has no impact on local or state government revenues or expenditures. DFS has filed an amended legislative budget request for MSFH Program funding needs. It will likely have a positive direct economic impact on the private sector.

The bill is effective on July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In 2006, the Legislature created the My Safe Florida Home (MSFH) Program within the Department of Financial Services (DFS), with the intent that the Program provide trained and certified inspectors to perform inspections for owners of site-built, single-family, residential properties (mitigation inspections), and grants to eligible applicants, subject to funding availability.[1] The MSFH Program was to "develop and implement a comprehensive and coordinated approach for hurricane damage mitigation."[2] The MSFH program allowed DFS to undertake a public outreach and advertising campaign to inform consumers of the availability, and benefits, of the mitigation inspections and grants.[3] It required the development of brochures for distribution to general contractors, roofing contractors, and real estate brokers and sales associates to explain the benefits of residential hurricane damage mitigation to homeowners.[4]

Hurricane Mitigation Inspections

The purpose of the mitigation inspections was to determine:

- What mitigation measures were needed;
- What insurance premium discounts might have been available; and
- What improvements to existing residential properties were needed to reduce the properties' susceptibility to hurricane damage.[5]

The mitigation inspections were to include, at a minimum:

- A report that summarized the results and identified recommended improvements the homeowner could take to mitigate hurricane damage.
- A range of cost estimates regarding the recommended mitigation improvements.
- Insurer-specific information regarding premium discounts correlated to current and recommended hurricane mitigation improvements.[6]

DFS was required to maintain a list of hurricane mitigation inspectors who were authorized to conduct the mitigation inspections for the MSFH Program.[7] DFS entered contracts to provide mitigation inspections with wind certification entities who, at a minimum used hurricane mitigation inspectors who:

- Were certified building inspectors;
- Were licensed as general or residential contractors;
- Were licensed and professional engineers and had passed the appropriate equivalency test of the building code training program;
- Were licensed as a professional architect; or
- Had at least two years of experience in residential construction or residential building inspection and had received specialized training in hurricane mitigation procedures.[8]

Mitigation Grants

The purpose of the mitigation grants was to retrofit single-family homes to make them less vulnerable to hurricane damage.[9] To be eligible for a grant, the following criteria must have been met:

[1] S. 215.5586, F.S.
[2] *Id.*
[3] S. 215.5586(3), F.S.
[4] S. 215.5586(7), F.S.
[5] S. 215.5586(1)(a), F.S.
[6] *Id.*
[7] S. 215.55186(6), F.S.
[8] S. 215.5586(1)(b), F.S.
[9] S. 215.5586(2), F.S.

- The homeowner must have had a homestead exemption on the home to be retrofitted;
- The home must have had an insured value of $300,000 or less, unless the homeowner was classified as a low-income person;
- The home must have undergone an acceptable hurricane mitigation inspection after May 1, 2007;
- The home must have been located in the "wind-borne debris region" as defined in the International Building Code; and
- The building permit application for initial construction of the home must have been made before March 1, 2002.[10]

In addition, the homeowner had to match the grant award on a dollar-for-dollar basis up to $10,000, for the actual cost of the mitigation project, and the state's contribution could not exceed $5,000.[11] Low-income homeowners were eligible for grants of up to $5,000, and were not required to provide a matching amount to receive a grant.[12] Matching fund grants were also available to local governments and nonprofit entities for projects to reduce hurricane damages to single-family homes.[13]

Grants could be used on previously-inspected existing structures or on rebuilds.[14] If recommended by a hurricane mitigation inspection, grants could be used for the following improvements:

- Opening protection.
- Upgrading exterior doors, including garage doors.
- Bracing gable ends.
- Reinforcing roof-to-wall connections.
- Improving the strength of roof-deck attachments.
- Upgrading roof coverings from code to code plus.
- Installing secondary water barrier for roofs.[15]

DFS was required to issue an annual report on the activities of the MSFH Program that accounted for the use of any appropriated state funds, the number of inspections requested and performed, the number of grant applications received, and the number and value of grants approved.[16]

The MSFH Program was appropriated $250 million in Fiscal Year 2006-07.[17] As of May 2009, approximately $93 million in MSFH grants were allocated to 32,000 homes, and approximately 400,000 homes received a MSFH home inspection.[18] DFS requested that Risk Management Solutions (RMS), conduct an impact analysis of the MSFH program, and RMS released a report of the impact analysis on May 14, 2009 (report).[19] In the report, RMS concluded that the MSFH grants were beneficial to the State of Florida, individual homeowners, and the insurance industry.[20] RMS indicated that the predicted reduction in loss as a result of the grant projects completed far exceeded the grant money spent.[21] While the MSFH Program was never repealed from law, additional funding was not provided until May 2022.

[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] Rebuilds were defined as site-built, single-family dwellings under construction to replace homes that were destroyed or significantly damaged by hurricanes and deemed unlivable by a regulatory authority. S. 215.5586(2)(e), F.S.
[15] S. 215.5586(2)(e), F.S.
[16] S. 215.5586(10), F.S.
[17] Risk Management Solutions, *Analyzing the Effects of the My Safe Florida Home Program on Florida Insurance Risk*, May 14, 2009, https://www.ipcc.ch/apps/njlite/srex/njlite_download.php?id=5036 (last visited Mar. 2, 2023).
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*

2022 Renewal of the MSFH Program

During the 2022D Special Session, the Legislature passed a property insurance bill (SB 2-D), in which it renewed the funding for the MSFH Program by appropriating $150 million in nonrecurring funds from General Revenue (GR) to DFS for the Program for the 2022-2023 fiscal year. The funds appropriated were allocated as follows:

- $115 million for mitigation grants.
- $25 million for hurricane mitigation inspections.
- $4 million for education and consumer awareness.
- $1 million for public outreach for contractors and estate brokers and sales associates.
- $5 million for administrative costs.

SB 2-D reappropriated any unexpended balance of funds from the appropriation remaining on June 30, 2023, to DFS for the 2023-2024 fiscal year to be used for the MSFH Program. The appropriation will expire on October 1, 2024. SB 2-D gave DFS the authority to adopt emergency rules to implement the MSFH Program.

SB 2-D made additional modifications to the MSFH Program. It required that an application for a mitigation grant include a provision that requires an applicant to make his or her home available for inspection once a mitigation project is completed. The bill changed the monetary limits for eligibility for mitigation grants so that homes with an insured value of $500,000, or less, qualify for the program.

SB 2-D required that homes that receive mitigation grants have undergone home mitigation inspections after July 1, 2008, and have received permits for initial construction before January 1, 2008. The homeowner must also match grant funds on the basis of $1 from the homeowner for every $2 provided by the state up to a maximum state contribution of $10,000 towards the actual cost of the mitigation project undertaken on the eligible home.

The bill enhanced the reporting requirements for DFS under the MSFH Program by requiring that the report include the following received by homeowners from insurers as a result of the mitigation funded by the program:

- The average annual amount of insurance premium discounts; and
- The total annual amount of insurance premium discounts.

2022 MSFH Program Implementation

Following the passage of SB 2-D, DFS procured a vendor to administer the MSFH Program, qualified inspectors to conduct mitigation inspections, and qualified contractors who agreed to provide mitigation repairs and retrofitting under the grant portion of the Program.[22] DFS compiled a list of approved vendors that homeowners participating in the MSFH Program may choose for inspections and mitigation work.[23]

On November 18, 2022, a web-based application for homeowners to request mitigation inspections and grant funds went live.[24] Between May 26, 2022 and February 28, 2023, 16,724 mitigation inspections were completed and 2,979 grant applications were approved.[25]

Inspectors completing mitigation inspections under the MSFH Program must complete the Uniform Mitigation Verification Inspection Form (Inspection Form), as revised by the Office of Insurance Regulation on January 12, 2023.[26] The mitigation inspection report provided to the homeowner includes the completed Inspection Form, as well as the information already required by statute,[27] including:

[22] Florida Department of Financial Services, Agency Analysis of 2023 House Bill 881, p. 1 (Mar. 1, 2023).
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] S. 215.5586(1)(a), F.S.

- A summary of the results of the mitigation inspection identifying recommended improvements a homeowner may undertake;
- A range of cost estimates regarding the recommended improvements; and
- Estimated property insurance premium discounts based on the mitigation measures the homeowner has completed.[28]

Effect of the bill

The bill makes various changes to the statutory framework for the MSFH Program, including inspection and grant eligibility requirement changes; program management changes; and technical, conforming, and statutory-restructuring changes.

Inspection and Grant Eligibility Requirements

The bill limits single-family home eligibility for mitigation inspections to homesteaded properties.[29]

The bill removes the designation of a specific portion of the grant funds for low-income recipients without reducing funding, but increases the overall grant award for low-income recipients from $5,000 to $10,000. The bill broadens geographic eligibility to include otherwise in eligible homes outside the wind-borne debris region, in effect making it a statewide program.[30]

The bill removes outdated elements from the home improvements list for which MSFH Program grant funds may be used.[31] Those home improvements are no longer recognized by the Florida Building Code.

Project Management

The bill requires home inspectors to be licensed, in addition to certified, to conform with other statutory chapters. The bill revises home inspector training/experience requirements. The bill gives DFS the authority and a direction to establish objective, reasonable criteria for prioritizing inspection applications. The bill removes the requirement that the Legislative Budget Commission (LBC) review and approve all MSFH Program contracts valued at $1 million or more.[32]

Technical, Conforming, and Statutory Restructuring Changes

The bill clarifies that hurricane mitigation inspectors conducting mitigation inspections for the MSFH Program must undergo a level II background check, which is a fingerprint-based background check. It consolidates statutory language related to education and consumer awareness, and public outreach for contractors, real estate brokers, and sales associates. It also makes other technical and conforming changes.

The bill also adds the Citizens Property Insurance Corporation to the proposed list of entities that may receive program brochures for redistribution.

B. SECTION DIRECTORY:

Section 1. Amends s. 215.5586, F.S., relating to My Safe Florida Home Program.

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[28] Department of Financial Services, *supra* note 22, at 2.
[29] This requirement was already in place for the grant portion of the MSFH Program under s. 215.5586(2), F.S.
[30] *See* Fiscal Comments.
[31] These elements are bracing of gable ends and upgrading of roof coverings from code to code plus.
[32] The LBC is composed of seven members of the House of Representatives and seven members of the Senate. It meets at least quarterly throughout the year and its powers and duties include:
- Reviewing and approving or disapproving budget amendments recommended by the Governor or Chief Justice of the Florida Supreme Court.
- Developing the long-range financial outlook described in s. 19, Art. III of the State Constitution.
- Exercising all other powers and performing all other duties prescribed by the Legislature. S. 11.910(6), F.S.

Section 2. Reenacts s. 215.5588, F.S., relating to Florida Disaster Recovery.

Section 3. Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that homes that participate in the MSFH Program receive mitigation credits under their insurance policies and are less exposed to risk as a result of mitigation retrofitting using grant funds, the MSFH Program will have a positive direct economic impact on homeowners. Hurricane mitigation contractors may also see an increase in project activity.

D. FISCAL COMMENTS:

The bill increases the number of homeowners that are eligible for the MSFH Program, but does not include an appropriation beyond the $150 million in nonrecurring funds from GR to DFS appropriated in May 2022. Without additional funds being appropriated for the MSFH Program, the expanded eligibility may cause funds to run out earlier than originally expected. However, DFS has submitted an amended legislative budget request to ask Legislature for an additional $100 million for the mitigation grants portion of the MSFH Program.[33] DFS anticipates that the $115 million allocated for the mitigation grants will be exhausted within the 2022-2023 fiscal year without the additional funding.[34]

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.

[33] DFS Legislative Budget Request, *Expenditures by Issue and Appropriation Category*, http://floridafiscalportal.state.fl.us/Document.aspx?ID=25277&DocType=PDF (last visited Mar. 2, 2023).
[34] *Id.*

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 9, 2023, the Insurance & Banking Subcommittee considered the bill, adopted one amendment, and reported it favorably as a committee substitute. The amendment:

- Removes a proposed change in eligibility for the program and maintains current law regarding townhomes,
- Deletes proposed authority for the Department of Financial Services to define and apply criteria to prioritize inspection applications for funding, and
- Adds the Citizens Property Insurance Corporation to the proposed list of entities that may receive program brochures for redistribution.

The bill analysis is drafted to the bill as reported out of the Insurance & Banking Subcommittee.

A bill to be entitled

An act relating to the My Safe Florida Home Program; amending s. 215.5586, F.S.; providing that licensed, rather than certified, inspectors are to provide hurricane mitigation inspections on site-built, single-family, residential properties that have been granted a homestead exemption; revising the information provided to homeowners as part of a hurricane mitigation inspection; revising the hurricane mitigation inspectors that may be selected by the Department of Financial Services to provide hurricane mitigation inspections; deleting a provision requiring the department to implement a certain quality assurance program; revising the criteria for mitigation grant eligibility for homeowners; deleting a provision that subjects mitigation projects to random reinspection for a specified timeframe; revising the improvements for which mitigation grants may be used; revising the amount low-income homeowners may receive from the department under the grant program; deleting a provision authorizing low-income homeowners to use grant funds for specified purposes; deleting a requirement that the department establish specified criteria for prioritizing grant applications; authorizing, rather than requiring, the

program to develop and distribute certain brochures to specified persons; deleting a provision requiring certain contracts entered into by the department to be reviewed and approved by the Legislative Budget Commission; requiring the department to develop a certain quality assurance and reinspection program; revising the contents of the annual report the department is required to deliver to the Legislature; conforming provisions to changes made by the act; making technical changes; reenacting s. 215.5588(3), F.S., relating to the Florida Disaster Recovery Program, to incorporate the amendments made to s. 215.5586, F.S., in a reference thereto; providing an effective date.

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

Section 1. Section 215.5586, Florida Statutes, is amended to read:

215.5586 My Safe Florida Home Program.—There is established within the Department of Financial Services the My Safe Florida Home Program. The department shall provide fiscal accountability, contract management, and strategic leadership for the program, consistent with this section. This section does not create an entitlement for property owners or obligate the

state in any way to fund the inspection or retrofitting of residential property in this state. Implementation of this program is subject to annual legislative appropriations. It is the intent of the Legislature that the My Safe Florida Home Program provide licensed ~~trained and certified~~ inspectors to perform inspections for owners of site-built, single-family, residential properties and grants to eligible applicants as funding allows. The program shall develop and implement a comprehensive and coordinated approach for hurricane damage mitigation that may include the following:

(1) HURRICANE MITIGATION INSPECTIONS.—

(a) Licensed ~~Certified~~ inspectors are to provide home ~~home-retrofit~~ inspections of site-built, single-family, residential properties for which a homestead exemption has been granted, ~~property may be offered~~ to determine what mitigation measures are needed, what insurance premium discounts may be available, and what improvements to existing residential properties are needed to reduce the property's vulnerability to hurricane damage.

(b) The Department of Financial Services shall contract with wind certification entities to provide hurricane mitigation inspections. The inspections provided to homeowners, at a minimum, must include:

1. A home inspection and report that summarizes the results and identifies recommended improvements a homeowner may

take to mitigate hurricane damage.

2. A range of cost estimates regarding the recommended mitigation improvements.

3. ~~Insurer-specific~~ Information regarding estimated premium discounts, correlated to the current mitigation features and the recommended mitigation improvements identified by the inspection.

(c) ~~(b)~~ To qualify for selection by the department as a wind certification entity to provide hurricane mitigation inspections, the entity must ~~shall~~, at a minimum, meet the following requirements:

1. Use hurricane mitigation inspectors who are licensed or certified as:

a. ~~Are certified as~~ A building inspector under s. 468.607;

b. ~~Are licensed as~~ A general, building, or residential contractor under s. 489.111;

c. ~~Are licensed as~~ A professional engineer under s. 471.015 ~~and who have passed the appropriate equivalency test of the building code training program as required by s. 553.841~~;

d. ~~Are licensed as~~ A professional architect under s. 481.213; or

e. A home inspector under s. 468.8314 and who have completed at least 3 hours of hurricane mitigation training approved by the Construction Industry Licensing Board, which training must include hurricane mitigation techniques and

compliance with the uniform mitigation verification form and completion of a proficiency exam ~~Have at least 2 years of experience in residential construction or residential building inspection and have received specialized training in hurricane mitigation procedures. Such training may be provided by a class offered online or in person.~~

2. Use hurricane mitigation inspectors who also~~:~~

~~a.~~ have undergone drug testing and a level II background screening. The department may conduct criminal record checks of inspectors used by wind certification entities. Inspectors must submit a set of ~~the~~ fingerprints to the department for state and national criminal history checks and must pay the fingerprint processing fee set forth in s. 624.501. The fingerprints must ~~shall~~ be sent by the department to the Department of Law Enforcement and forwarded to the Federal Bureau of Investigation for processing. The results must ~~shall~~ be returned to the department for screening. The fingerprints must ~~shall~~ be taken by a law enforcement agency, designated examination center, or other department-approved entity~~; and~~

~~b. Have been certified, in a manner satisfactory to the department, to conduct the inspections~~.

3. Provide a quality assurance program including a reinspection component.

~~(c) The department shall implement a quality assurance program that includes a statistically valid number of~~

~~reinspections.~~

(d) An application for an inspection must contain a signed or electronically verified statement made under penalty of perjury that the applicant has submitted only a single application for that home.

(e) The owner of a site-built, single-family, residential property for which a homestead exemption has been granted may apply for and receive an inspection without also applying for a grant pursuant to subsection (2) and without meeting the requirements of paragraph (2)(a).

(2) MITIGATION GRANTS.—Financial grants shall be used to encourage single-family, site-built, owner-occupied, residential property owners to retrofit their properties to make them less vulnerable to hurricane damage.

(a) For a homeowner to be eligible for a grant, the following criteria must be met:

1. The homeowner must have been granted a homestead exemption on the home under chapter 196.

2. The home must be a dwelling with an insured value of $500,000 or less. Homeowners who are low-income persons, as defined in s. 420.0004(11), are exempt from this requirement.

3. The home must undergo ~~have undergone~~ an acceptable hurricane mitigation inspection as provided in subsection (1) ~~after July 1, 2008~~.

~~4. The home must be located in the "wind-borne debris~~

~~region" as that term is defined in the Florida Building Code.~~

4.~~5.~~ The building permit application for initial construction of the home must have been made before January 1, 2008.

5.~~6.~~ The homeowner must agree to make his or her home available for inspection once a mitigation project is completed.

An application for a grant must contain a signed or electronically verified statement made under penalty of perjury that the applicant has submitted only a single application and must have attached documents demonstrating the applicant meets the requirements of this paragraph.

(b) All grants must be matched on the basis of $1 provided by the applicant for $2 provided by the state up to a maximum state contribution of $10,000 toward the actual cost of the mitigation project.

(c) The program shall create a process in which contractors agree to participate and homeowners select from a list of participating contractors. All mitigation must be based upon the securing of all required local permits and inspections and must be performed by properly licensed contractors. ~~Mitigation projects are subject to random reinspection of up to at least 5 percent of all projects.~~ Hurricane mitigation inspectors qualifying for the program may also participate as mitigation contractors as long as the inspectors meet the

department's qualifications and certification requirements for mitigation contractors.

(d) Matching fund grants shall also be made available to local governments and nonprofit entities for projects that will reduce hurricane damage to single-family, site-built, owner-occupied, residential property. The department shall liberally construe those requirements in favor of availing the state of the opportunity to leverage funding for the My Safe Florida Home Program with other sources of funding.

(e) When recommended by a hurricane mitigation inspection, grants may be used for the following improvements:

1. Opening protection.

2. Exterior doors, including garage doors.

~~3. Brace gable ends.~~

3.~~4.~~ Reinforcing roof-to-wall connections.

4.~~5.~~ Improving the strength of roof-deck attachments.

~~6. Upgrading roof covering from code to code plus.~~

5.~~7.~~ Secondary water barrier for roof.

The department may require that improvements be made to all openings, including exterior doors and garage doors, as a condition of reimbursing a homeowner approved for a grant. The department may adopt, by rule, the maximum grant allowances for any improvement allowable under this paragraph.

(f) Grants may be used on a previously inspected existing

structure or on a rebuild. A rebuild is defined as a site-built, single-family dwelling under construction to replace a home that was destroyed or significantly damaged by a hurricane and deemed unlivable by a regulatory authority. The homeowner must be a low-income homeowner as defined in paragraph (g), must have had a homestead exemption for that home before ~~prior to~~ the hurricane, and must be intending to rebuild the home as that homeowner's homestead.

(g) Low-income homeowners, as defined in s. 420.0004(11), who otherwise meet the requirements of paragraphs (a), (c), (e), and (f) are eligible for a grant of up to $10,000 ~~$5,000~~ and are not required to provide a matching amount to receive the grant. ~~Additionally, for low-income homeowners, grant funding may be used for repair to existing structures leading to any of the mitigation improvements provided in paragraph (e), limited to 20 percent of the grant value.~~ The program may accept a certification directly from a low-income homeowner that the homeowner meets the requirements of s. 420.0004(11) if the homeowner provides such certification in a signed or electronically verified statement made under penalty of perjury.

~~(h) The department shall establish objective, reasonable criteria for prioritizing grant applications, consistent with the requirements of this section.~~

(h) ~~(i)~~ The department shall develop a process that ensures the most efficient means to collect and verify grant

applications to determine eligibility and may direct hurricane mitigation inspectors to collect and verify grant application information or use the Internet or other electronic means to collect information and determine eligibility.

(3) EDUCATION, ~~AND~~ CONSUMER AWARENESS, AND OUTREACH.—

(a) The department may undertake a statewide multimedia public outreach and advertising campaign to inform consumers of the availability and benefits of hurricane inspections and of the safety and financial benefits of residential hurricane damage mitigation. The department may seek out and use local, state, federal, and private funds to support the campaign.

(b) The program may develop brochures for distribution to Citizens Property Insurance Corporation, general contractors, roofing contractors, and real estate brokers and sales associates who are licensed under part I of chapter 475 which provide information on the benefits to homeowners of residential hurricane damage mitigation. Citizens Property Insurance Corporation is encouraged to distribute the brochure to policyholders of the corporation. Contractors are encouraged to distribute the brochures to homeowners at the first meeting with a homeowner who is considering contracting for home or roof repair or contracting for the construction of a new home. Real estate brokers and sales associates are encouraged to distribute the brochure to clients before the purchase of a home. The brochures may be made available electronically.

(4) FUNDING.—The department may seek out and leverage local, state, federal, or private funds to enhance the financial resources of the program.

(5) RULES.—The Department of Financial Services shall adopt rules pursuant to ss. 120.536(1) and 120.54 to govern the program; implement the provisions of this section; including rules governing hurricane mitigation inspections and grants, mitigation contractors, and training of inspectors and contractors; and carry out the duties of the department under this section.

(6) HURRICANE MITIGATION INSPECTOR LIST.—The department shall develop and maintain as a public record a current list of hurricane mitigation inspectors authorized to conduct hurricane mitigation inspections pursuant to this section.

~~(7) PUBLIC OUTREACH FOR CONTRACTORS AND REAL ESTATE BROKERS AND SALES ASSOCIATES.—The program shall develop brochures for distribution to general contractors, roofing contractors, and real estate brokers and sales associates licensed under part I of chapter 475 explaining the benefits to homeowners of residential hurricane damage mitigation. The program shall encourage contractors to distribute the brochures to homeowners at the first meeting with a homeowner who is considering contracting for home or roof repairs or contracting for the construction of a new home. The program shall encourage real estate brokers and sales associates licensed under part I~~

~~of chapter 475 to distribute the brochures to clients prior to the purchase of a home. The brochures may be made available electronically.~~

(7)~~(8)~~ CONTRACT MANAGEMENT.—

(a) The department may contract with third parties for grants management, inspection services, contractor services for low-income homeowners, information technology, educational outreach, and auditing services. Such contracts are ~~shall be~~ considered direct costs of the program and are ~~shall~~ not ~~be~~ subject to administrative cost limits~~, but contracts valued at $1 million or more shall be subject to review and approval by the Legislative Budget Commission~~. The department shall contract with providers that have a demonstrated record of successful business operations in areas directly related to the services to be provided and shall ensure the highest accountability for use of state funds, consistent with this section.

(b) The department shall implement a quality assurance and reinspection program that determines whether initial inspections and home improvements are completed in a manner consistent with the intent of the program. The department may use valid random sampling in order to perform the quality assurance portion of the program.

(8)~~(9)~~ INTENT.—It is the intent of the Legislature that grants made to residential property owners under this section shall be considered disaster-relief assistance within the

meaning of s. 139 of the Internal Revenue Code of 1986, as amended.

(9) ~~(10)~~ REPORTS.—The department shall make an annual report on the activities of the program that shall account for the use of state funds and indicate the number of inspections requested, the number of inspections performed, the number of grant applications received, the number and value of grants approved, and the estimated average annual amount of insurance premium discounts and total estimated annual amount of insurance premium discounts homeowners received from insurers as a result of mitigation funded through the program. The report must ~~shall~~ be delivered to the President of the Senate and the Speaker of the House of Representatives by February 1 of each year.

Section 2. For the purpose of incorporating the amendments made by this act to section 215.5586, Florida Statutes, in a reference thereto, subsection (3) of section 215.5588, Florida Statutes, is reenacted to read:

215.5588 Florida Disaster Recovery Program.—

(3) Up to 78 percent of these funds may be used to complement the grants awarded by the Department of Financial Services under s. 215.5586 and fund other eligible disaster-related activities supporting housing rehabilitation, hardening, mitigation, and infrastructure improvements at the request of the local governments in order to assist the State of Florida in better serving low-income homeowners in single-family housing

units, including, but not limited to, condominiums. Up to 20 percent of the funds may be used to provide inspections and mitigation improvements to multifamily units receiving rental assistance under projects of the United States Department of Housing and Urban Development or the Rural Development Division of the United States Department of Agriculture.

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

HB 1091

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1091 Licensing Fee Relief
SPONSOR(S): Alvarez
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	14 Y, 0 N	Wright	Anstead
2) State Administration & Technology Appropriations Subcommittee	14 Y, 0 N	Helpling	Topp
3) Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

The Florida Department of Business and Professional Regulation (DBPR) regulates and licenses businesses and professionals in Florida under the Divisions of Professions, Regulation, Real Estate, and Certified Public Accounting.

For each professional licensed, DBPR charges an initial license fee and license renewal fee set by statute and the applicable board, or by DBPR if there is no board for the profession. DBPR also imposes a $5 unlicensed activity fee on each occupational license, in order to fund efforts to combat unlicensed activity. Certain professions also require background checks, which requires a separate fee to an outside contractor.

The bill requires DBPR to waive, for the 2023-2024 and 2024-2025 fiscal years:

- 50 percent of the initial licensing fee for an applicant applying for an initial license, with such waiver limited to a maximum of $200 per year per license.
- 50 percent of a licensee's license renewal fee, with such waiver limited to a maximum of $200 per year per license.

Such fee waivers may not include any applicable unlicensed activity or background check fees. This waiver expires July 1, 2025.

The bill provides an appropriation to implement for such waiver in the sum of $50 million in nonrecurring funds from the General Revenue Fund to DBPR to be deposited into the Professional Regulation Trust Fund for the 2023-2024 fiscal year. Any unexpended balance of funds from this appropriation remaining on June 30, 2024, shall revert and is appropriated to DBPR for the 2024-2025 fiscal year for the same purpose.

The appropriation provided in the bill will offset the loss of revenue to implement the specified reduction in licenses. *See* Fiscal Comments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Department of Business and Professional Regulation – Current Situation

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

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

The Division of Professions licenses and regulates more than 434,000 professionals through the following professional boards and programs:

- Board of Architecture and Interior Design,
- Asbestos Licensing Unit,
- Athlete Agents,
- Board of Auctioneers,
- Barbers' Board,
- Building Code Administrators and Inspectors Board,
- Regulatory Council of Community Association Managers,
- Construction Industry Licensing Board,
- Board of Cosmetology,
- Electrical Contractors' Licensing Board,
- Board of Employee Leasing Companies,
- Home Inspectors,
- Board of Landscape Architecture,
- Mold-Related Services,
- Board of Pilot Commissioners,
- Board of Professional Geologists,
- Talent Agencies,
- Board of Veterinary Medicine, and
- Florida Board of Professional Engineers.[2]

The Division of Regulation is the enforcement authority for the Florida Athletic Commission, Farm Labor Program, Child Labor Program, and any professional boards and programs housed within Professions.[3] To ensure compliance with applicable laws and rules by those professions and related businesses, Regulations investigates complaints, utilizes compliance mechanisms, and performs inspections.[4]

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[1] S. 20.165, F.S.

[2] Florida Department of Business and Professional Regulation, *Division of Professions*, http://www.myfloridalicense.com/DBPR/division-of-professions/ (last visited Mar. 12, 2023).

[3] Except the Board of Architecture and Interior Design, and the Florida Board of Professional Engineers.

[4] Florida Department of Business and Professional Regulation, *Division of Regulation*, http://www.myfloridalicense.com/DBPR/division-of-regulation/ (last visited Mar. 12, 2023).

The Division of Certified Public Accounting is responsible for the regulation of certified public accountants and accounting firms in the state.[5]

The Division of Real Estate is responsible for the regulation of real estate sales associates, brokers, and appraisers, in conjunction with the Florida Real Estate Commission and the Florida Real Estate Appraisal Board.[6]

DBPR Professional License Fees

For each professional license issued by DBPR, there is an initial license fee and a license renewal fee set by statute and the applicable board, or by DBPR if there is no board for the profession. DBPR also imposes a $5 unlicensed activity fee on each occupational license, in order to fund efforts to combat unlicensed activity.[7] The initial licensing fees generally range from $25[8] to $701.[9] The renewal license fees generally range from $5[10] to $400.[11]

Certain professions also require background checks, which requires a separate fee to an outside contractor.

DBPR Umbrella Chapter

Chapter 455, F.S., applies to the regulation of professions constituting "any activity, occupation, profession, or vocation regulated by DBPR in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation."[12]

It also provides the general powers of DBPR and sets forth the procedural and administrative framework for all of the professional boards housed under DBPR.[13]

Department of Business and Professional Regulation – Effect of the Bill

The bill requires DBPR to waive, for licenses subject to ch. 455, F.S., during the 2023-2024 and 2024-2025 fiscal years:

- 50 percent of the initial licensing fee for an applicant applying for an initial license, with such waiver limited to a maximum of $200 per year per license.
- 50 percent of a licensee's license renewal fee, with such waiver limited to a maximum of $200 per year per license.

Such fee waivers may not include any applicable unlicensed activity or background check fees. This waiver expires July 1, 2025.

The bill provides an appropriation for such waiver in the sum of $50 million in nonrecurring funds from the General Revenue Fund to DBPR to be deposited into the Professional Regulation Trust Fund for the 2023-2024 fiscal year. Any unexpended balance of funds from this appropriation remaining on June 30, 2024, shall revert and is appropriated to DBPR for the 2024-2025 fiscal year for the same purpose.

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

B. SECTION DIRECTORY:

[5] S. 473.3035, F.S.; Florida Department of Business and Professional Regulation, *Certified Public Accounting*, Certified Public Accounting – MyFloridaLicense.com (last visited Mar. 12, 2023).
[6] S. 475.021, F.S.
[7] S. 455.2281, F.S.
[8] R. 61-35.002, F.A.C., Interior Designer.
[9] R. 61G7-10.002, F.A.C., Employee Leasing Company Controlling Person.
[10] R. 61-35.008, F.A.C., Building Code Professionals.
[11] R. 61-19.003, F.A.C., Talent Agents.
[12] S. 455.01(6), F.S.
[13] S. 455.203, F.S.

Section 1: Amends s. 455.213, F.S.; providing a partial fee waiver for FY 23-24 and FY 24-25.
Section 2: Provides an appropriation.
Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The fee waivers under the bill will save professional licensees money, which may then be used for other business or personal needs.

D. FISCAL COMMENTS:

The bill appropriates $50 million nonrecurring funds from the General Revenue Fund to be deposited in the Professional Regulation Trust Fund. Any unexpended balance of the $50 million deposited funds shall revert on June 30, 2024 and is appropriated to DBPR for the 2024-2025 fiscal year for the same purpose. This appropriation will offset the loss of revenue in the Professional Regulation Trust Fund to implement the specified temporary licensing fee waivers.

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 act requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to licensing fee relief; amending s. 455.213, F.S.; waiving a portion of the initial license application fee and renewal fees for certain licenses; providing a maximum waiver; providing an expiration; providing an appropriation; providing for disposition of any unexpended balance; providing an effective date.

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

Section 1. Subsection (15) is added to section 455.213, Florida Statutes, to read:

455.213 General licensing provisions.—

(15) For the 2023-2024 and 2024-2025 fiscal years, the department shall waive 50 percent of the initial licensing fee for an applicant applying for an initial license for a profession under this chapter, with such waiver limited to a maximum of $200 per year per license. The department shall waive 50 percent of a licensee's license renewal fee for a profession under this chapter, with such waiver limited to a maximum of $200 per year per license. Such fee waivers shall not include any applicable unlicensed activity or background check fees. This subsection expires July 1, 2025.

Section 2. For the 2023-2024 fiscal year, the sum of $50

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

million in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Business and Professional Regulation to be deposited into the Professional Regulation Trust Fund to implement this act. Any unexpended balance of funds from this appropriation remaining on June 30, 2024, shall revert and is appropriated to the Department of Business and Professional Regulation for the 2024-2025 fiscal year for the same purpose.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1117 Medical Treatment of Animals
SPONSOR(S): Buchanan
TIED BILLS: **IDEN./SIM. BILLS:** SB 554, SB 1600

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	9 Y, 1 N	Thompson	Anstead
2) Commerce Committee		Thompson	Hamon

SUMMARY ANALYSIS

In Florida, the practice of "veterinary medicine" means the diagnosis of medical conditions of animals, and the prescribing or administering of medicine and treatment to animals for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease. Veterinarians are regulated by the Board of Veterinary Medicine (Board) in the Department of Business and Professional Regulation (DBPR) pursuant to ch. 474, F.S., relating to veterinary medical practice (practice act). The purpose of the practice act is to ensure that every veterinarian practicing in this state meets minimum requirements for safe practice to protect public health and safety.

Current law defines a "veterinarian/client/patient relationship" (VCPR) as one in which a veterinarian has assumed responsibility for making medical judgments about the health of an animal and its need for medical treatment. Veterinarians are permitted to prescribe drugs in the course of veterinary practice; however, the veterinarian must be either personally acquainted with the keeping and caring of the animal and have recently seen the animal, or have made medically appropriate and timely visits to the premises where the animal is kept before prescribing drugs in the course of practice.

The use of electronic communications to facilitate patient health care (telemedicine) is not addressed in the practice act and is not specifically prohibited or authorized in Florida. However, medical doctors may practice telemedicine in Florida and may establish a patient relationship with a patient evaluation via telemedicine under certain circumstances.

The bill creates an act cited as the Providing Equity in Telemedicine Services (PETS) Act, which establishes a framework for the practice of veterinary telemedicine as follows:

- Authorizes a veterinarian practicing veterinary telemedicine to order, prescribe, or make available medicinal drugs or drugs defined in ch. 465, F.S., the Florida Pharmacy Act.
- Limits a veterinarian's authority to prescribe controlled substances while practicing telemedicine to situations where the veterinarian has previously performed an in-person physical examination or made medically appropriate and timely visits to the premises where the animal is kept.
- Allows veterinarians who are personally acquainted with the caring or keeping of an animal or group of animals for food-producing animal operations, who has recently seen the animal(s) or has made medically appropriate and timely visits to practice telemedicine for these animal(s).
- Specifies that only Florida licensed veterinarians may practice veterinary telemedicine, and grants the Board jurisdiction over the practice of veterinary telemedicine.
- Allows an animal control authority under the "indirect supervision" of a veterinarian to administer rabies vaccinations.

The bill is not expected to have a fiscal impact on state or local government, and may have a positive fiscal impact on the private sector.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Practice of Veterinary Medicine

The Board of Veterinary Medicine (Board) in the Department of Business and Professional Regulation (DBPR) implements the provisions of ch. 474, F.S., relating to veterinary medical practice (practice act). The purpose of the practice act is to ensure that every veterinarian practicing in this state meets minimum requirements for safe practices to protect public health and safety.[1]

A "veterinarian" is a health care practitioner licensed by the Board to engage in the practice of veterinary medicine in Florida[2] and they are subject to disciplinary action from the Board for various violations of the practice act.[3]

The practice of "veterinary medicine" is the diagnosis of medical conditions of animals, and the prescribing or administering of medicine and treatment to animals for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease, or holding oneself out as performing any of these functions.[4]

Veterinary medicine includes, with respect to animals:[5]

- Surgery;
- Acupuncture;
- Obstetrics;
- Dentistry;
- Physical therapy;
- Radiology;
- Theriogenology (reproductive medicine);[6] and
- Other branches or specialties of veterinary medicine.

The practice act does not apply to the following categories of persons:

- Veterinary aides, nurses, laboratory technicians, preceptors,[7] or other employees of a licensed veterinarian, who administer medication or provide help or support under the responsible supervision[8] of a licensed veterinarian;
- Certain non-Florida licensed veterinarians who are consulting upon request of a Florida-licensed veterinarian on the treatment of a specific animal or on the treatment on a specific case of the animals of a single owner.
- Faculty veterinarians when they have assigned teaching duties at accredited[9] institutions;

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[1] S. 474.201, F.S.
[2] S. 474.202(11), F.S.
[3] Ss. 474.213 & 474.214, F.S.
[4] *See* s. 474.202(9), F.S. Also included is the determination of the health, fitness, or soundness of an animal, and the performance of any manual procedure for the diagnosis or treatment of pregnancy or fertility or infertility of animals.
[5] *See* s. 474.202(13), F.S. S. 474.202(1), F.S., defines "animal" as "any mammal other than a human being or any bird, amphibian, fish, or reptile, wild or domestic, living or dead."
[6] The Society for Theriogenology, established in 1954, is composed of veterinarians dedicated to standards of excellence in animal reproduction. *See* https://www.therio.org/ (last visited Mar. 6, 2023).
[7] A preceptor is a skilled practitioner or faculty member who directs, teaches, supervises, and evaluates students in a clinical setting to allow practical experience with patients. *See also* https://www.merriam-webster.com/dictionary/preceptor#medicalDictionary (last visited Mar. 6, 2023).
[8] The term "responsible supervision" is defined in s. 474.202(10), F.S., as the "control, direction, and regulation by a licensed doctor of veterinary medicine of the duties involving veterinary services" delegated to unlicensed personnel.
[9] Ss. 474.203(1) and (2), F.S., provide that accreditation of a school or college must be granted by the American Veterinary Medical Association (AVMA) Council on Education, or the AVMA Commission for Foreign Veterinary Graduates.

- Certain graduated intern/resident veterinarians of accredited institutions;
- Certain students in a school or college of veterinary medicine who perform assigned duties by an instructor or work as preceptors;
- Certain doctors of veterinary medicine employed by a state agency or the United States Government;
- Persons or their employees caring for the persons' own animals, as well as certain part-time or temporary employees, or independent contractors, who are hired by an owner to help with herd management and animal husbandry tasks; and
- Certain entities or persons[10] that conduct experiments and scientific research on animals as part of the development of pharmaceuticals, biologicals, serums, or treatment methods of treatment or techniques to diagnose or treatment of human ailments, or in the study and development of methods and techniques applicable to the practice of veterinary medicine.[11]

Any permanent or mobile establishment where a licensed veterinarian practices must have a premises permit issued by DBPR.[12] Each person to whom a veterinary license or premises permit is issued must conspicuously display such document in her or his office, place of business, or place of employment in a permanent or mobile veterinary establishment or clinic.[13]

By virtue of accepting a license to practice veterinary medicine in Florida, a veterinarian consents to:

- Render a handwriting sample to an agent of the department and, further, to have waived any objections to its use as evidence against her or him.
- Waive the confidentiality and authorize the preparation and release of medical reports pertaining to the mental or physical condition of the licensee when the department has reason to believe that a violation of this chapter has occurred and when the department issues an order, based on the need for additional information, to produce such medical reports for the time period relevant to the complaint.[14]

For Fiscal Year 2020-2021, there were 12,156 actively licensed veterinarians in Florida. DBPR received 472 complaints, which resulted in 17 disciplinary actions.[15]

Veterinarian/Client/Patient Relationship

The practice act defines a "patient" as any animal for which the veterinarian practices veterinary medicine.[16]

The practice act defines a "veterinarian/client/patient relationship" (VCPR) as one in which a veterinarian has assumed responsibility for making medical judgments about the health of an animal and its need for medical treatment.[17]

Veterinarians are permitted to prescribe drugs in the course of veterinary practice, but may be disciplined by the Board for certain related violations, including ordering, prescribing, or making available medicinal drugs or drugs[18] or controlled substances[19] for use other than for the specific treatment of animal patients for which there is a documented VCPR and without:

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[10] *See* s. 474.203(6), F.S., which states that the exemption applies to "[s]tate agencies, accredited schools, institutions, foundations, business corporations or associations, physicians licensed to practice medicine and surgery in all its branches, graduate doctors of veterinary medicine, or persons under the direct supervision thereof...."
[11] *See* s. 474.203, F.S.
[12] S. 474.215(1), F.S.
[13] S. 474.216, F.S.
[14] S. 474.2185, F.S.
[15] Department of Business and Professional Regulation, *Division of Professions Annual Report Fiscal Year 2020-2021*, http://www.myfloridalicense.com/DBPR/os/documents/DivisionAnnualReport_FY2021.pdf (last visited Mar. 6, 2023).
[16] S. 474.202(8), F.S.
[17] S. 474.202(12), F.S.
[18] S. 465.003(8), F.S.
[19] S. 893.02(4), F.S.

- Having sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the medical condition of the animal, which means that the veterinarian is personally acquainted with the keeping and caring of the animal and has recently seen the animal or has made medically appropriate and timely visits to the premises where the animal is kept;
- Being available to provide for follow-up care and treatment in case of adverse reactions or failure of the regimen of therapy; and
- Maintaining records which document patient visits, diagnosis, treatment, and other relevant information required under the practice act.[20]

Veterinary Telemedicine

The use of electronic communications to facilitate patient health care (telemedicine) is not addressed in the practice act and is not specifically prohibited or authorized for practitioners of veterinary medicine in Florida.[21]

Veterinary Telemedicine During the Pandemic

On March 24, 2020, the U.S. Food and Drug Administration (FDA) announced that it would temporarily suspend enforcement of certain prescription limitations in order to allow veterinarians to better utilize telemedicine to address animal health needs during the COVID-19 pandemic. Specifically, the FDA provided guidance related to suspending the enforcement of the animal examination and premises visit VCPR requirements relevant to FDA regulations governing **Extra-label Drug Use in Animals**[22] and **Veterinary Feed Directive Drugs**.[23] This allowed veterinarians to prescribe or authorize the use of drugs without direct examination or making visits to patients, in an effort to limit human-to-human interaction and potential spread of COVID-19 in the community.[24]

According to the FDA, veterinarians are licensed by their state veterinary licensing board and must meet the requirements of the licensing board to practice in that state. FDA regulates the devices and drugs that veterinarians use, and the conditions under which veterinarians may **prescribe drugs for extra-label uses**. When an approved drug is used in a manner other than what is stated on the label, it is an extra-label use. This is commonly called an "off-label" use because the drug is used in a way that is "off the label."[25]

On March 27, 2020, DBPR issued emergency order EO 2020-04, which suspended any restriction of ch. 474, F.S., or ch. 61G-18, F.A.C., which would prohibit an active Florida-licensed veterinarian from practicing telemedicine on a patient. The order specified that attending veterinarians must be comfortable assessing the patient remotely and feel able to exercise good clinical judgment to assist the patient.[26]
The FDA withdrew its temporary guidance suspending the enforcement of the animal examination and premises visit VCPR requirements on February 21, 2023.[27]

DBPR's emergency order allowing Florida-licensed veterinarians to practice telemedicine ended with

[20] S. 474.214(1)(y)., F.S.
[21] R. 64B8-9.0141, F.A.C. Currently, medical doctors may practice telemedicine in Florida in a patient relationship with a patient evaluation, under certain circumstances.
[22] 21 C.F.R. part 530.
[23] 21 C.F.R. s. 558.6.
[24] U.S. Food and Drug Administration, *Coronavirus (COVID-19) Update: FDA Helps Facilitate Veterinary Telemedicine During Pandemic*, https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-helps-facilitate-veterinary-telemedicine-during-pandemic (last visited Mar. 6, 2023).
[25] .S. Food and Drug Administration, *What FDA Does and Does Not Regulate*, https://www.fda.gov/animal-veterinary/animal-health-literacy/what-fda-does-and-does-not-regulate#top (last visited Mar. 6, 2023).
[26] Department of Business and Professional Regulation, *Emergency Order EO 2020-04*, Mar. 27, 2020, http://www.myfloridalicense.com/dbpr/os/documents/EO_2020-04.pdf (last visited Mar. 6, 2023).
[27] 87 C.F.R. 78111.

the expiration of Florida's COVID-19 state of emergency (EO 20-52) on Saturday June 26, 2021.[28]

Veterinary Telemedicine in Other States

The use of telemedicine by veterinarians varies by state. Some states allow telemedicine to be used at the veterinarian's discretion, others allow it after the establishment of a VCPR, some do not allow it at all, and others limit telemedicine for purposes of prescribing medication or controlled substances.

According to the Veterinary Virtual Care Association, state laws relating to veterinary telemedicine generally fall within the following categories: six states either enable vets to use telemedicine to establish a VCPR or have no VCPR; seven states require the provider to have "recently seen" or become "acquainted with" the animal; 25 states require an examination or a physical examination for a VCPR; and 10 states expressly prohibit using telemedicine to establish a VCPR. Florida is not included among these categories.[29]

Virginia allows veterinarians to practice telemedicine. In addition, it allows a veterinarian who performs or has performed an appropriate examination of a patient to prescribe certain controlled substances to a patient via the practice of telemedicine. The Virginia Board of Veterinary Medicine adopted guidance effective September 17, 2020, for telehealth in the practice of veterinary medicine, which indicates that:

> "Using telehealth technologies in veterinary practice is considered a method of service delivery. The current, applicable regulations apply to all methods of service delivery, including telehealth. The licensee is responsible for using professional judgment to determine if the type of service can be delivered via telehealth at the same standard of care as in-person service."[30]

The Idaho Board of Veterinary Medicine provides the following guidance on telehealth:

> "The veterinarian must employ sound profession judgment to determine whether using Telehealth is appropriate in particular circumstances each and every time animal care is provided and only provide medical advice or treatment via Telehealth to the extent that it is possible without a hands on examination. A veterinarian using Telehealth must take appropriate steps to obtain Informed Consent, establish the VCPR and conduct all appropriate evaluations and history of the patient consistent with traditional standards of care for the particular patient presentation. As such, some situations and patient presentations are appropriate for the utilization of Telehealth as a component of, or in lieu of, hands on medical care, while others are not."[31]

The state of Oklahoma only allows a veterinarian to prescribe drugs via telemedicine under the following conditions:

> "The veterinarian accepts that he or she cannot prescribe drugs when practicing via telehealth alone, unless the veterinarian has sufficient knowledge of the animal or group of animals by virtue of a history and inquiry, and either physical examination or medically

[28] On March 9, 2020, Governor DeSantis issued Executive Order 20-52 which declared a state of emergency for the entire state due to COVID-19. The Executive Order was extended several times. Executive Order 21-94 extended the state of emergency for sixty days from April 27, 2021. The sixtieth day was Saturday June 26, 2021, and the order was not renewed by the Governor.

[29] Veterinary Virtual Care Association, Veterinary Telemedicine Regulatory Map, https://vvca.org/telemedicine-map/ (last visited Mar. 19, 2023).

[30] Virginia Board of Veterinary Medicine, *Guidance for Telehealth in the Practice of Veterinary Medicine, Guidance Document: 150-25*, https://www.dhp.virginia.gov/media/dhpweb/docs/vet/guidance/150-25.pdf (last visited Mar. 6, 2023).

[31] Idaho Veterinary Medical Association, *State specific questions for Idaho – Essential services, taxes, telehealth, IDAHO BOARD OF VETERINARY MEDICINE – TELEMEDICINE STATEMENT*, https://www.ivma.org/2020/03/26/idaho-essential-services-extended-tax-filing-deadline/ (last visited Mar. 6, 2023).

appropriate and timely visits to the premises where the animal or group of animals is kept."[32]

The state of Washington only allows telemedicine after a VCPR has been established:

> "The veterinarian shall not establish a veterinary-client-patient relationship solely by telephonic or other electronic means. However, once established, a veterinary-client-patient relationship may be maintained between medically necessary examinations via telephone or other types of consultations."[33]

Michigan recently repealed the need for an **in-person** exam prior to practicing telemedicine. Effective April 15, 2021, a veterinarian providing a "telehealth service" is required to have sufficient knowledge of the animal patient by having recently examined the animal patient in person or obtained current knowledge of the animal patient through the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically, or have conducted medically appropriate and timely visits to the premises where the group of animal patients is kept.[34]

Telehealth for Medical Doctors

Current law broadly defines "telehealth" as the use of synchronous or asynchronous telecommunications technology by a telehealth provider to provide health care services, including, but not limited to:[35]

- Assessment, diagnosis, consultation, treatment, and monitoring of a patient;
- Transfer of medical data;
- Patient and professional health-related education;
- Public health services; and
- Health administration.

Telehealth does not include audio-only telephone calls, e-mail messages, or facsimile transmission under Florida law.[36] No express authority is needed to communicate using these methods.

Health care services may be provided via telehealth by a Florida-licensed health care practitioner, a practitioner licensed under a multistate health care licensure compact of which Florida is a member,[37] or a registered out-of-state-health care provider.[38]

Out-of-state telehealth providers must register biennially with the Department of Health (DOH) or the applicable board to provide telehealth services, within the relevant scope of practice established by Florida law and rule, to patients in this state. To register or renew registration as an out-of-state telehealth provider, the health care professional must:

- Hold an active and unencumbered license, which is substantially similar to a license issued to a Florida practitioner in the same profession, in a U.S. state or jurisdiction and
- Not have been subject to licensure disciplinary action during the five years before submission of the registration application;[39]
- Not be subject to a pending licensure disciplinary investigation or action;
- Not have had license revoked in any state or jurisdiction;
- Designate a registered agent in this state for the service of process;

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[32] Oklahoma State Board of Veterinary Medical Examiners, Board Telemedicine/Telehealth Position Statement, https://www.okvetboard.com/veterinarian-faq/95-board-telemedicine-telehealth-position-statement (last visited Mar. 6, 2023).
[33] Wash. Rev. Code § 246-933-200(2).
[34] Mich. Gen. R. 338.4901a.
[35]
[36] S. 456.47(1), F.S.
[37] Florida is a member of the Nurse Licensure Compact. *See* s. 464.0095, F.S.
[38] S. 456.47(4), F.S.
[39] The bill requires DOH to consult the National Practitioner Data Bank to verify whether adverse information is available for the registrant.

- Maintain professional liability coverage or financial responsibility, which covers services provided to patients not located in the provider's home state, in the same amount as required for Florida-licensed practitioners;[40] and
- Prominently display a link to the DOH website, described below, which provides public information on registered telehealth providers.[41]

Telehealth Standards of Practice

Current law sets the standard of care for telehealth providers at the same level as the standard of care for health care practitioners or health care providers providing in-person health care services to patients in this state. This ensures that a patient receives the same standard of care irrespective of the modality used by the health care professional to deliver the services. A patient receiving telehealth services may be in any location at the time services are rendered and a telehealth provider may be in any location when providing telehealth services to a patient.[42]

Practitioners may perform a patient evaluation using telehealth. A practitioner using telehealth is not required to research a patient's medical history or conduct a physical examination of the patient before providing telehealth services to the patient if the telehealth provider is capable of conducting a patient evaluation in a manner consistent with the applicable standard of care sufficient to diagnose and treat the patient when using telehealth.

Emergency Orders

On January 31, 2020, the U.S. Secretary of HHS issued a public health emergency.[43] On March 16, 2020, the DEA published a COVID-19 Information page on the Diversion Control Division website, authorizing DEA-registered practitioners to issue prescriptions for all Schedule II-V controlled substances to patients without first conducting an in-person medical evaluation, provided all of the following conditions are met:

- The prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of his/her professional practice.
- The evaluation is conducted using an audio-visual, real-time, two-way interactive communication system.
- The practitioner is acting in accordance with applicable federal and state law.[44]

On March 16, 2020, Surgeon General Scott Rivkees executed DOH Emergency Order 20-002 authorizing certain out-of-state physicians, osteopathic physicians, physician assistants, and advanced practice registered nurses to provide telehealth in Florida without the need to register as a telehealth

[40] Florida law requires physicians, acupuncturists, chiropractic physicians, dentists, anesthesiologist assistants, advanced practice registered nurses, and licensed midwives to demonstrate $100,000 per claim and an annual aggregate of $300,000 of professional responsibility (*see* ss. 458.320 and 459.0085, F.S.; r. 64B1-12.001. F.A.C; r. 64B2-17.009, F.A.C.; 64B5-17.0105, F.A.C.; r. 64B8-31.006 and 64B15-7.006, F.A.C.; r. 64B9-4.002, F.A.C.; and r. 64B24-7.013, F.A.C.; respectively). Podiatric physicians must demonstrate professional responsibility in the amount of $100,000 (*see* r. 64B18-14.0072, F.A.C.).

[41] S. 456.47(4), F.S.

[42] S. 456.47(2), F.S.

[43] Determination that a Public Health Emergency Exists, Alex M. Azar II, Secretary of U.S. Department of Health and Human Services (January 31, 2020) https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx (last visited Mar. 6, 2023).

[44] Diversion Control Division, U.S. Department of Justice Drug Enforcement Administration, *COVID-19 Information Page*, https://www.deadiversion.usdoj.gov/coronavirus.html (last visited Jan. 5, 2022); Letter from Thomas Prevoznik, Deputy Assistant Administrator, Diversion Control Division, U.S. Department of Justice Drug Enforcement Administration, to DEA Qualifying Practitioners and Other Practitioners, (Mar. 31, 2020) https://www.deadiversion.usdoj.gov/GDP/(DEA-DC-022)(DEA068)%20DEA%20SAMHSA%20buprenorphine%20telemedicine%20%20(Final)%20+Esign.pdf (last visited Mar. 6, 2023).

provider under s. 456.47(4), F.S.[45] This emergency order ended with the expiration of Florida's COVID-19 state of emergency (EO 20-52) on June 26, 2021.[46]

The Surgeon General also executed DOH Emergency Order 20-003[47] authorizing certain out-of-state clinical social workers, marriage and family therapists, mental health counselors, and psychologists to provide telehealth in Florida without the need to register as a telehealth provider under s. 456.47(4), F.S. This emergency order also ended on June 26, 2021.[48]

Controlled Substances – Florida Law

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act. This chapter classifies controlled substances into five schedules in order to regulate the manufacture, distribution, preparation, and dispensing of the substances. The scheduling of substances in Florida law is generally consistent with the federal scheduling of substances under 21 U.S.C. s. 812:

- A Schedule I substance has a high potential for abuse and no currently accepted medical use in treatment in the United States and its use under medical supervision does not meet accepted safety standards. Examples include heroin and lysergic acid diethylamide (LSD).
- A Schedule II substance has a high potential for abuse, a currently accepted but severely restricted medical use in treatment in the United States, and abuse may lead to severe psychological or physical dependence. Examples include cocaine and morphine.
- A Schedule III substance has a potential for abuse less than the substances contained in Schedules I and II, a currently accepted medical use in treatment in the United States, and abuse may lead to moderate or low physical dependence or high psychological dependence or, in the case of anabolic steroids, may lead to physical damage. Examples include lysergic acid; ketamine; and some anabolic steroids.
- A Schedule IV substance has a low potential for abuse relative to the substances in Schedule III, a currently accepted medical use in treatment in the United States, and abuse may lead to limited physical or psychological dependence relative to the substances in Schedule III. Examples include alprazolam, diazepam, and phenobarbital.
- A Schedule V substance has a low potential for abuse relative to the substances in Schedule IV, a currently accepted medical use in treatment in the United States, and abuse may lead to limited physical or psychological dependence relative to the substances in Schedule IV. Examples include low dosage levels of codeine, certain stimulants, and certain narcotic compounds.

Controlled Substances – Federal Law

The Federal Controlled Substances Act[49] also classifies controlled substances into schedules based on the potential for abuse and whether there is a currently accepted medical use for the substance. The Drug Enforcement Administration (DEA) is required to consider the following when determining where to schedule a substance:[50]

- The substance's actual or relative potential for abuse;
- Scientific evidence of the substance's pharmacological effect, if known;

[45] Department of Health, State of Florida, *Emergency Order DOH No. 20-002* (Mar. 16, 2020) http://floridahealthcovid19.gov/wp-content/uploads/2020/03/filed-eo-doh-no.-20-002-medical-professionals-03.16.2020.pdf (last visited Mar. 6, 2023).
[46] On March 9, 2020, Governor DeSantis issued Executive Order 20-52 which declared a state of emergency for the entire state due to COVID-19. The Executive Order was extended several times. Executive Order 21-94 extended the state of emergency for sixty days from April 27, 2021. The sixtieth day was Saturday June 26, 2021, and the order was not renewed by the Governor.
[47] Department of Health, State of Florida, *Emergency Order DOH No. 20-003* (Mar. 21, 2020) https://s33330.pcdn.co/wp-content/uploads/2020/03/DOH-EO-20-003-3.21.2020.pdf (last visited Mar. 6, 2023).
[48] On March 9, 2020, Governor DeSantis issued Executive Order 20-52 which declared a state of emergency for the entire state due to COVID-19. The Executive Order was extended several times. Executive Order 21-94 extended the state of emergency for sixty days from April 27, 2021. The sixtieth day was Saturday June 26, 2021, and the order was not renewed by the Governor.
[49] 21 U.S.C. s. 812.
[50] 21 U.S.C. s. 811(c).

- The state of current scientific knowledge regarding the substance;
- The substance's history and current pattern of abuse;
- The scope, duration, and significance of abuse;
- What, if any, risk there is to public health;
- The substance's psychic or physiological dependence liability; and
- Whether the substance is an immediate precursor of a substance already controlled.

Telehealth Prescribing of Controlled Substances

Federal law specifically prohibits prescribing controlled substances via the Internet without an in-person evaluation, but the Ryan Haight Online Pharmacy Consumer Protection Act (Haight Act),[51] signed into law in October 2008[52] created a pathway for telehealth practitioners to dispense controlled substances via telehealth. The practitioner is still subject to the requirement that all controlled substance prescriptions be issued for a legitimate purpose by a practitioner acting in the usual course of professional practice. But, **once an in-person evaluation of the patient has occurred**, the practitioner may provide future prescriptions for **controlled substances** for that patient using telehealth services.[53]

Florida law currently prohibits a telehealth provider (human) from using telehealth services to prescribe a Schedule II controlled substance except when treating a psychiatric disorder, an inpatient at a licensed hospital, a patient receiving hospice services, or a resident of a nursing home facility. However, providers are allowed to prescribe Schedule III, IV, and V controlled substances using telehealth services without limitation.[54]

Prescription Drug Law for Veterinarians

In order to purchase, prescribe, administer or dispense controlled substances in Florida, veterinarians must obtain a license from the U.S. Drug Enforcement Administration (DEA). Florida does not require any additional licensure for veterinarians to purchase and prescribe controlled drugs.[55]

The DEA is a division within the U.S. Department of Justice and reports to the U.S. Attorney General. In consultation with the U.S. Secretary of the federal Department of Health and Human Services (HHS) and others, the Attorney General oversees the listing of substances on five schedules (Classes I, II, III, IV or V) of controlled agents as described in Title 21 United States Code (USC) of the Controlled Substances Act. The central mission of the DEA is to enforce controlled substances laws and regulations.[56]

With respect to veterinarians and other health professionals, the major focus of the DEA is to prevent illegal diversion of controlled prescription drugs for the purpose of illicit or non-medical uses. In order to legally purchase, dispense or prescribe controlled prescription drugs, a veterinarian must be licensed by the DEA. Prescription drugs that are regulated or controlled by the DEA include many important drugs that are used routinely by veterinarians. DEA-controlled drugs are tightly controlled at all aspects of manufacturing, distribution, ordering, storage, use and disposition.[57]

While veterinarians are allowed to write prescriptions for controlled drugs, they cannot order controlled drugs from their local pharmacy for "in-house" use nor for secondary re-sale. Like any other prescription, controlled drug prescriptions must be written for a specific patient and cannot be for

[51] Ryan Haight Online Consumer Protection Act of 2008, Public Law 110-425 (H.R. 6353).
[52] 21 CFR s. 829, the in-person medical evaluation requires that the patient be in the physical presence of the provider without regard to the presence or conduct of other professionals.
[53] *Id*.
[54] S. 456.47(2)(c), F.S.
[55] Thomas Vickory, PhD, DEA REGULATION OF CONTROLLED DRUGS, https://www.vetfolio.com/learn/article/florida-drug-laws-update-2013 (last visited Mar. 6, 2023).
[56] Thomas, *supra* note 46.
[57] Thomas, *supra* note 46.

general use. As a licensed DEA registrant, veterinarians are expected to create and maintain a system that provides strong safeguards against theft or diversion of controlled drugs in their practice.[58]

Two opioids are approved and marketed for use in animals, butorphanol and buprenorphine. Due to the limited number of approved and marketed veterinary opioids, veterinarians who need to use opioids to control pain in their patients generally use products approved for use in people.[59]

Rabies Vaccinations

All dogs, cats, and ferrets four months of age or older must be vaccinated **by a licensed veterinarian** against rabies with a vaccine that is licensed by the U.S. Department of Agriculture (USDA) for use in those species. The owner must have the animal revaccinated 12 months after the initial vaccination, and subsequent vaccinations must conform to the vaccine manufacturer's directions. The cost of vaccination must be borne by the animal's owner. Violations of this requirement are a civil infraction, punishable as provided in s. 828.27(2), F.S.[60]

Currently, Florida law does not appear to allow anyone other than the veterinarian to administer the rabies vaccine. The law allows certain vaccines, anesthesia and tranquilization to be administered by a veterinary aide, nurse, laboratory technician, intern, or other employee of a licensed veterinarian while under the "immediate supervision" of a licensed veterinarian.[61] In addition, the following tasks may be performed without the licensed veterinarian on the premises:

- The administration of medication and treatment, **excluding vaccinations**, as directed by the licensed veterinarian; and
- The obtaining of samples and the performance of those diagnostic tests, including radiographs, directed by the licensed veterinarian.[62]

The Board has recognized that the following diseases are communicable to humans and are of public health significance, and as a result, **only a veterinarian** is authorized to immunize or treat an animal for these diseases. The diseases include:

- Brucellosis.
- Tuberculosis.
- Rabies.
- Equine Encephalomyelitis.[63]

Effect of the Bill

The bill allows licensed veterinarians to practice veterinary telemedicine on a limited basis, and indirectly supervise rabies vaccinations of impounded animals.

Regarding veterinary telemedicine, the bill:

- Defines "veterinary telemedicine" to mean the practice of veterinary medicine using synchronous, audiovisual, interactive telecommunications technology.
- Requires veterinarians to be currently licensed in order to practice veterinary telemedicine.
- Deems the practice to occur at the premises where the patient is located at the time a veterinarian practices veterinary telemedicine.
- Gives the Board jurisdiction over a veterinarian practicing veterinary telemedicine in this state, regardless of the location of the veterinarian's physical office.
- Requires veterinarians practicing telemedicine to provide the client with a statement containing:

[58] Thomas, *supra* note 46.
[59] U.S. FDA, *The Opioid Epidemic: What Veterinarians Need to Know*, https://www.fda.gov/animal-veterinary/resources-you/opioid-epidemic-what-veterinarians-need-know (last visited Mar. 6, 2023).
[60] S. 828.30(1), F.S.
[61] S. 474.202(5), F.S., defines "immediate supervision" or words of similar purport to mean a licensed doctor of veterinary medicine is on the premises whenever veterinary services are being provided.
[62] R. 61G18-17.005, F.A.C.
[63] R. 61G18-17.006, F.A.C.

    - The veterinarian's identity, license number, and contact information;
    - The contact for at least one physical veterinary clinic in the vicinity of the pet's location; and
    - Instructions for how to receive patient follow-up care or assistance if the veterinarian and client are unable to communicate because of a technological or equipment failure or if there is an adverse reaction to treatment.
- Requires the veterinarian to obtain from the client a signed and dated statement indicating the client has received the required information from the client statement.
- Authorizes a veterinarian practicing veterinary telemedicine to order, prescribe, or make available medicinal drugs.
- Limits a veterinarian's authority to order, prescribe, or make available controlled substances while practicing telemedicine to situations where the veterinarian has previously performed an in-person physical examination or made medically appropriate and timely visits to the premises where the patient is kept.
- Revises the requirement that a veterinarian have "seen the animal" in order to prescribe medicinal drugs and controlled substances, to instead require the veterinarian to have recently performed an examination of the patient either:
    - In person; or
    - By the use of veterinary telemedicine in compliance with s. 474.2021, F.S.
- Authorizes veterinarians who are personally acquainted with the caring and keeping of an animal or group of animals on food-producing animal operations on land classified as agricultural who has recently seen the animal or group of animals or has made medically appropriate and timely visits to the premises where the animal or group of animals is kept to practice veterinary telemedicine for animals on such operations in compliance with this section and applicable federal law.
- Requires veterinarians practicing telemedicine to employ sound, professional judgment to determine whether using veterinary telemedicine is an appropriate method for delivering medical advice or treatment to the patient and providing quality of care consistent with prevailing veterinary medical practice.
- Specifies that the practice of veterinary telemedicine in compliance with these provisions is not a quality-of-care violation, and a veterinarian may not be disciplined solely for practicing veterinary telemedicine.

Regarding rabies vaccinations, the bill:

- Allows an employee, agent, or contractor of an animal control authority acting under the indirect supervision of a veterinarian to administer rabies vaccinations to impounded animals that will be transferred, rescued, fostered, adopted, or reclaimed by the owner.
- Defines "indirect supervision," to mean the supervising veterinarian must be available for consultation through telecommunications but is not required to be on the premises during such consultation.
    - The supervising veterinarian assumes responsibility for the veterinary care given to the animal by any person working under or at his or her direction and supervision.
- Authorizes veterinarians who supervise an employee, agent, or contractor of an animal control authority administering the rabies vaccination to an animal to affix his or her signature stamp in lieu of an actual signature.

B. SECTION DIRECTORY:

Section 1: Titles the act the "Providing Equity in Telemedicine Services (PETS) Act."

Section 2: Amends s. 474.202, F.S., relating to definitions.

Section 3: Creates s. 474.2021, F.S., relating to veterinary telemedicine.

Section 4: Amends s. 474.203, F.S., relating to exemptions.

Section 5: Amends s. 474.214, F.S., relating to disciplinary proceedings.

Section 6: Amends s. 474.2165, F.S., relating to ownership and control of veterinary medical patient records; report or copies of records to be furnished.

Section 7: Amends s. 828.30, F.S., relating to rabies vaccination of dogs, cats, and ferrets.

Section 8: Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Indeterminate. Animal control authorities will be able to administer rabies vaccinations of impounded animals without a veterinarian having to be physically present. This may create a savings for local animal control authorities to the extent they are incurring extra veterinary costs associated with veterinarians being required to be onsite to administer rabies vaccinations.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Licensed veterinarians will be permitted to practice veterinary telemedicine, including limited prescription authority, thus giving them more flexibility in their practice. This will move them further toward equal footing with licensed health care providers in the state who are already allowed to practice telehealth.

Animal owners may have greater access to veterinarians and may feel more comfortable, especially during a state of emergency. Visitors and tourists with pets may be able to obtain veterinarian care while on vacation in Florida without the need for locating and transporting their animal to a veterinarian's office.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

3. Other:
   None.

B. RULE-MAKING AUTHORITY:

Current law appears to grant the Board sufficient authority to adopt rules to implement the provisions of this bill.[64]

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[64] S. 474.206, F.S.

A bill to be entitled

An act relating to the medical treatment of animals; providing a short title; amending s. 474.202, F.S.; defining the term "veterinary telemedicine"; creating s. 474.2021, F.S.; authorizing veterinarians to practice veterinary telemedicine; providing licensure requirements to practice veterinary telemedicine; providing jurisdiction of the Board of Veterinary Medicine; requiring a veterinarian practicing telemedicine to establish a veterinarian/client/patient relationship, provide the client with specified information, and employ certain professional judgments regarding the use of veterinary telemedicine; authorizing a veterinarian practicing telemedicine to order, prescribe, or make available specified medicinal drugs; prohibiting such veterinarian from ordering, prescribing, or making available controlled substances unless certain conditions are met; authorizing veterinarians to practice veterinary telemedicine for animals on certain animal operations if the veterinarian meets certain conditions; amending s. 474.203, F.S.; conforming provisions to changes made by the act; amending s. 474.214, F.S.; revising grounds for disciplinary action against a veterinarian; amending

s. 474.2165, F.S.; revising the definition of the term "records owner" to conform to changes made by the act; amending s. 828.30, F.S.; authorizing certain employees, agents, or contractors to administer rabies vaccinations under certain circumstances; providing that a supervising veterinarian assumes responsibility for any person working under the veterinarian's supervision or at his or her direction; defining the term "indirect supervision"; authorizing a veterinarian who indirectly supervises the administration of the rabies vaccination to affix his or her signature stamp in lieu of an actual signature on the rabies vaccination certificate; providing an effective date.

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

Section 1. This act may be cited as the "Providing Equity in Telemedicine Services (PETS) Act."

Section 2. Subsection (14) is added to section 474.202, Florida Statutes, to read:

474.202 Definitions.—As used in this chapter:

(14) "Veterinary telemedicine" means the practice of veterinary medicine using synchronous, audiovisual, interactive telecommunications technology.

Section 3. Section 474.2021, Florida Statutes, is created to read:

474.2021 Veterinary telemedicine.—

(1) A veterinarian may practice veterinary telemedicine.

(2) A veterinarian must hold a current license to practice veterinary medicine in this state in order to practice veterinary telemedicine. The practice of veterinary medicine is deemed to occur at the premises where the patient is located at the time the veterinarian practices veterinary telemedicine.

(3) The board has jurisdiction over a veterinarian practicing veterinary telemedicine in this state, regardless of where the veterinarian's physical office is located.

(4) A veterinarian practicing telemedicine shall do all of the following:

(a) Establish the veterinarian/client/patient relationship.

(b) Provide the client with a statement containing the veterinarian's identity, license number, and contact information and the contact information for at least one physical veterinary clinic in the vicinity of the pet's location and instructions for how to receive patient follow-up care or assistance if the veterinarian and client are unable to communicate because of a technological or equipment failure or if there is an adverse reaction to treatment. The veterinarian shall obtain from the client a signed and dated statement indicating the client has

received the required information.

(c) Employ sound, professional judgment to determine whether using veterinary telemedicine is an appropriate method for delivering medical advice or treatment to the patient and providing quality of care consistent with prevailing veterinary medical practice. The practice of veterinary telemedicine in compliance with this section is not a quality-of-care violation, and a veterinarian may not be disciplined solely for practicing veterinary telemedicine.

(5) A veterinarian practicing veterinary telemedicine may order, prescribe, or make available medicinal drugs or drugs as defined in chapter 465.

(6) A veterinarian practicing veterinary telemedicine may not order, prescribe, or make available controlled substances as defined in chapter 893 unless the veterinarian has performed an in-person physical examination of the patient or made medically appropriate and timely visits to the premises where the patient is kept.

(7) A veterinarian personally acquainted with the caring and keeping of an animal or group of animals on food-producing animal operations on land classified as agricultural pursuant to s. 193.461 who has recently seen the animal or group of animals or has made medically appropriate and timely visits to the premises where the animal or group of animals is kept may practice veterinary telemedicine for animals on such operations

in compliance with this section and applicable federal law.

Section 4. Paragraph (a) of subsection (5) of section 474.203, Florida Statutes, is amended to read:

474.203 Exemptions.—This chapter does not apply to:

(5)(a) Any person, or the person's regular employee, administering to the ills or injuries of her or his own animals, including, but not limited to, castration, spaying, and dehorning of herd animals, unless title is transferred or employment provided for the purpose of circumventing this law. This exemption does not apply to any person licensed as a veterinarian in another state or foreign jurisdiction and practicing temporarily in this state. However, except as provided in s. 828.30, only a veterinarian may immunize or treat an animal for diseases that are communicable to humans and that are of public health significance.

For the purposes of chapters 465 and 893, persons exempt pursuant to subsection (1), subsection (2), or subsection (4) are deemed to be duly licensed practitioners authorized by the laws of this state to prescribe drugs or medicinal supplies.

Section 5. Paragraph (y) of subsection (1) of section 474.214, Florida Statutes, is amended to read:

474.214 Disciplinary proceedings.—

(1) The following acts shall constitute grounds for which the disciplinary actions in subsection (2) may be taken:

(y) Using the privilege of ordering, prescribing, or making available medicinal drugs or drugs as defined in chapter 465, or controlled substances as defined in chapter 893, for use other than for the specific treatment of animal patients for which there is a documented veterinarian/client/patient relationship. ~~Pursuant thereto,~~ The veterinarian shall:

1. Have sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the medical condition of the animal, which means that the veterinarian is personally acquainted with the keeping and caring of the animal and has recently performed an examination of the patient either in person or by the use of veterinary telemedicine in compliance with s. 474.2021 ~~seen the animal~~ or has made medically appropriate and timely visits to the premises where the animal is kept.

2. Be available or provide for follow-up ~~followup~~ care and treatment in case of adverse reactions or failure of the regimen of therapy.

3. Maintain records which document patient visits, diagnosis, treatment, and other relevant information required under this chapter.

Section 6. Subsection (1) of section 474.2165, Florida Statutes, is amended to read:

474.2165 Ownership and control of veterinary medical patient records; report or copies of records to be furnished.—

(1) As used in this section, the term "records owner" means any veterinarian who generates a medical record after making an ~~a physical~~ examination of a patient, either in person or by the use of veterinary telemedicine in compliance with s. 474.2021, or administering treatment or dispensing legend drugs to~~,~~ any patient; any veterinarian to whom records are transferred by a previous records owner; or any veterinarian's employer, provided the employment contract or agreement between the employer and the veterinarian designates the employer as the records owner.

Section 7. Subsections (1) and (3) of section 828.30, Florida Statutes, are amended to read:

828.30 Rabies vaccination of dogs, cats, and ferrets.—

(1)(a) All dogs, cats, and ferrets 4 months of age or older must be vaccinated by a licensed veterinarian or, in the case of impounded animals, a person authorized under paragraph (b) against rabies with a vaccine ~~that is~~ licensed by the United States Department of Agriculture for use in those species.

(b) An employee, an agent, or a contractor of a county or municipal animal control authority acting under the indirect supervision of a veterinarian may vaccinate impounded dogs, cats, and ferrets that will be transferred, rescued, fostered, adopted, or reclaimed by the owner. The supervising veterinarian assumes responsibility for any person vaccinating animals at the veterinarian's direction or under his or her supervision. As

used in this paragraph, the term "indirect supervision" means that the supervising veterinarian is required to be available for consultation through telecommunications but is not required to be physically present during such consultation.

(c) The owner of every dog, cat, and ferret shall have the animal revaccinated 12 months after the initial vaccination. Thereafter, the interval between vaccinations shall conform to the vaccine manufacturer's directions. The cost of vaccination must be borne by the animal's owner. Evidence of circulating rabies virus neutralizing antibodies may ~~shall~~ not be used as a substitute for current vaccination in managing rabies exposure or determining the need for booster vaccinations.

(3) Upon vaccination against rabies, the licensed veterinarian shall provide the animal's owner and the animal control authority with a rabies vaccination certificate. Each animal control authority and veterinarian shall use the "Rabies Vaccination Certificate" of the National Association of State Public Health Veterinarians (NASPHV) or an equivalent form approved by the local government which ~~that~~ contains all the information required by the NASPHV Rabies Vaccination Certificate. The veterinarian who administers the rabies vaccination, or who supervises the administration of the rabies vaccination as provided in paragraph (1)(b), ~~vaccine~~ to an animal as authorized ~~required~~ under this section may affix his or her signature stamp in lieu of an actual signature.

Section 8. This act shall take effect July 1, 2023.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1203 Registrations and Transfers of Heating, Ventilation, and Air-Conditioning System Manufacturer Warranties
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Maggard
TIED BILLS: **IDEN./SIM. BILLS:** SB 1242

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	14 Y, 0 N, As CS	Larkin	Anstead
2) Commerce Committee		Larkin	Hamon

SUMMARY ANALYSIS

Generally, manufacturers provide a warranty for a Heating, Ventilation, and Air Conditioning (HVAC) system for 5 to 10 years. The manufacturer warranty covers parts that might fail such as the air compressor or furnace heat exchanger. The manufacturer will replace or repair any parts at no cost if the parts are covered under the warranty. If a residential real property is sold to another person, the warranty time may be cut short or may not be transferable to the new owner. In Florida, most manufacturer warranties are tied to a person instead of the property. The HVAC manufacturer warranty is tied to the original owner and does not transfer when the property is sold unless the previous owner transfers it to a new owner if that is an option under the warranty.

The bill:

- Provides that regardless of ownership, an HVAC manufacturer's warranty runs with the property.
- Provides that an HVAC warrantor continues to be obligated under the terms of the warranty regardless of the property owner and may not charge a transfer fee.
- Provides that the transfer of an HVAC manufacturer warranty does not make the existing warranty term longer.
- Provides that such warranties are deemed registered if a licensed contractor meets certain requirements.
- Provides that a licensed contractor who installs a new HVAC system must document the installation through an invoice or receipt to the customer.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Warranty Background

A warranty is an assurance that a manufacturer or seller makes about the condition of its product.[1] A warranty means that a manufacturer or seller will replace or repair the product under certain instances. A warranty can be either express or implied.[2]

An express warranty is a verbal or written assurance for the product.[3] On the other hand, an implied warranty is an unstated assurance that the product is made for its intended purpose.[4] An implied warranty is in addition to an express warranty. However, an implied warranty may be negated or limited by an express warranty. There is no implied warranty if a seller states that the product is "as is", "with all faults", or similar language.[5]

Manufacturer Warranties

A manufacturer warranty attaches to the purchase of the product by the manufacturer. A manufacturer warranty is considered a limited warranty because the warranty is only valid for a certain time period after the purchase. These terms and conditions are created by the manufacturer. Once the period of coverage is over, someone can purchase an extended warranty under different coverage terms to extend the protection of the product beyond the terms and conditions laid out in the manufacturer warranty.[6]

Magnuson-Moss Warranty Act

The Magnuson-Moss Warranty Act (MMWA)[7] is a federal law that governs consumer product warranties. Passed in 1975, the Act requires manufacturers and sellers of consumer products to provide consumers with detailed information about warranty coverage before and after the sale of the warranted product.[8]

The MMWA defines three kinds of consumers:

- a buyer of any consumer product;
- any person to whom such product is transferred during the duration of an implied or express warranty applicable to the product;
- any other person who is entitled by the terms of such warranty or under applicable State law to enforce the obligations of the warranty.[9]

Manufacturer Warranties for HVAC Systems- Current Situation

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[1] Will Kenton, *Warranty Definition, Types, Example, and How It Works*, Investopedia, Nov. 24, 2022, https://www.investopedia.com/terms/w/warranty.asp (last visited March 11, 2023).
[2] 45 Fla. Jur 2d Sales and Exchanges of Goods § 156.
[3] "An express warranty is created by an affirmation of fact or promise made by the seller to the buyer that relates to the goods, by any description of the goods that is made part of the basis of the bargain, or by any sample or model that is made part of the basis of the bargain." S. 672.313, F.S.
[4] S. 672.314, F.S.
[5] S. 672.316, F.S.
[6] Tom Scott, *Extended Warranties vs. Manufacturer Warranties: What's the Difference?*, Fortegra, July 9, 2019, https://blog.fortegra.com/extended-warranties-vs.-manufacturer-warranties-whats-the-difference (last visited March 11, 2023).
[7] 15 U.S.C. §§ 2301-2312 (1975).
[8] MMWA does not apply if a seller or manufacturer does not provide a warranty on their product. Jason Gordon, *Magnuson Moss Warranty Act – Explained*, The Business Professor, Sept. 26, 2021, https://thebusinessprofessor.com/en_US/consumer-law/magnuson-moss-warranty-act (last visited March 12, 2023).
[9] *O'Connor v. BMW of N. Am., LLC*, 905 So. 2d 235, 236–37 (Fla. 2d DCA 2005); *see also*, § 2310(d) of MMMWA provides that, "a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this title, or under a written warranty, implied warranty, or service contract, may bring suit for damages…"

Florida

Most manufacturers require that an HVAC contractor purchase and install the HVAC system before the consumer can register the HVAC system for the limited manufacturer warranty. Generally, manufacturers provide a warranty for the HVAC system for 5 to 10 years. The warranty covers parts that might fail such as the air compressor or furnace heat exchanger. The manufacturer will replace or repair any parts at no cost if the parts are covered under the warranty.[10] The following are examples of leading HVAC manufacturers and their warranty terms:

- Goodman air conditioner warranty: 10-year unit replacement limited warranty, lifetime compressor limited warranty on select models.
- Carrier air conditioner warranty: 10-year parts limited warranty on Infinity, Performance, and Comfort series models with Puron refrigerant.
- Lennox air conditioner warranty: 10-year limited parts and compressor warranty for Dave Lennox Signature® Collection Series models; 5-year limited parts warranty, 10-year compressor
- Trane air conditioner warranty: 1 to 20-year base limited warranty that covers compressor, outdoor coil, and internal functioning components.
- Bryant air conditioner warranty: 10-year standard parts limited warranty if registered within 90 days of purchase; 5-year standard parts limited warranty if not registered.
- Amana air conditioner warranty: Lifetime limited warranty for compressor, lifetime unit replacement warranty, 10-year parts limited warranty, varies by model.

If a building or house that contains an HVAC system with a manufacturer warranty is sold to another person, the warranty time may be cut short or may not transfer to the new owner. The assignment of the HVAC warranty to the new owner is contingent upon the terms and conditions for the warranty.[11] In Florida, most manufacturer warranties are tied to a person instead of the property. Usually, the manufacturer warranty is tied to the original owner and does not transfer when the property is sold unless the previous owner transfers it to the new owner if that is an option in the warranty. Below are some typical transfer policies:[12]

Manufacturer	Transfer Policy
Carrier	• Must register within 90 days of the property sale. • HVAC must stay in same location. • Subsequent owner will have access to limited warranty with 5-year parts and compressor coverage.
Maytag	• Can transfer a warranty from the original owner to subsequent owner. • Subsequent owner can access an "unregistered warranty" for 5-year parts and compressor coverage and 20-year heat exchanger coverage. • Subsequent owners cannot access the entire coverage period that the original owner had for the registered warranty.
Trane	• Warranty stays with the HVAC unit regardless of original or subsequent ownership. • Subsequent owner gets access to the remaining warranty coverage period of the original owner's limited warranty with the manufacturer, but the subsequent owner must register the unit with Trane and pay a transfer fee.

Other States

States differ in their approach on the transferability of warranties to a subsequent owner. In Louisiana and Texas, warranties automatically transfer the remaining coverage of the original owner, without any cost, to the subsequent owner of the property.[13] In Alaska, if the lessor has a warranty on personal property and

[10] Bryan Carnahan, *HVAC Warranties and You: What Are They, and Why Should You Register Your Product?,* Fire & Ice Heating and Air Conditioning, Inc., July 1, 2022, https://indoortemp.com/resources/hvac-warranties-and-product-registration (last visited March 12, 2023).
[11] Ralph Desmornes, *Does My Air Conditioner Have a Warranty?*, HVAC, July 26, 2022, https://www.hvac.com/air-conditioners/does-my-air-conditioner-have-a-warranty/ (last visited March 12, 2023).
[12] Bry'Ana Arvie, Will HVAC Warranties Automatically Transfer over to New Homeowners?, Angi, Aug. 10, 2021, https://www.angi.com/articles/do-hvac-warranties-transfer-homeowners.htm (visited March 12, 2023).
[13] La. Stat. § 9:3148; TX BUS & COM § 608.002(a)-(b) which states the following:

the terms of the warranty permit transfer, the lessor may transfer the warranty to the new person who acquired ownership.[14] Generally, states allow the terms and conditions of the warranty to control whether the remaining coverage is transferable to a subsequent owner.

Manufacturer Warranties for HVAC Systems- Effect of the Bill

The bill makes the manufacturer warranty for an HVAC system run with the property instead of the person.

The bill provides that:

- a manufacturer's warranty for an HVAC system is attached to the residential property, not the original owner;
- once a new owner purchases a residential property, the remaining manufacturer warranty coverage for an HVAC system is instantly transferred to the new owner;
- a manufacturer continues to be obligated under the terms of a manufacturer's warranty agreement for a warranty that is transferred and may not charge a fee for the transfer of the warranty;
- the transfer of a manufacturer warranty not make the existing warranty term longer;
- a manufacturer's warranty of an HVAC system is deemed registered with the manufacturer if a contractor licensed under part I of chapter 489:
    - installs the new HVAC system; and
    - provides the manufacturer of the HVAC system with the date of the issuance of the certificate of occupancy[15] for installations relating to new construction, or the serial number of the HVAC system for installations relating to existing construction, as applicable.
- the contractor licensed under part I of chapter 489 who installs a new HVAC system must document the installation through an invoice or receipt to the customer.

Overall, the bill allows a homeowner to be discharged from the responsibility of registering a new HVAC system for a manufacturer warranty and the responsibility of transferring the remaining warranty coverage for the HVAC system to a new owner.

B. SECTION DIRECTORY:

Section 1: Creating s. 559.956, F.S.; requiring manufacturer warranties for heating, ventilation, and air-conditioning systems to run with the property; providing that the manufacturer continues to be obligated under the terms of a manufacturer warranty agreement regardless of the owner and may not charge a transfer fee; providing that the transfer of a warranty not extend the warranty; providing such warranties are deemed registered if a contractor licensed under part I of chapter 489 meets certain requirements; requiring certain documentation.

Section 2: Providing an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

(a) If residential real property that includes an air conditioning system as a fixture to the property is conveyed to a new owner, a manufacturer's warranty in effect on that system or a component of that system on the date of the conveyance:
(1) is automatically transferred to the new owner; and
(2) continues in effect as if the new owner was the original purchaser of the system or component, as applicable.
(b) A warrantor continues to be obligated under the terms of a manufacturer's warranty agreement for a warranty transferred under this section and may not charge a fee for the transfer of the warranty.

[14] Alaska Stat. Ann. § 45.35.020.

[15] Under the Florida Building Code, a building or structure is not allowed to be used, occupied, or to be changed from its existing use or occupancy until a building official has issued certificate of occupancy. After a building official conducts an inspection of a building or a structure and finds no violations with applicable law, a building official issues a certificate of occupancy. Ss. 111.1 and 111.2 of the Florida Building Code, Seventh edition.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There would be a positive economic impact for property owners and subsequent property owners as they will enjoy the remaining manufacturer warranty coverage for their HVAC system without having to file additional paperwork. This means that if they have a faulty HVAC part that is covered under the warranty, then there will be no cost to repair that part.

There will likely be a positive economic impact on HVAC contractor industry professionals because consumers will be more likely to hire them to repair their HVAC system when the costs of the parts would be covered under the warranty and the consumers would only pay for cost of the labor.

It is unclear whether manufacturers will increase product costs based on any increase in payouts on warranties.

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 16, 2023, the Regulatory Reform & Economic Development Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Clarifies that a manufacturer's warranty for an HVAC system is attached to the property and not to the original purchaser.
- Clarifies that this bill only applies to residential real properties.
- Provides that the warrantor continues to be obligated under the terms of a manufacturer's warranty and cannot charge the new owner a transfer fee.

- Provides that the transfer of the warranty to the new owner does not make the existing warranty term longer.
- Provides that such warranties are deemed registered if a contractor meets certain requirements.
- Provides that a contractor must document the HVAC system installation and provide the invoice or receipt to the customer.
- Makes technical and conforming changes.

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

A bill to be entitled

An act relating to registrations and transfers of heating, ventilation, and air-conditioning system manufacturer warranties; creating s. 559.956, F.S.; requiring a manufacturer's warranty for a heating, ventilation, and air conditioning (HVAC) system to run with the property; providing that a warrantor continues to be obligated under the terms of a manufacturer's warranty agreement regardless of the property owner and may not charge a transfer fee; providing that the transfer of a warranty does not extend the warranty; providing that a warranty is deemed registered if a contractor licensed under part I of chapter 489, F.S., meets certain requirements; requiring certain documentation; providing an effective date.

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

Section 1. Section 559.956, Florida Statutes, is created to read:

559.956 Registrations and transfers of heating, ventilation, and air-conditioning system manufacturer warranties; required contractor documentation.—

(1) If a residential real property that includes a

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

heating, ventilation, and air-conditioning (HVAC) system as a fixture to the property is conveyed to a new owner, a manufacturer's warranty in effect on that system or a component of that system:

(a) Is automatically transferred to the new owner; and

(b) Continues in effect as if the new owner was the original purchaser of such system or component, as applicable.

(2) A warrantor continues to be obligated under the terms of a manufacturer's warranty agreement for a warranty transferred under this section and may not charge a fee for the transfer of the warranty.

(3) The transfer of a manufacturer's warranty under this section does not extend the remaining term of the warranty.

(4) A manufacturer's warranty for an HVAC system is deemed registered with the manufacturer if a contractor licensed under part I of chapter 489:

(a) Installs the new HVAC system; and

(b) Provides the manufacturer of the HVAC system with the date of the issuance of the certificate of occupancy for installations relating to new construction, or the serial number of the HVAC system for installations relating to existing construction, as applicable.

(5) A contractor licensed under part I of chapter 489 who installs a new HVAC system must document the installation through an invoice or a receipt and provide the invoice or

receipt to the customer.

Section 2. This act shall take effect July 1, 2023.

PCB COM 23-02

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB COM 23-02 Central Bank Digital Currency
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Fletcher	Hamon

SUMMARY ANALYSIS

Digital currency is a virtual representation of a value that is not available in physical form but which can be used as a medium of exchange, a unit of account, or a store of value. Digital currency is stored and transacted in electronic form and does not have the status of U.S. currency in any U.S. jurisdiction. Digital currency includes a subset of currencies referred to as cryptocurrencies (i.e., Bitcoin) which are protected by cryptography.

Central bank digital currency (CBDC) is a digital currency authorized by a sovereign central bank or government as a digital representation of a certain denomination of currency. In the U.S. today, standard U.S. currency is the only type of central bank money available for use by the general public.

Proponents of CBDC claim it would accomplish goals of financial inclusion and promoting the U.S. currency's international role as a reserve currency and a medium of exchange for international trade. However, the issuance of a CBDC would rewire the fundamental infrastructure of America's banking and financial system by changing the relationship between citizens and money.

While the Federal Reserve has made no decisions on whether to pursue or implement a CBDC, the Uniform Law Commission (ULC) and American Law Institute (ALI) have drafted model amendments to the Uniform Commercial Code to address emerging technologies and provide updated rules for commercial transactions involving virtual currencies, distributed ledger technologies (including blockchain), and other technological developments. These suggested model amendments have not been adopted by Florida.

The bill amends Florida's Uniform Commercial Code (UCC), codified at ch. 670-680, F.S., to expressly prohibit the use of a CBDC in Florida.

The bill has no impact on state or local revenues and expenditures and an indeterminate impact on the private sector.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Money in the U.S.

In 1792, Congress passed the Mint Act which established the coinage system of the United States and dollar as the principal unit of U.S. currency.[1] The first U.S. coins were struck in 1793 at the Philadelphia Mint, and the first paper money was issued in 1861.[2] In the interim years, the U.S. government issued "Treasury notes" intermittently during periods of financial stress, such as the War of 1812, the Mexican War of 1846, and the Panic of 1857.[3]

Years later in 1913, Congress passed the Federal Reserve Act, establishing America's Federal Reserve System and authorized the Federal Reserve Banks to issue Federal Reserve Bank notes, which they began issuing in 1914.[4] The first electronic payment was made in the 1871, when Western Union debuted the electronic fund transfer system.[5]

Money serves as a medium of exchange[6], a store of value[7], and a unit of account[8]. In the U.S. today, money takes multiple forms:

- **Central bank money** is a liability of the central bank. In the U.S., central bank money comes in the form of physical currency issued by the Federal Reserve and digital balances held by commercial banks at the Federal Reserve.[9]
- **Commercial bank money** is the digital form of money that is most commonly used by the public. Commercial bank money is held in accounts at commercial banks.[10]
- **Nonbank money** is digital money held as balances at nonbank financial service providers. These firms typically conduct balance transfers on their own books using a range of technologies, including mobile apps.[11]

U.S. currency is largely digital today. According to Harvard Business Review, over 97% of the money in circulation today is from checking deposits – U.S. currency deposited online and converted into a string

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[1] National Credit Union Administration, History of the United States Currency, https://mycreditunion.gov/financial-resources/history-united-states-currency#:~:text=After%20the%20U.S.%20Constitution%20was,the%20decimal%20system%20for%20currency. (last visited Mar. 24, 2023).
[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] CSG Forte, *Electronic Payments: A Brief History*, Jul. 27, 2021, https://www.forte.net/electronic-payments-a-brief-history/ (last visited Mar. 24, 2023).
[6] "A 'medium of exchange' is a function of money that expedites trade between a buyer and seller because it is widely accepted as payment for a good or service. Most societies use their currency, but stones, salt, gold, and tobacco have been used as a medium of exchange." Higher Rock Education, *Medium of Exchange*, https://www.higherrockeducation.org/glossary-of-terms/medium-of-exchange (last visited Mar. 24, 2023).
[7] "Store of value" describes a currency that can be stored and retrieved at a later date, without depreciating. Amoussou, Madela, *What is a 'Store of Value'?* Securities.io, Jan. 4, 2023, https://www.securities.io/what-is-a-store-of-value/ (last visited Mar. 24, 2023).
[8] "A unit of account refers to a measurement that can be used to value goods and services, make calculations and record debt." Study Smarter, *Unit of Account Costs*, https://www.studysmarter.us/explanations/macroeconomics/economic-performance/unit-of-account-costs/ (last visited Mar. 24, 2023).
[9] Board of Governors of the Federal Reserve System, *Money and Payments: The U.S. Digital Dollar in the Age of Digital Transformation*, Jan. 2022, https://www.federalreserve.gov/publications/files/money-and-payments-20220120.pdf (last visited Mar. 24, 2023).
[10] *Id.*
[11] *Id.*

of digital code by a commercial bank.[12] The digitization of credit and debit card transactions and the development of banking apps has moved many traditionally cash-based transactions into the digital space.[13]

Digital Currencies

Digital currency is a virtual representation of a value that is not available in physical form but which can be used as a medium of exchange, a unit of account, or a store of value.[14] Digital currency is stored and transacted in electronic form and does not have the status of U.S. currency in any U.S. jurisdiction.[15] Digital currencies can be issued in two ways: decentralized and centralized.[16] Most privately issued digital currencies, such as Bitcoin, belong to decentralized digital currencies, while central bank digital currencies (CBDCs) are centralized currencies issued by central banks.[17]

Some specific characteristics of a CBDC include:

- Liability of the central bank or government that authorizes and/or issues the CBDC;
- Issuance directly to consumers (i.e., circumventing the intermediary role of commercial banks);
- Usage of distributed ledger technology (such as blockchain) that allow computers in different locations to propose and validate transactions and update records in a synchronized way across a network.[18]

Notwithstanding the above, a CBDC does not need to have all of the above characteristics to be considered as a CBDC.

Westlaw defines CBDC as a digital currency issued by a sovereign central bank or government as a digital representation of a certain denomination of currency.[19] The value of a CBDC does not fluctuate other than as the value of the underlying currency moves in relation to other currencies.[20] In the U.S. today, standard U.S. currency is the only type of central bank money available for use by the general public.[21]

In March 2022, President Biden issued an executive order directing federal agencies to assess the benefits and potential risks of the integration of digital assets into the mainstream and, notably, the development and integration of a CBDC in America.[22] Proponents of CBDC claim it would accomplish

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[12] Mookerjee, Ajay S., *What If Central Banks Issued Digital Currency?* Harvard Business Review, Oct. 15, 2021, https://hbr.org/2021/10/what-if-central-banks-issued-digital-currency#:~:text=Over%2097%25%20of%20the%20money,code%20by%20a%20commercial%20bank. (last visited Mar. 24, 2023).
[13] *Id.*
[14] Westlaw, *Definition of virtual currency*, https://1.next.westlaw.com/Document/I1c0f4fc4505011e89bf199c0ee06c731/View/FullText.html?ppcid=d154a21215fa49b2b97bc6db2c6392a5&originationContext=knowHow&transitionType=KnowHowItem&contextData=%28sc.Default%29 (last visited Mar. 22, 2023).
[15] *Id.*
[16] Yang, Zhou, *A study on the influence mechanism of CBDC on monetary policy: An analysis based on e-CNY*, https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0268471 (last visited Mar. 23, 2023).
[17] *Id.*
[18] Bank for International Settlements, *Central bank digital currencies – executive summary*, https://www.bis.org/publ/othp42.pdf (last visited Mar. 24, 2023).
[19] Westlaw, *Definition of central bank digital currency, https://1.next.westlaw.com/w-032-2803?VR=3.0&RS=cblt1.0&__lrTS=20230323210728711&transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1* (last visited Mar. 23, 2023).
[20] *Id.*
[21] Board of Governors of the Federal Reserve System, *Central Bank Digital Currency (CBDC)*, https://www.federalreserve.gov/central-bank-digital-currency.htm (last visited Mar. 22, 2023).
[22] *See Executive Order on Ensuring Responsible Development of Digital Assets*, https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/09/executive-order-on-ensuring-responsible-development-of-digital-assets/ (last visited Mar. 22, 2023).

goals of financial inclusion and promoting the U.S. currency's international role as a reserve currency and a medium of exchange for international trade.[23]

Others claim the issuance of a CBDC is not needed to digitize U.S. currency, as U.S. currency is largely digital today.[24] Moreover, the issuance of a CBDC would rewire the fundamental infrastructure of America's banking and financial system by changing the relationship between citizens and money.[25] According to the Acting Comptroller of the Currency Michael Hsu, America's current two-tier banking system (i.e., the use of commercial banks as an intermediary between the public and the Federal Reserve) "is not an accident. It is the result of a carefully architected monetary and banking system." Moreover, the American Banking Association has argued that "any potential benefits of a CBDC are uncertain and unlikely to be realized; the costs of offering a CBDC are real and acute; and there are better ways to achieve the shared objectives that do not put America's financial system or economy at risk."[26]

2022 Model Amendments to the UCC

While the Federal Reserve has made no decisions on whether to pursue or implement a CBDC, the Uniform Law Commission (ULC) and American Law Institute (ALI) have drafted model amendments to the Uniform Commercial Code (UCC) to address emerging technologies and provide updated rules for commercial transactions involving virtual currencies, distributed ledger technologies (including blockchain), and other technological developments.[27]

The UCC model amendments add to the definition of "money:"

> **"The term does not include an electronic record that is a medium of exchange recorded and transferable in a system that existed and operated for the medium of exchange before the medium of exchange was authorized or adopted by the government."**[28]

In other words, the definition of "money" in the UCC model amendments excludes digital currency, unless such digital currency has been authorized or adopted by the federal government. In effect, the UCC model amendments open the door for the implementation of U.S. CBDC while excluding any other digital currency not issued by a centralized bank that has not been adopted by the government (i.e., Bitcoin or the like, cannot be elevated to the status of money). These suggested model amendments have not been adopted by Florida.

Florida's UCC

Florida's Uniform Commercial Code (UCC), codified at ch. 670-680, F.S., regulates commercial and secured transactions in the state. Florida's UCC currently defines "money" as "a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries."[29]

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[23] Board of Governors of the Federal Reserve System, *Money and Payments: The U.S. Digital Dollar in the Age of Digital Transformation*, supra.
[24] American Bankers Association, supra.
[25] *Id.*
[26] *Id.*
[27] Uniform Law Commission, *UCC, 2022 Amendments to*, https://www.uniformlaws.org/committees/community-home?CommunityKey=1457c422-ddb7-40b0-8c76-39a1991651ac (last visited Mar. 22, 2023).
[28] Uniform Law Commission and the American Law Institute, *Uniform Commercial Code Amendments (2022)*, https://higherlogicdownload.s3-external-1.amazonaws.com/UNIFORMLAWS/f12fdae2-9355-569d-d66d-88c0e68ff080_file.pdf?AWSAccessKeyId=AKIAVRDO7IEREB57R7MT&Expires=1679518672&Signature=%2BH%2Fxe85ZlpbwlyZarD36lOpgHeg%3D, Section 1-201(b)(24).
[29] S. 671.201(24), F.S.

Effect of the Bill

The bill amends Florida's UCC to:

- Provide a definition for the term "central bank digital currency." CBDC is:
  - Digital currency, a digital medium of exchange, or a digital monetary unit of account issued by the United States Federal Reserve System, a federal agency, a foreign government, a foreign central bank, or a foreign reserve system, that is made directly available to a consumer by such entities.
  - The term includes a digital currency, a digital medium of exchange, or a digital monetary unit of account issued by the United States Federal Reserve System, a federal agency, a foreign government, a foreign central bank, or a foreign reserve system, that is processed or validated directly by such entities; and
- Exclude CBDC from the definition of "money."

In effect, the bill amends Florida's UCC to exclude CBDC as "money" for purposes of Florida's UCC. Therefore, CBDC, as defined in the bill, could not be used in Florida as money.

B. SECTION DIRECTORY:

Section 1: Amends s. 671.201, F.S., relating to general definitions.

Section 2: Amends s. 328.0015, F.S., relating to definitions.

Section 3: Amends s. 559.9232, F.S., relating to definitions; exclusion of rental-purchase agreements from certain regulations.

Section 4: Amends s. 563.022, F.S., relating to relations between beer distributors and manufacturers.

Section 5: Amends s. 668.50, F.S., relating to Uniform Electronic Transaction Act.

Section 6: Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If the federal government enacts a U.S. CBDC, as defined by the bill, it could not be used as "money" for purposes of the Florida UCC. This could have an indeterminate fiscal impact on financial transactions in Florida.

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:

If the federal government enacts a U.S. CBDC, the bill could implicate the Supremacy Clause.[30] Notwithstanding whether or not the federal government enacts a U.S. CBDC, the bill could also implicate the Dormant Commerce Clause.[31]

B. RULE-MAKING AUTHORITY:

Not applicable. The bill does not appear to create or modify rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In the U.S. today, physical currency only represents 3% of U.S. currency in circulation. The remainder is essentially "electronic" or "digital" now. However, both physical and electronic U.S. currency are distributed, processed, and validated through the complex and private U.S. financial system. The bill does not appear to negatively impact this current system.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[30] "The Constitution's Supremacy Clause provides that federal law is 'the supreme Law of the Land' notwithstanding any state law to the contrary. This language is the foundation for the doctrine of federal preemption, according to which federal law supersedes conflicting state laws." Congressional Research Service, *Federal Preemption: A Legal Primer*, https://sgp.fas.org/crs/misc/R45825.pdf (last visited Mar. 23, 2023).

[31] "In contrast to the doctrine of preemption, which generally applies in areas where Congress has acted, the so-called Dormant Commerce Clause may bar state or local regulations even where there is no relevant congressional legislation. Although the Commerce Clause is framed as a positive grant of power to Congress and not an explicit limit on states' authority, the Supreme Court has also interpreted the Clause to prohibit state laws that unduly restrict interstate commerce even in the absence of congressional legislation—i.e., where Congress is dormant. [… Under the Dormant Commerce Clause,] states may not take actions that are facially neutral but unduly burden interstate commerce." Constitution Annotated, Artl.S8.C3.7.1 Overview of Dormant Commerce Clause, https://constitution.congress.gov/browse/essay/artI-S8-C3-7-1/ALDE_00013307/ (last visited Mar. 23, 2023).

A bill to be entitled

An act relating to central bank digital currency; amending s. 671.201, F.S.; defining the term "central bank digital currency" and revising the definition of the term "money" for purposes of the Uniform Commercial Code; amending ss. 328.0015, 559.9232, 563.022, and 668.50, F.S.; conforming cross-references to changes made by the act; providing an effective date.

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

Section 1. Subsections (10) through (46) of section 671.201, Florida Statutes, are renumbered as subsections (11) through (47), respectively, present subsections (24) and (26) of that section are amended, and a new subsection (10) is added to that section, to read:

671.201 General definitions.—Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other chapters of this code which apply to particular chapters or parts thereof, have the meanings stated. Subject to definitions contained in other chapters of this code which apply to particular chapters or parts thereof, the term:

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

(10) "Central bank digital currency," means a digital currency, a digital medium of exchange, or a digital monetary unit of account issued by the United States Federal Reserve System, a federal agency, a foreign government, a foreign central bank, or a foreign reserve system, that is made directly available to a consumer by such entities. The term includes a digital currency, a digital medium of exchange, or a digital monetary unit of account issued by the United States Federal Reserve System, a federal agency, a foreign government, a foreign central bank, or a foreign reserve system, that is processed or validated directly by such entities.

(25) ~~(24)~~ "Money" means a medium of exchange that is currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries. The term does not include a central bank digital currency.

(27) ~~(26)~~ A person "notifies" or "gives" a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it. Subject to subsection (28) ~~(27)~~, a person "receives" a notice or notification when:

(a) It comes to that person's attention; or

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

(b) It is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

Section 2. Paragraphs (c), (j), and (n) of subsection (2) of section 328.0015, Florida Statutes, are amended to read:

328.0015 Definitions.—

(2) The following definitions and terms also apply to this part:

(c) "Conspicuous" as defined in s. 671.201(11) ~~s. 671.201(10)~~.

(j) "Representative" as defined in s. 671.201(37) ~~s. 671.201(36)~~.

(n) "Send" as defined in s. 671.201(40) ~~s. 671.201(39)~~.

Section 3. Paragraph (f) of subsection (2) of section 559.9232, Florida Statutes, is amended to read:

559.9232 Definitions; exclusion of rental-purchase agreements from certain regulations.—

(2) A rental-purchase agreement that complies with this act shall not be construed to be, nor be governed by, any of the following:

(f) A security interest as defined in s. 671.201(39) ~~s. 671.201(38)~~.

Section 4. Paragraph (g) of subsection (2) of section 563.022, Florida Statutes, is amended to read:

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

563.022 Relations between beer distributors and manufacturers.—

(2) DEFINITIONS.—In construing this section, unless the context otherwise requires, the word, phrase, or term:

(g) "Good faith" means honesty in fact in the conduct or transaction concerned as defined and interpreted under s. 671.201(21) ~~s. 671.201(20)~~.

Section 5. Paragraph (d) of subsection (16) of section 668.50, Florida Statutes, is amended to read:

668.50 Uniform Electronic Transaction Act.—

(16) TRANSFERABLE RECORDS.—

(d) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in s. 671.201(22) ~~s. 671.201(21)~~, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code, including, if the applicable statutory requirements under s. 673.3021, s. 677.501, or s. 679.330 are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and indorsement are not required to obtain or exercise any of the rights under this paragraph.

Section 6. This act shall take effect July 1, 2023.

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