

Regulatory Reform & Economic Development Subcommittee

Wednesday, January 17, 2024
8:00 AM - 10:00 AM
Webster Hall (212 Knott)

Meeting Packet

Amended

Paul Renner
Speaker

Tyler Sirois
Chair

The Florida House of Representatives

Commerce Committee

Regulatory Reform & Economic Development Subcommittee

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Chair

Meeting Agenda

Wednesday, January 17, 2024
8:00 am – 10:00 am
Webster Hall (212 Knott)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

- HB 293 Hurricane Protections for Homeowners' Associations by Sirois
- HB 377 License or Permit to Operate a Vehicle for Hire by Borrero
- HB 535 Low-voltage Alarm System Projects by Snyder
- HB 577 Spaceport Territory by Griffitts
- HB 579 Use of Private Providers for Plans Review and Inspection by Griffitts
- HB 665 Expedited Approval of Residential Building Permits by McClain
- HB 1203 Homeowners' Associations by Esposito

Consideration of the following proposed committee substitute(s):

- PCS for HB 189 -- Gaming Control

V. Closing Remarks

VI. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, FL 32399-1300
(850) 717-4870

HB 293

A bill to be entitled

An act relating to hurricane protections for homeowners' associations; amending s. 720.3035, F.S.; providing applicability; requiring the board or a committee of a homeowners' association to adopt hurricane protection specifications; requiring that such specifications conform to applicable building codes; prohibiting the board or a committee of an association from denying an application for the installation, enhancement, or replacement of certain hurricane protection; authorizing the requirement to adhere to certain guidelines regarding the external appearance of a structure or an improvement on a parcel; defining the term "hurricane protection"; providing an effective date.

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

Section 1. Subsection (6) is added to section 720.3035, Florida Statutes, to read:

720.3035 Architectural control covenants; parcel owner improvements; rights and privileges.—

(6)(a) To protect the health, safety, and welfare of the people of the state and to ensure uniformity and consistency in the hurricane protection installed by parcel owners, this

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

subsection applies to all homeowners' associations in the state, regardless of when the community was created. The board or any architectural, construction improvement, or other such similar committee of an association must adopt hurricane protection specifications for each structure or other improvement on a parcel governed by the association. The specifications may include the color and style of hurricane protection products and any other factor deemed relevant by the board. All specifications adopted by the board must comply with the applicable building code.

(b) Notwithstanding any other provision in the governing documents of the association, the board or any architectural, construction improvement, or other such similar committee may not deny an application for the installation, enhancement, or replacement of hurricane protection by a parcel owner which conforms to the specifications adopted by the board or committee. The board or committee may require a parcel owner to adhere to an existing unified building scheme regarding the external appearance of the structure or other improvement on the parcel.

(c) For purposes of this subsection, the term "hurricane protection" includes, but is not limited to, metal roofs, permanent fixed storm shutters, roll-down track storm shutters, impact-resistant windows and doors, polycarbonate panels, reinforced garage doors, erosion controls, and other hurricane

protection products used to preserve and protect the structures or improvements on a parcel governed by the association.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 293 Hurricane Protections for Homeowners' Associations
SPONSOR(S): Sirois
TIED BILLS: **IDEN./SIM. BILLS:** SB 600

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

SUMMARY ANALYSIS

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners and membership is a mandatory condition of parcel ownership. HOAs are authorized to impose assessments that, if unpaid, may become a lien on the parcel. HOAs may levy fines against or suspend certain access rights of a parcel owner for failing to comply with the HOA's governing documents.

If the HOA's governing documents allow, an HOA or its architectural, construction improvement, or other similar committee (ARC) may:

- Require a review and approval of plans and specifications for the location, size, type, or appearance of any structure or other improvement on a parcel before a parcel owner makes such improvement.
- Enforce standards for the external appearance of any structure or improvement located on a parcel.

Hurricane hardening involves improvements to a home or other structure to make it less susceptible to damage from extreme wind, flooding, or flying debris. Hardening improves the durability and stability of a structure, making it better able to withstand the impacts of hurricanes without sustaining major damage.

The bill:

- Requires an HOA or ARC to adopt **hurricane protection** specifications for each structure or other improvement on a parcel governed by the HOA. The specifications may include the color and style of hurricane protection products and must comply with the applicable building code.
- Prohibits an HOA or ARC from denying an application for the installation, enhancement, or replacement of hurricane protection by a parcel owner which conforms to the specifications adopted by the HOA or ARC.
- Allows the HOA or ARC to require a parcel owner to adhere to an existing unified building scheme regarding the external appearance of the structure or other improvement on the parcel.
- Provides that "hurricane protection" includes, but is not limited to:
    - Metal roofs,
    - Permanent fixed or roll-down track storm shutters, and
    - Impact-resistant windows and doors.

The bill provides that in order to protect the health, safety, and welfare of the people of the state and to ensure uniformity and consistency in the hurricane protection installed by parcel owners, the bill applies to all HOAs in the state, regardless of when the community was created.

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

The bill provides an effective date of upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Homeowners' Associations

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners and membership is a mandatory condition of parcel ownership. HOAs are authorized to impose assessments that, if unpaid, may become a lien on the parcel.[1]

Only HOAs whose covenants and restrictions include mandatory assessments are regulated by Ch. 720, F.S., the Homeowners' Association Act (HOA Act). Like a condominium, an HOA is administered by an elected board of directors (board). The powers and duties of an HOA include the powers and duties provided in the HOA Act, and in the association's governing documents, which include the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments to those documents.[2]

An HOA must be a Florida corporation and the initial governing documents must be recorded in the official records of the county in which the community is located. The powers and duties of an association include those set forth in the HOA Act and in the governing documents, except as expressly limited or restricted in the HOA Act.

No state agency has direct oversight over HOAs. However, Florida law provides for a limited mandatory binding arbitration program, administered by the Division of Condominiums, Timeshares and Mobile Homes, within the Department of Business and Professional Regulation, for certain election and recall disputes.[3]

HOA Architectural and Construction Improvement Covenants and Rules

If the governing documents allow, an HOA or its architectural, construction improvement, or other similar committee (ARC) may:[4]

- Require a review and approval of plans and specifications for the location, size, type, or appearance of any structure or other improvement on a parcel before a parcel owner makes such improvement.
- Enforce standards for the external appearance of any structure or improvement located on a parcel.

The HOA or ARC may not restrict the right of a parcel owner to select from any options given in the governing documents for the use of material, the size of the structure or improvement, the design of the structure or improvement, or the location of the structure or improvement on the parcel.[5]

Each parcel owner is entitled to the rights and privileges set forth in the governing documents concerning the architectural use of the parcel, and the construction of permitted structures and improvements on the parcel and such rights and privileges may not be unreasonably infringed upon or impaired by the HOA or ARC. If the an HOA or ARC unreasonably, knowingly, and willfully infringes

[1] S. 720.301(9), F.S.
[2] *See generally* ch. 720, F.S.
[3] S. 720.311, F.S.
[4] S. 720.3035(1), F.S.
[5] S. 720. 3035(2), F.S.

upon or impairs such rights and privileges, the adversely affected parcel owner may recover damages, including any costs and reasonable attorney's fees.[6]

An HOA or ARC may not enforce any policy or restriction that is inconsistent with the rights and privileges of a parcel owner set forth in the governing documents, whether uniformly applied or not.[7]

Levying Fines

Owners, tenants, and guests must comply with an HOA's governing documents, including those related to architectural or construction improvements. HOAs may levy fines against or suspend the right of a parcel owner, tenant, or a guest of an owner or occupant, to use the common areas[8] or any other association property for failing to comply with any provision in the HOA's governing documents.[9]

No fine may exceed $100 per violation, although a fine may be levied on the basis of each day of a continuing violation provided that fine does not exceed $1,000 in the aggregate. However, a fine may exceed $1,000 if the HOA's governing documents authorize it. A fine may not become a lien on the property unless it exceeds $1,000.[10]

Hurricane Hardening

Generally, hurricane hardening involves improvements to a building structure and its openings to make it less susceptible to damage from extreme wind, flooding, or flying debris. Hardening improves the durability and stability of a structure, making it better able to withstand the impacts of hurricanes and weather events without sustaining major damage.[11]

Hurricane hardening includes installing hurricane impact-rated doors, windows with impact-resistant glass, reinforced roof and wall structures that meet or exceed high-velocity impact codes, independent emergency power systems, potable water storage, fuel stores, and other supplies and systems that will sustain those within the building for a certain time period after a storm.[12]

Most hurricane hardening must be installed in compliance with applicable codes, including the Florida Building Code, and by a licensed construction contractor.[13]

Condominium Hurricane Protection Specifications

Each residential condominium must adopt hurricane shutter specifications for each building of the condominium, which must include color, style, and other factors deemed relevant by the condominium. All such specifications must comply with the applicable building code.[14] A condominium is not required to adopt other hurricane protection specifications.

A condominium may not refuse to approve the installation or replacement of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection by a condominium unit owner conforming to the condominium's specifications.[15]

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[6] S. 720.3035(4), F.S.
[7] S. 720.3035(5), F.S.
[8] This does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may not prohibit an owner or tenant of a parcel from having vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park. S. 720.305(2)(a), F.S.
[9] S. 720.305, F.S.
[10] S. 720.305(2), F.S.
[11] *Hurricane Hardening*, WGInc, (June 14, 2018), https://wginc.com/hurricane-hardening/ (last visited Dec. 8, 2023); *Hardening and Resiliency U.S. Energy Industry Response to Recent Hurricane Seasons*, U.S. Department of Energy, Aug. 2010, p.8, https://www.oe.netl.doe.gov/docs/HR-Report-final-081710.pdf (last visited Dec. 8, 2023).
[12] *Id*.
[13] *See* s. 553.72(1), F.S.; S. 489.105, F.S.
[14] S. 718.113(5), F.S.
[15] S. 718.113(5)(d), F.S.

Effect of the Bill

The bill requires an HOA or any ARC to adopt **hurricane protection** specifications for each structure or other improvement on a parcel governed by the HOA. The specifications may include the color and style of hurricane protection products and any other factor deemed relevant by the board. All specifications adopted by the HOA must comply with the applicable building code.

The bill allows the HOA or ARC to require a parcel owner to adhere to an existing unified building scheme regarding the external appearance of the structure or other improvement on the parcel.

The bill provides that, regardless of any other provision in the HOA's governing documents, the HOA or ARC may not deny an application for the installation, enhancement, or replacement of hurricane protection by a parcel owner which conforms to the specifications adopted by the HOA or ARC.

The bill provides that "hurricane protection" includes, but is not limited to:

- Metal roofs,
- Permanent fixed storm shutters,
- Roll-down track storm shutters,
- Impact-resistant windows and doors,
- Polycarbonate panels,
- Reinforced garage doors,
- Erosion controls, and
- Other hurricane protection products used to preserve and protect the structures or improvements on a parcel governed by the HOA.

The bill provides that in order to protect the health, safety, and welfare of the people of the state and to ensure uniformity and consistency in the hurricane protection installed by parcel owners, the bill applies to all HOAs in the state, regardless of when the community was created.

B. SECTION DIRECTORY:

Section 1: Amends s. 720.3035, F.S.; requiring HOAs to provide certain guidance and allow certain improvements related to hurricane protection.
Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may allow more HOA parcel owners to harden their homes to withstand a storm, which could increase construction in the state and reduce effects of a storm on residences.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It is not clear if the bill is intended to be applied retroactively.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

REGULATORY REFORM AND ECONOMIC DEVELOPMENT SUBCOMMITTEE

HB 293 by Rep. Sirois
Hurricane Protections for Homeowners' Associations

AMENDMENT SUMMARY
December 13, 2024

Amendment 1 by Rep. Sirois (line 50):

- Adds exterior fixed generators and fuel storage tanks to the list of items for which an HOA must adopt specifications for acceptable use or installation by parcel owners.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Regulatory Reform & Economic Development Subcommittee

Representative Sirois offered the following:

Amendment

Remove line 50 and insert:

reinforced garage doors, erosion controls, exterior fixed generators, fuel storage tanks, and other hurricane

HB 377

A bill to be entitled

An act relating to a license or permit to operate a vehicle for hire; creating s. 320.0603, F.S.; providing that a person who holds a license or permit issued by a county or municipality to operate a vehicle for hire may operate a vehicle for hire in any other county or municipality without being subject to certain requirements or fees under certain circumstances; defining the term "airport"; providing construction and applicability; providing an effective date.

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

Section 1. Section 320.0603, Florida Statutes, is created to read:

320.0603 Vehicle-for-hire license or permit; reciprocity.—

(1) A person who holds a valid, active license or permit issued by a county or municipality to operate a vehicle for hire may operate a vehicle for hire in any other county or municipality without being subject to additional licensing or permitting requirements and without paying additional license or permit fees if the person:

(a) Holds a valid, active license or permit to operate a vehicle for hire in the county or municipality in which the

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

person is domiciled; and

(b) Has not had a license or permit to operate a vehicle for hire suspended or revoked within the preceding 5 years.

(2) Notwithstanding subsection (1) or subsection (3), this section does not apply to an airport. For purposes of this section, the term "airport" includes an airport, airport authority, aviation authority, or other entity that operates a public-use airport as defined in s. 332.004, including counties, municipalities, or special districts that operate airports defined in this subsection.

(3) This section does not grant specific authority to counties, municipalities, or special districts to regulate or license vehicles for hire which is required by s. 163.211.

(4) This section does not apply to a person who holds a valid, active license or permit to operate a vehicle for hire when such person provides transportation of persons while on stretchers or wheelchairs, or transportation of persons whose disability, illness, injury, or other incapacitation makes it impractical to be transported by a regular common carrier such as a bus, taxi, non-taxi, limousine, or other vehicle for hire.

Section 2. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 377 License or Permit to Operate a Vehicle for Hire
SPONSOR(S): Borrero
TIED BILLS: **IDEN./SIM. BILLS:** SB 648

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Larkin	Anstead
2) Local Administration, Federal Affairs & Special Districts Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Motor vehicles used for transporting persons or goods for compensation are called “vehicles for-hire” or “transportation for-hire.” The transport of goods and other personal property in a motor vehicle by a corporation or association for its stockholders, shareholders, and members, cooperative or otherwise, is also considered transportation “for hire.”

Some counties and municipalities require persons to obtain a permit or license to operate a vehicle for-hire within its jurisdiction. Counties are authorized by general law to license and regulate taxis, jitneys, limousines, rental cars, and other passenger vehicles for-hire that operate in the unincorporated areas of the county. Some municipalities currently license and regulate vehicles for-hire under their broad general powers because they are not currently prohibited from doing so in general law. Similarly, county airports and airport authorities are not restricted from licensing and regulating vehicles for-hire.

The bill:

- Prohibits a county or municipality from requiring a person to obtain an additional license from such county or municipality when that person holds a valid, active license or permit to operate a vehicle for-hire in any other county or municipality if the person:
  - Holds a valid, active license or permit to operate a vehicle for-hire in the county or municipality in which the person permanently resides.
  - Has not had a license or permit to operate a vehicle for hire suspended or revoked within the preceding 5 years.
- Provides that public-use airports are exempted from the provisions of the bill.
- Provides that certain persons who hold a valid, active license or permit to operate a vehicle-for-hire are exempted from the provisions of the bill when such person provides transportation of persons:
  - While on stretchers or wheelchairs, or
  - Whose handicap, illness, other incapacitation makes it impractical to be transported by a regular common carrier such as a bus, taxi, non-taxi, limousine, or other vehicle-for-hire.

The bill provides an effective date of July 1, 2024.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

License or Permit to Operate a Vehicle for-Hire- Current Situation

Background

With certain exceptions[1], offering for lease or rent any motor vehicle or offering passengers transportation in exchange for compensation in the State of Florida qualifies the vehicle as a "for-hire vehicle." A "for-hire vehicle" is a motor vehicle used for transporting persons or goods for compensation. When goods or passengers are transported for compensation in a motor vehicle outside a municipal corporation of this state, or when goods are transported for compensation in a motor vehicle not owned by the person owning the goods, such transportation is considered "for-hire." In addition, the carriage of goods and other personal property in a motor vehicle by a corporation or association for its stockholders, shareholders, and members, cooperative or otherwise, is transportation "for-hire."[2] Moreover, there are companies that provide for-hire medical transportation of individuals while they are on stretchers or wheelchairs, or are handicap, have an illness, injury, or other incapacitation.[3] This kind of medical transportation is included in the definition of a "for-hire vehicle" because the vehicle is transporting passengers for compensation. Some local governments require a nonemergency and emergency medical transportation service provider to apply for a license or certificate.[4]

Florida law establishes specific financial responsibility requirements applicable to for-hire vehicles. For-hire vehicles, such as taxis and limousines, must maintain a motor vehicle liability policy with minimum limits of $125,000 per person for bodily injury, $250,000 per incident for bodily injury, and $50,000 for property damage.[5] The owner or operator of a for-hire vehicle may also prove financial responsibility by providing satisfactory evidence of holding a motor vehicle liability policy issued by an insurance carrier, which is a member of the Florida Insurance Guaranty Association, or by providing a certificate of self-insurance.[6]

Vehicles for-hire are not the same as transportation network companies or TNC's, like Uber or Lyft. **The regulation and licensing of TNC's are expressly preempted to the state** and are regulated by the Department of Financial Services.[7]

The State imposes an annual license taxes on certain types of motor vehicles for-hire upon registration or renewal, including locally operated motor vehicles for-hire. These taxes range from: $17 flat plus $1.50 per cwt[8] to $3.50 flat plus $1.50 per cwt.[9] However, the state does not require special licenses for drivers for vehicles for-hire.

Counties

[1] S. 320.01(15)(b), F.S.
[2] S. 320.01(15)(a), F.S.
[3] A couple examples of medical transportation: *Explore about Nonmedical Transport Services*, Frang Zeal, July 22, 2022, https://frangzeal.com/faq-s/ (last visited Jan. 12, 2024) and *Trans Mobility Private Hire Service*, Trans Mobility Private Hire Service, https://www.transmobilityfl.com/ (last visited Jan. 12, 2024).
[4] For example, Broward County requires nonemergency medical transportation service providers to obtain a license and requires emergency medical transport or non-transport services such as Advanced Life Services and Basic Life Services to obtain a certificate of public convenience and necessity from the Broward County Board of Commissioners. *See*, Requirements for a Nonemergency Medical Transportation Service License, https://www.broward.org/Consumer/Forms/Documents/NonemergencyMedicalTransportServLic_ECPD2021.pdf (last visited Jan. 12, 2024); *See also,* Broward County Ordinance Code Sec. 3½-6.
[5] S. 324.032(1), F.S.
[6] S. 324.031, F.S.
[7] S. 627.748(17)(a), F.S.
[8] "Cwt" means the weight per hundred pounds, or major fraction thereof, of a motor vehicle. S. 320.01(8), F.S.
[9] S 320.08(6) and (14), F.S.

Counties are specifically authorized by general law to license and regulate taxis, jitneys, limousines, rental cars, and other passenger vehicles for-hire that operate in the unincorporated areas of the county.[10] The county may impose licensing fees in order to license these vehicles for-hire.

Municipalities

Municipalities have broad home rule powers authorizing them to enact legislation concerning any subject matter upon which the Legislature may act, except:

- The subjects of annexation, merger, and exercise of extraterritorial power, which require general or special law pursuant to s. 2(c), Art. VIII of the State Constitution;
- Any subject expressly prohibited by the constitution;
- Any subject expressly preempted to state or county government by the constitution or by general law; or
- Any subject preempted to a county pursuant to a county charter adopted under the authority of ss. 1(g), 3, and 6(e), Art. VIII of the State Constitution.[11]

A municipality is allowed to impose reasonable regulatory fees, proportionate with the cost of the regulatory activity.[12]

Currently, counties and municipalities differ on whether they require vehicles for-hire to be licensed and regulated. Some counties require licensure and some do not. Some cities require licensure for vehicles for-hire within the city and also at the airport, while others only require the license for the city but not the airport and vis-a-versa. Here are some examples of local requirements:[13]

- Miami-Dade County's Passenger Transportation Regulatory Division regulates for-hire chauffeurs and vehicles such as taxicabs, limousines, passenger motor carriers, including jitneys and tour vans. The county charges $70 for an initial inspection fee, quarterly, semi-annual and annual inspection fees of $38, depending on the type of service; $35 for re-inspection; and $20 for a replacement decal. The For-Hire application fees are non-refundable, and are separate from the annual license fee, inspection fees and Local Business Tax Receipt.[14]
- Hillsborough County requires any person engaged in the business of operating vehicles for-hire in the County to obtain a "public vehicle driver's license" (PVDL) from the Hillsborough County Tax Collector, in addition to a valid certificate for the operator and a valid permit for the vehicle after passing a safety and mechanical inspection. Vehicles 10 years of age or older must have additional inspections.[15] A PVDL initial application and renewal fee is $65 and requires fingerprinting.
- The City of Orlando's police department has a vehicle for-hire unit that requires applicants to show proof of payment of the business tax, to pass a vehicle inspection, to pass a national background check, and to obtain a vehicle permit and a driver permit. The application fee for the Vehicle For-hire permit is $250 and each permit is $200.[16]

Some cities and counties have made the decision to end their practice of specifically licensing vehicles for-hire.

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[10] S. 125.01(1)(n), F.S.; an incorporated area of the county means that the area is not located within the boundaries of an incorporated municipality.
[11] S. 166.021(3), F.S.
[12] S. 166.221, F.S; *see also* s. 205.042, F.S. (municipalities may levy, by appropriate resolution or ordinance, business tax for the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction).
[13] Examples of other cities with vehicle for-hire requirements include: the City of Fort Lauderdale. *See Vehicle For Hire*, City of Fort Lauderdalehttps://www.fortlauderdale.gov/government/departments-i-z/transportation-and-mobility/vehicle-for-hire (last visited Jan. 12, 2024).
[14] Miami-Dade County, Transportation and Public Work, *For-Hire Transportation,* https://www.miamidade.gov/global/service.page?Mduid_service=ser1498077559199786 (last visited Jan. 12, 2024)
[15] Hillsborough County Tax Collectors Office, https://www.hillstax.org/other-services/vehicle-for-hire/ordinance-information/ (Last visited Jan. 12, 2024).
[16] *Vehicle for Hire Permit Application*, City of Orlando Police Department, https://www.orlando.gov/Public-Safety/OPD/Start-a-Transportation-Company (last visited Jan. 12, 2024).

- For example, Sarasota, Naples and Collier County made the decision in 2015 to stop licensing vehicles for-hire. "The decision will deregulate the industry once the county's ordinance is officially taken off the books in the coming weeks. Taxi companies will no longer have to buy commercial insurance and their drivers won't have to pass criminal background checks. Collier County will no longer issue licenses to taxi or limo companies. Essentially, anyone with a driver's license will be able to operate a car-for-hire in Collier County."[17]

Special Districts

A special district is a unit of local government created for a special purpose, as opposed to a general purpose, which has jurisdiction to operate within a limited geographic boundary and is created by

- general law;
- special act;
- local ordinance; or
- rule of the Governor and Cabinet.[18]

A "dependent special district" is a special district meeting at least one of the following criteria:

- The membership of the district's governing body is identical to the governing body of a single county or municipality;
- All members of the district's governing body are appointed by the governing body of a single county or municipality;
- Members of the district's governing body are removable at will by the governing body of a single county or municipality; or
- The district's budget is subject to approval by the governing body of a single county or municipality.[19]

An "independent special district" is any district that is not a dependent special district or one that includes more than one county unless the district lies wholly within a single municipality.[20] Special districts do not possess "home rule" powers. The county or municipality who created the special district defines the powers of a special district.[21]

Special districts vary on their ability to issue licenses or permits to operate a vehicle for hire. Due to the fact that the county or municipality which created the special district defines its powers.

Preemption[22]

Generally, local governments are preempted from issuing occupational licenses that are not specifically authorized in general law. Local governments include counties, municipalities, and special districts.

In 2021, the Governor signed HB 735, Preemption of Local Occupational Licensing, which preempts occupational licensing to the state unless the local government has specific authority to license and regulate set out in general law. In 2023, the Governor signed HB 1383 which extended the expiration date for local licensing without general law authority to July 1, 2024. Because counties have specific authority in general law to license and regulate vehicles for-hire, HB 735 does not appear to affect a counties' ability to license vehicles for-hire. However, this preemption may prevent municipalities from

[17] Naples Daily News, Greg Stanley, *Collier tosses out regulations for cabs and ride-sharing, helping Uber and similar businesses*, https://archive.naplesnews.com/business/local/collier-tosses-out-regulations-for-cabs-and-ride-sharing-helping-uber-and-similar-businesses-2319126-337701871.html/ (last visited Jan. 12, 2024).
[18] S. 189.012(6), F.S.
[19] Section 189.012(2), F.S.
[20] Section 189.012(3), F.S. Independent special districts are created by the Legislature, unless another mechanism is authorized by general law. *See, e.g.* s. 190.005, F.S. (community development districts may be created by a county, municipality, or the Florida Land and Water Adjudicatory Commission, depending on the size and location of the district).
[21] "Administrative agencies, such as the airport authority, are creatures of statute and derive only the power specified therein." Fla. Att'y Gen. Op. 2012-24 (2012).
[22] S.163.211, F.S.

licensing and regulating vehicles for-hire after July 1, 2024, because they do not have specific authority to regulate.[23]

Public Use Airports

A "public-use airport" means any publicly owned airport which is used or to be used for public purposes.[24] An airport is classified as a commercial service airport when the Secretary of U.S. Transportation determines that it has more than 10,000 passenger boardings each year.[25]

In Florida, the Department of Transportation (DOT) is responsible for planning airport systems and overseeing the public airport system.[26] The owner or lessee of a proposed public airport[27] must receive DOT approval before site acquisition, construction, or establishment of a public airport facility.[28] DOT is also responsible for licensing public airport facilities prior to the operation of aircraft to or from the facility and must inspect such facilities prior to licensing or renewal.[29] Current law authorizes local governments to establish and operate airports.[30] Neither state law nor federal law establish requirements for airport governance or ownership. As such, Florida airports operate under either a government department model (where the airport operates as a department of the local government) or an airport authority model (where the airport authority is created as either an independent or a dependent special district). Because airports are generally governed and subsumed as part of local governments, state law provides for very little oversight and accountability.

With respect to county owned or operated airports, the board of county commissioners has the right, power, and authority to enter into contracts with one or more motor carriers for the transportation of passengers for-hire between airports and points within such county.[31] These contracts define the period of authorization to transport passengers.[32] The county is required to use the competitive bidding process[33] to grant an exclusive right to use certain parking areas at the county owned airport for motor carriers for the transportation of passengers such as a taxicab and limousine stand.[34] A county-owned airport, which is located within the jurisdictional boundaries of a municipality, is under the county's exclusive authority and the municipality does not have authority over such airport.[35]

Some airport authorities require vehicles for-hire to obtain a permit to operate from the local government and the airport. For example, Orlando International Airport requires vehicles for hire to have:[36]

- a valid, current driver's license issued by the City of Orlando,
- a vehicle permit (V-Permit) decal issued by the Orlando International Airport displayed on the vehicle at all times, and
- a vehicle for hire permit decal issued by the City of Orlando displayed on the vehicle at all times.

[23] *See* s. 163.211, F.S.; This may be preempted on July 1, 2024.
[24] S. 332.004(14), F.S.
[25] 49 U.S.C.A. § 47102 (2018); *see also*, s. 332.0075 (1)(a), F.S.
[26] S. 332.001, F.S.
[27] S. 330.27(6), F.S. For purposes of DOT approval and licensure, the term "public airport" means a publicly or privately-owned airport for public use.
[28] S. 330.30(1), F.S.
[29] S. 330.30(2), F.S.
[30] *See* ch.332, F.S.
[31] This does not apply to counties who own or operate an airport which is located on land that is separated from the mainland of the state by a body of water or the county has a population between 150,000 and 200,000. S. 331.15(2), F.S.
[32] S. 331.15(2), F.S.
[33] "Competitive bidding is a process of issuing a public bid with the intent that companies will put together their best proposal and compete for a specific project." *"Competitive Bidding: What Is Competitive Bidding?*, FindRFP Inc. https://www.findrfp.com/Government-Contracting/competitive-bidding.aspx (last visited Jan. 12, 2024); A county is required to use a competitive bidding procedure to lease county-owned property. *See* 1988 Op. Att'y Gen. Fla. 110 (1988).
[34] *Randall Indus., Inc. v. Lee Cnty.*, 307 So. 2d 499, 501 (Fla. 2d DCA 1975).
[35] Fla. Att'y Gen. Op. 2009-46 (2009); s. 125.015, F.S.; *see also City of Dania v. Hertz Corp.*, 518 So. 2d 1387, 1388 (Fla. 4th DCA 1988).
[36] Greater Orlando Aviation Authority, Vehicle-For-Hire (VFH): V-Permit Holders and Drivers Handbook p. 5, Orlando International Airport, https://orlandoairports.net/site/uploads/VFH-Handbook.pdf (last visited March 1, 2023).

The Fort Lauderdale-Hollywood International Airport requires persons that operate a vehicle for hire to first register with and obtain a permit from the Environmental and Consumer Protection Division of Broward County. Then, persons with a permit to operate a vehicle for hire must apply for a decal permit from the Broward County Aviation Department.[37] The Jacksonville International Airport has a similar arrangement.[38]

On the other hand, some airport authorities issue a separate permit for vehicles for-hire for transporting passengers at the airport. For example, the Orlando Sanford International Airport requires a vehicle for hire to obtain a ground transportation prearranged permit which is issued by the airport.[39]This includes a ground transportation agreement which excludes taxicabs.[40]

The following are public-use airports:[41]

- Airglades Airport;
- Arcadia Municipal Airport;
- Bartow Executive Airport;
- Boca Raton Airport;
- Calhoun County Airport;
- Clearwater Air Park;
- Dade-Collier Training and Transition Airport;
- DeLand Municipal - Sidney H. Taylor Field;
- Downtown Fort Lauderdale Heliport;
- Fernandina Beach Municipal Airport;
- Fort Lauderdale/Hollywood International Airport;
- Herlong Recreational Airport;
- Inverness Airport;
- Key West International Airport;
- La Belle Municipal Airport;
- Lakeland Linder International Airport;
- Marianna Municipal Airport;
- Merritt Island Airport;
- Miami International Airport;
- New Smyrna Beach Municipal Airport;
- Northeast Florida Regional Airport;
- Okeechobee County Airport;
- Ormond Beach Municipal Airport;
- Palm Beach County Glades Airport;
- Pensacola International Airport;
- Peter Prince Field;
- Pompano Beach Airpark;
- Sarasota/Bradenton
- Albert Whitted Airport;
- Arthur Dunn Air Park;
- Belle Glade State Municipal Airport;
- Brooksville - Tampa Bay Regional Airport;
- Carrabelle - Thompson Airport;
- Cross City Airport;
- Daytona Beach International Airport;
- Destin - Fort Walton Beach Airport / Eglin Air Force Base;
- Everglades Airpark;
- Flagler Executive Airport;
- Gainesville Regional Airport;
- Hilliard Airpark;
- Jacksonville Executive at Craig Airport;
- Keystone Heights Airport;
- Lake City Gateway Airport;
- Leesburg International Airport;
- Marion County Airport;
- Miami Executive Airport;
- Miami-Opa Locka Executive Airport;
- North Palm Beach County General Aviation Airport;
- Northwest Florida Beaches International Airport;
- Orlando International Airport;
- Page Field;
- Palm Beach County Park Airport;
- Perry-Foley Airport;
- Pierson Municipal Airport;
- Punta Gorda Airport;
- Sebastian Municipal Airport;
- Apalachicola Regional-Cleve Randolph Field;
- Avon Park Executive Airport;
- Bob Sikes Airport;
- Buchan Airport;
- Cecil Airport;
- Crystal River - Captain Tom Davis Field;
- Defuniak Springs Airport;
- Destin Executive Airport;
- Orlando Executive Airport;
- Fort Lauderdale Executive Airport;
- George T. Lewis Airport;
- Immokalee Regional Airport;
- Jacksonville International Airport;
- Kissimmee Gateway Airport;
- Lake Wales Municipal Airport;
- Marco Island Executive Airport;
- Melbourne Orlando International Airport;
- Miami Homestead General Aviation Airport;
- Naples Municipal Airport;
- North Perry Airport;
- Ocala International-Jim Taylor Field;
- Orlando Sanford International Airport;
- Palatka Municipal-Lt Kay Larkin Field;
- Palm Beach International Airport;
- Peter O Knight Airport;
- Plant City Airport;
- Quincy Municipal Airport;
- Sebring Regional Airport;

[37] *Operational Guidelines for Ground Transportation at Fort Lauderdale-Hollywood International Airport,* p. 5, Broward County Board of County Commissioners (Aug. 17, 2021), https://www.broward.org/Airport/Business/about/Documents/Operationalguidelinesforgroundtransportationservices01.pdf (last visited March 2, 2023).

[38] First a person must obtain a vehicle for hire permit issued from the City of Jacksonville. Then, the person must obtain an annual permit from the Jacksonville Aviation Authority. *Commercial Ground Transportation Policy* p. 7, Jacksonville International Airport, Jacksonville Aviation Authority, (Jan. 28, 2013), https://flyjacksonville.com/PDFs/AppndxG.pdf (last visited March 2, 2023).

[39] The fees to obtain a permit to operate vehicle for hire depend on the weight and length of the vehicle.

[40] *2023 Ground Transportation Pre-Arranged Permit,* Orlando Sanford International Airport, https://web1.osaa.net/GTX/docs/GT-Permit-2023-for-Website.pdf (last visited March 1, 2023).

[41] E-mail from Lisa Waters, President/CEO, Florida Airports Council, RE: HB 807 (April 14, 2023).

International Airport;
- Southwest Florida International Airport;
- St Pete-Clearwater International Airport;
- Tampa Executive Airport;
- The Florida Keys Marathon International Airport;
- Umatilla Municipal Airport;
- Vero Beach Regional Airport;
- Williston Municipal Airport;
- Zephyrhills Municipal Airport
- Space Coast Regional Airport;
- Suwannee County Airport;
- Tampa International Airport;
- Treasure Coast International Airport;
- Valkaria Airport;
- Wakulla County Airport;
- Winter Haven Regional Airport;
- St Cloud Seaplane Base;
- Tallahassee International Airport;
- Tavares Seaplane Base;
- Tri-County Airport;
- Venice Municipal Airport;
- Wauchula Municipal Airport;
- Witham Field; and

License or Permit to Operate a Vehicle for-Hire- Effect of Bill

Counties and Municipalities

The bill provides an exception from certain local licensing requirements to a person who holds a valid, active license or permit issued by a county or municipality to operate a vehicle for-hire. Such person may operate a vehicle-for hire without being subject to additional licensing or permitting requirements and without paying additional fees if the person:

- Holds a valid, active license or permit to operate a vehicle for hire in the county or municipality in which the person is domiciled[42].
- Has not had a license or permit to operate a vehicle for hire suspended or revoked within the preceding 5 years.

A county may still license and regulate taxis, jitneys, limousines, rental cars, and other passenger vehicles for-hire that operate in the unincorporated areas of the county. However, if the person is already licensed or permitted by the area[43] where they live and have a license or permit in good standing, the county will not be able to enforce additional licensing or permitting requirements or impose additional fees upon that person.

As for municipalities, if a person is licensed or permitted by the area where they live and has a license or permit in good standing, the municipality will not be able to enforce additional licensing or permitting requirements or impose additional fees upon that person.

A person who is an unlicensed or does not fall within the exception may be able to obtain a license or permit to operate a vehicle for hire in another county or municipality despite where he or she currently lives.

Thus, the bill allows persons who possess a license or permit in one jurisdiction to operate a vehicle for-hire in other jurisdictions without being subject to obtaining another license or permit.

The bill states that this section does not grant specific authority to counties, municipalities, or special districts to regulate or license vehicles.

Furthermore, the bill provides that the reciprocity under certain circumstances **does not apply** to a person who holds a valid, active license or permit to operate a vehicle when such person provides transportation of persons:

- While on stretchers or wheelchairs, or
- Whose handicap, illness, other incapacitation makes it impractical to be transported by a regular common carrier such as a bus, taxi, non-taxi, limousine, or other vehicle-for-hire.

This will likely allow counties or municipalities to maintain or implement required certifications or licenses for a company to operate a medical transportation service for hire.

Public Use Airports

[42] Domicile means someone's permanent residence or principal home. *Domicile Definition and Meaning*, Merriam-Webster, https://www.merriam-webster.com/dictionary/domicile (last visited Jan. 12, 2024).
[43] Municipality or county.

The bill provides that the ability for a person to operate to a vehicle for hire to obtain reciprocity under certain circumstances **does not apply** to an airport that licenses or certifies persons who operate a vehicle for hire. For purposes of this section, the term "airport" includes an airport, airport authority, aviation authority, or other entity that operates a public-use airport as defined in s. 332.004(14)[44], including counties, municipalities or special districts that operate airports defined in this subsection.

Overall, this will allow an airport to license or permit persons who operate a vehicle for hire and charge a licensing fee.

B. SECTION DIRECTORY:

Section 1. Creating s. 320.0603, F.S., relating to a license or permit to operate vehicle for hire.

Section 2. Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill may potentially impact the revenues of municipalities who raise revenue from the licenses that they issue if such fees are not in proportion to the regulatory activity. However, municipalities are required to only impose regulatory fees that are proportionate to the cost of regulation in accordance with section 166.221, F.S. Since municipalities will no longer be issuing as many licenses or inspecting as many vehicles for hire, this loss of revenue should be offset by a decrease in expenditures.

   As for counties, the negative impact on revenues is indeterminate.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There may be a positive economic impact on the vehicles for-hire industry. There would be a positive economic impact for persons who:

- hold a valid, active license or permit to operate a for hire vehicle in the municipality or county where they live and
- maintain their license or permit to operate in good standing for the preceding 5 years.

Such persons will not be subject to additional licensing or permitting requirements or fees in other municipalities or counties.

[44] A "public-use airport" means any publicly owned airport which is used or to be used for public purposes. S. 332.004(14), F.S.

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:

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

HB 535

A bill to be entitled

An act relating to low-voltage alarm system projects; amending s. 553.793, F.S.; specifying that a nonelectric fence or wall must enclose the outside perimeter of a low-voltage electric fence; permitting low-voltage electric fences to be installed in areas within more than one zoning category; prohibiting a municipality, county, district, or other entity of local government from adopting or maintaining certain ordinances or rules that provide additional requirements for low-voltage alarm system projects; providing an effective date.

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

Section 1. Paragraphs (b) and (d) of subsection (3) and subsection (10) of section 553.793, Florida Statutes, are amended to read:

553.793 Streamlined low-voltage alarm system installation permitting.—

(3) A low-voltage electric fence must meet all of the following requirements to be permitted as a low-voltage alarm system project, and no further permit shall be required for the low-voltage alarm system project other than as provided in this section:

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

(b) A nonelectric fence or wall must completely enclose the outside perimeter of the low-voltage electric fence. The low-voltage electric fence may be up to 2 feet higher than the perimeter nonelectric fence or wall.

(d) A ~~The~~ low-voltage electric fence is allowed ~~shall not be installed~~ in any ~~an~~ area unless the area is zoned exclusively for single-family or multifamily residential use. An area is not considered to be zoned exclusively for single-family or multifamily residential use if the area is within more than one zoning category.

(10) A municipality, county, district, or other entity of local government may not adopt or maintain in effect any ordinance or rule regarding a low-voltage alarm system project that provides additional requirements beyond those set out in this section for the installation or maintenance of a low-voltage alarm system project or that is otherwise ~~is~~ inconsistent with this section.

Section 2. This act shall take effect July 1, 2024.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 535 Low-voltage Alarm System Projects
SPONSOR(S): Snyder
TIED BILLS: **IDEN./SIM. BILLS:** SB 496

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Wright	Anstead
2) Local Administration, Federal Affairs & Special Districts Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

A "low-voltage electric fence" is an alarm system that consists of a fence structure and an energizer powered by a commercial storage battery not exceeding 12 volts which produces an electric charge upon contact with the fence structure. Florida law sets out a streamlined process for permitting low-voltage electric fence projects.

If a low-voltage electric fence meets certain requirements, it may be permitted as a low-voltage alarm system project, and no other permit may be required. Requirements include:

- The low-voltage electric fence will be completely enclosed by a nonelectric fence or wall. Current law is unclear if the fence must be enclosed on both sides or enclosed only on the outside perimeter.
- The low-voltage electric fence will not be installed in an area zoned exclusively for single-family or multifamily residential use.

A municipality, county, district, or other entity of local government may not adopt or maintain in effect any ordinance or rule regarding a low-voltage alarm system project that is inconsistent Florida Statutes.

Recently, two Florida trial courts differed on when an ordinance or rule relating to a low-voltage alarm system project is preempted and inconsistent with Florida law.

The bill clarifies that a nonelectric fence or wall must only be completely enclosed on the outside perimeter of the low-voltage electric fence, but does not have to be completely enclosed on both sides.

The bill provides that a local government must allow low-voltage electric fences in areas not exclusively zoned for single- or multi-family residential use, and therefore may not prohibit such fences in areas zoned in multiple zoning categories.

The bill clarifies that any ordinance or rule with additional requirements beyond those set out in, or that is otherwise inconsistent, with Florida Statutes related to the installation or maintenance of a low-voltage alarm system project, may not be adopted by a municipality, county, district, or other entity of local government.

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

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Florida Building Code

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

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

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

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

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.[7] Every local government must enforce the Building Code and issue building permits.[8]

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.[9] Any construction work that requires a building permit also requires

[1] The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs,* p. 4, http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Jan, 11, 2024).
[2] *Id.*
[3] Florida Building Commission Homepage, https://floridabuilding.org/c/default.aspx (last visited Jan, 11, 2024).
[4] *See* s. 553.72(1), F.S.
[5] The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to "construct safe, sustainable, affordable and resilient structures." International Code Council, *About the ICC*, https://www.iccsafe.org/about/who-we-are/ (last visited Jan, 11, 2024).
[6] S. 553.73(7)(a), F.S.
[7] S. 553.72, F.S.
[8] Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.
[9] S. 468.603(2), F.S; § 202, FBC, Building, 7th Ed., (2020).

plan reviews and inspections by the building official, inspector, or plans examiner to ensure the work complies with the Building Code.[10]

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.[11] A building permit is not valid until the fees for the permit have been paid.[12]

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.[13] An application for a permit must include building plans.[14] 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.[15]

Streamlined Permitting for Low-voltage Electric Fences

Section 553.793, F.S., sets out a streamlined process for permitting low-voltage alarm system projects, which includes low-voltage electric fence projects.

A "low-voltage alarm system project" means a project for the installation, maintenance, inspection, replacement, or service of the following new or existing alarm systems, or any ancillary components thereof, by a licensed electrical or alarm systems contractor:[16]

- Hardwired and low-voltage[17] video cameras and closed-circuit television systems used to signal or detect a burglary, fire, robbery, or medical emergency; and
- Low-voltage electric fences.

A "low-voltage electric fence" is an alarm system that consists of a fence structure and an energizer powered by a commercial storage battery not exceeding 12 volts which produces an electric charge upon contact with the fence structure.[18]

If a low-voltage electric fence meets all of the following requirements, it may be permitted as a low-voltage alarm system project, and no other permit may be required:[19]

- The electric charge produced by the fence upon contact does not exceed the international standard for energizer characteristics.[20]
- The low-voltage electric fence will be **completely enclosed** by a nonelectric fence or wall. The low-voltage electric fence may be up to 2 feet higher than the perimeter nonelectric fence or wall.
    - Current law is unclear if the fence must be enclosed on both sides or enclosed only on the outside perimeter.
- The low-voltage electric fence is identified using warning signs attached to the fence at intervals of not more than 60 feet.
- The low-voltage electric fence will not be installed in an area zoned exclusively for **single-family or multifamily residential use**.
- The low-voltage electric fence will not enclose **residential** portions of a property.

[10] §§ 107, 110.1, and 110.3, FBC, Building, 7th Ed., (2020).
[11] *See* ss. 125.56(4)(a) and 553.79(1), F.S.
[12] § 109.1, FBC, Building, 7th Ed., (2020).
[13] Ss. 125.56(4)(b), 553.79(1), and 713.135(5) and (6), F.S.
[14] Ss. 468.603(8), and 553.79(2), F.S.
[15] S. 553.79(2), F.S.
[16] S. 553.793(1)(b), F.S.
[17] As defined in Standard 70, NEC. S. 553.793(1)(b), F.S.
[18] S. 553.793(1)(c), F.S.
[19] S. 553.793(3), F.S.
[20] § 22.108, Figure 102, IEC 60335-2-76.

The streamlined permitting process is as follows:

- First, instead of requiring individualized permits, the local enforcement agency must make uniform basic permit labels available for purchase in bulk by an electrical or alarm systems contractor to be used for the installation or replacement of a new or existing alarm system at a cost of not more than $40 per label per project per unit.[21]
    - The local enforcement agency may not require a contractor, as a condition of purchasing a label, to submit any information other than identification information and proof of license.[22]
- Second, before commencing a project, the contractor must post an unused uniform basic permit label in a conspicuous place on the premises of the low-voltage alarm system project site.[23]
    - The contractor is not required to notify the local enforcement agency before commencing work.
- Third, within 14 days after completing the project, the contractor must submit a notice of completing the project[24] to the local enforcement agency.[25]
- Fourth, to inspect the project for compliance with applicable codes and standards, a local enforcement agency may coordinate directly with the owner or customer to inspect the project.
    - If the project fails the inspection, the contractor must take corrective action as necessary to pass inspection.[26]

A municipality, county, district, or other entity of local government may not adopt or maintain in effect any ordinance or rule regarding a low-voltage alarm system project that is inconsistent with s. 553.793, F.S.[27]

Recent Litigation

Recently, two Florida trial courts differed on whether an ordinance or rule relating to a low-voltage alarm system project is preempted and inconsistent with Florida law as set forth in s. 553.793, F.S.

Hillsborough County

In a case filed in Hillsborough County,[28] the trial court held that the county ordinance for low-voltage electric fences was inconsistent with and preempted by state law "to the extent that it prohibits or imposes additional requirements for low-voltage electric fences in areas of Hillsborough County other than those areas zoned exclusively for single-family or multiple-family residential use, where these fences satisfy the requirements of s. 553.793, F.S." The ordinance imposed restrictions on such fences in mixed-use areas.[29]

City of Orlando

In a case addressing a requirement in the City of Orlando's zoning code which prohibited the installation of electric fences in a certain heritage zoning district,[30] the trial court disagreed with the finding in the Hillsborough County case. The court held that the "standard is not whether the city's code imposes *additional* requirements, but whether those requirements *conflict* with [s. 553.793, F.S.]. That is, whether the code and the statute cannot coexist, or if the Plaintiff must violate one to comply with the other."[31]

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[21] S. 553.793(5), F.S.
[22] S. 553.793(5)(b), F.S.
[23] S. 553.793(6), F.S.
[24] The form requirements are outlined in s. 553.793(8), F.S.
[25] S. 553.793(7), F.S.
[26] S. 553-793(9), F.S.
[27] S. 553.793(10), F.S.
[28] *See Electric Guard Dog, LLC v. Hillsborough Co., Fla.*, (Case No. 17-CA-010362, Fla.13th Jud. Cir. 2019), at pp. 1-2.
[29] *Id*. at 2.
[30] *See Amarok Security, LLC v. City of Orlando, Fla.*, (Case No. 2022-CA-011454-0, Div. 35, Fla. 9th Jud. Cir. 2023).
[31] *Id*. at p. 8.

The court also held that "as long as the ordinance is not inconsistent with [that section], a municipality is not prevented from enacting regulations regarding electric fences."[32]

The court also found that the city's ordinance was not preempted by s. 553.793, F.S, as the ordinance at issue:

> Does not require an additional permit for an electric fence--it only regulates where the electric fences can be installed. It is within Orlando's police powers to maintain its communities, and the city has a legitimate interest in maintaining the appearance of the [heritage zoning] district with importance to the community.[33]

Accordingly, the City of Orlando's regulation prohibiting low-voltage electric fences in certain locations did not constitute an additional requirement for installing such fences, and the court found in favor of the City of Orlando.[34]

Effect of the Bill

The bill clarifies that a nonelectric fence or wall must only completely be enclosed on **the outside perimeter** of the low-voltage electric fence, but does not have to be completely enclosed on both sides.

The bill provides that a local government must allow low-voltage electric fences in areas not exclusively zoned for single- or multi-family residential use, and therefore may not prohibit such fences in areas zoned in multiple zoning categories.

The bill provides any ordinance or rule with additional requirements beyond those set out in, or that is otherwise inconsistent, with s. 553.793, F.S., for the installation or maintenance of a low-voltage alarm system project may not be adopted by a municipality, county, district, or other entity of local government.

B. SECTION DIRECTORY:

Section 1:	Amends s. 553.793, F.S.; providing requirements for low-voltage electric fence permits.
Section 2:	Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

[32] *Id*. at p. 9.
[33] *Id*.
[34] *Id*.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to spaceport territory; amending s. 331.304, F.S.; revising spaceport territory to include certain property; providing an effective date.

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

Section 1. Subsections (6) and (7) are added to section 331.304, Florida Statutes, to read:

331.304 Spaceport territory.—The following property shall constitute spaceport territory:

(6) Certain real property located in Miami-Dade County which was formerly included within the boundaries of Homestead Air Force Base and is included within the boundaries of Homestead Air Reserve Base or deeded to Miami-Dade County or the City of Homestead.

(7) Certain real property located in Bay County which is included within the boundaries of Tyndall Air Force Base.

Section 2. This act shall take effect July 1, 2024.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 577 Spaceport Territory
SPONSOR(S): Griffitts and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 968

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Thompson	Anstead
2) Local Administration, Federal Affairs & Special Districts Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Space Florida is an independent special district, a body politic and corporate, and a subdivision of the state, and is the point of contact for state aerospace-related activities with federal agencies, the military, state agencies, businesses, and the private sector. Space Florida is authorized to purchase or construct facilities, set rates, fees, and charges for the use of facilities, and undertake joint financing with municipalities or private sector entities for any project. Space Florida's ability to develop spaceport infrastructure is statutorily limited to geographic areas called spaceport territories.

The following properties constitute "spaceport territory:"

- Certain real property located in Brevard County that is included within the 1998 boundaries of Patrick Space Force Base, formerly Patrick Air Force Base; Cape Canaveral Space Force Station, formerly Cape Canaveral Air Force Station; or John F. Kennedy Space Center. The territory consisting of areas within the John F. Kennedy Space Center and the Cape Canaveral Space Force Station may be referred to as the "Cape Canaveral Spaceport."
- Certain real property located in Santa Rosa, Okaloosa, Gulf, and Walton Counties which is included within the 1997 boundaries of Eglin Air Force Base.
- Certain real property located in Duval County which is included within the boundaries of Cecil Airport and Cecil Commerce Center.
- Real property within the state which is a spaceport licensed by the Federal Aviation Administration, as designated by the board of directors of Space Florida.
- Certain real property located in Brevard County which is included within the boundaries of Space Coast Regional Airport, Space Coast Regional Airport Industrial Park, and Spaceport Commerce Park.

Currently, Homestead Air Reserve Base and Tyndal Air Force Base are not designated in Florida Statute as "spaceport territory."

The bill designates certain real property located in the following areas, as spaceport territory:

- Miami-Dade County which was formerly included within the boundaries of Homestead Air Force Base and is included within the boundaries of Homestead Air Reserve Base or deeded to Miami-Dade County or the City of Homestead.
- Bay County which is included within the boundaries of Tyndall Air Force Base.

The bill does not appear to have a negative fiscal impact on state or local government, or the private sector.

The effective date of the bill is July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Commercial Space Industry

The commercial space transportation industry emerged in the 1990s and was primarily used to launch commercial satellites and transport cargo to the International Space Station (ISS). In just the last few years, growing interest in commercial space is realizing new possibilities for the industry including providing transportation to the ISS laboratories for research and space tourism. This rapidly growing industry is inspiring scientists, engineers, teachers, and a whole generation, to imagine entirely new possibilities for the future of space.[1]

The Office of Commercial Space Transportation within the Federal Aviation Administration (FAA) is the federal agency responsible for regulating and facilitating the safe operations of the U.S. commercial space transportation industry.[2] The Commercial Space Launch Act of 1984, authorizes the FAA to establish licensing and regulatory requirements for launch vehicles, launch sites, and reusable suborbital rockets.[3] The FAA's launch regulations and licensing procedures apply to all commercial launches taking place within U.S. territory, and for launches being conducted abroad by U.S. companies. In general, the FAA does not license launch sites owned or operated by agencies of the U.S. government.[4]

Spaceports in Florida

Currently, Florida has two federally licensed spaceports and four FAA licensed spaceports. The spaceports, licensure, and launch type include:[5]

- Cape Canaveral Space Force Station, Federal, Vertical and Horizontal.
- Kennedy Space Center (NASA), Federal, Vertical and Horizontal.
- Space Florida Launch Complex 46, FAA, Vertical.
- Space Florida Launch and Landing Facility, FAA, Horizontal and Orbital Reentry.
- Cecil Air and Space Port, FAA, Horizontal.
- Space Coast Regional Airport, FAA, Horizontal.

Spaceport Territory

Currently, the following properties constitute spaceport territory:[6]

- Certain real property located in Brevard County that is included within the 1998 boundaries of Patrick Space Force Base, formerly Patrick Air Force Base; Cape Canaveral Space Force Station, formerly Cape Canaveral Air Force Station; or John F. Kennedy Space Center. The territory consisting of areas within the John F. Kennedy Space Center and the Cape Canaveral Space Force Station may be referred to as the "Cape Canaveral Spaceport."
- Certain real property located in Santa Rosa, Okaloosa, Gulf, and Walton Counties which is included within the 1997 boundaries of Eglin Air Force Base.
- Certain real property located in Duval County which is included within the boundaries of Cecil Airport and Cecil Commerce Center.

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[1] U.S. Department of Transportation, *Federal Aviation Administration*, https://www.faa.gov/space#:~:text=The%20commercial%20space%20transportation%20industry,International%20Space%20Station%20(ISS) (last visited Jan. 10, 2024).
[2] 14 C.F.R. s. 401.1-401.3.
[3] 51 U.S.C. Ch. 509, §§ 50901-23.
[4] The FAA also exempts certain classes of small rockets from licensure. See 14 C.F.R. § 400.2.
[5] Federal Aviation Administration, *Spaceports by State*, https://www.faa.gov/space/spaceports_by_state (last visited Jan. 10, 2024).
[6] S. 331.304, F.S.

- Real property within the state which is a spaceport licensed by the Federal Aviation Administration, as designated by the board of directors of Space Florida.
- Certain real property located in Brevard County which is included within the boundaries of Space Coast Regional Airport, Space Coast Regional Airport Industrial Park, and Spaceport Commerce Park.

Space Florida

Space Florida is established as an independent special district, a body politic and corporate, and a subdivision of the state, to foster the growth and development of a sustainable and world-leading aerospace industry in the state. Space Florida has all the powers, rights, privileges, and authority as provided under the laws of this state.[7]

Space Florida acts as Florida's point of contact for state aerospace-related activities with federal agencies, the military, state agencies, businesses, and the private sector.[8] Space Florida is authorized to purchase or construct facilities, set rates, fees, and charges for the use of facilities, and undertake joint financing with municipalities or private sector entities for any project.[9] Space Florida's ability to develop spaceport infrastructure is statutorily limited to geographic areas called spaceport territories.

Space Florida is authorized the following powers regarding spaceport territory:

- Own, acquire, construct, reconstruct, equip, operate, maintain, extend, or improve transportation facilities appropriate to meet the transportation requirements of Space Florida and activities conducted within spaceport territory.[10]
- Own, acquire, construct, reconstruct, equip, operate, maintain, extend, or improve electric power plants, transmission lines and related facilities, gas mains and facilities of any nature for the production or distribution of natural gas, transmission lines and related facilities and plants and facilities for the generation and transmission of power through traditional and new and experimental sources of power and energy; purchase electric power, natural gas, and other sources of power for distribution within any spaceport territory.[11]
- Designate, set aside, and maintain lands and areas within or without the territorial limits of any spaceport territory as conservation areas or bird and wildlife sanctuaries.[12]
- Establish a program for the control, abatement, and elimination of mosquitoes and other noxious insects, rodents, reptiles, and other pests throughout the spaceport territory.[13]
- Own, acquire, construct, reconstruct, equip, maintain, operate, extend, and improve public safety facilities for the spaceport, including security stations, security vehicles, fire stations, water mains and plugs, and fire trucks and other vehicles and equipment; hire employees, security officers, and firefighters; and undertake such works and construct such facilities determined by the board to be necessary or desirable to promote and ensure public safety within the spaceport territory.[14]
- Own, acquire, construct, develop, create, maintain, equip, extend, improve, reconstruct, and operate its projects within the geographical limits of the spaceport territory. This includes any portions of the spaceport territory located inside the boundaries of any incorporated municipality or other political subdivision.[15]
- Within the territorial limits of any spaceport territory, acquire, through purchase or interagency agreement, or as otherwise provided in law, construct, control, and maintain, roads, connections

[7] S. 331.302, F.S.
[8] S. 331.3011, F.S.
[9] S. 331.305, F.S.
[10] S. 331.305(12), F.S.
[11] S. 331.305(13), F.S.
[12] S. 331.305(14), F.S.
[13] S. 331.305(15), F.S.
[14] S. 331.305(17), F.S.
[15] S. 331.312, F.S.

and extensions that it deems necessary in accordance with established highway safety standards.[16]

Space Florida is required to regularly solicit input on Space Florida plans and activities from the aerospace industry, private sector spaceport territory stakeholders, each entity that owns or has ownership interest in a facility within spaceport territory, and other political subdivisions within spaceport territory.[17]

The Space Florida board of directors is authorized to take the following actions regarding comprehensive planning within spaceport territory:[18]

- Adopt, and from time to time review, amend, supplement, or repeal, a comprehensive general plan for the physical development of the area within the spaceport territory in accordance with the Space Florida Act, and consistent with the applicable county or municipal comprehensive plans.
- Prohibit within the spaceport territory the construction, alteration, repair, removal, or demolition, or the commencement of the construction, alteration, repair (except emergency repairs), removal, or demolition, of any building or structure, including, but not by way of limitation, public utility poles, lines, pipes, and facilities, without first obtaining a permit from the board or such other officer or agency as the board may designate, and prescribe the procedure with respect to the obtaining of such permit.
- Divide spaceport territory into zones or districts of such number, shape, and area as the board may deem best suited to carry out the purposes of the Space Florida Act, and make certain regulations and restrictions.[19]

The Space Florida board of directors is authorized to enter into contracts and agreements with municipalities located within a spaceport territory to help ensure effective cooperation and coordination in:[20]

- Discharging their common functions, powers, and duties; and
- Rendering services to the respective residents and property owners.

Space Florida is authorized to apply to the Federal Government for a grant allowing the designation of any spaceport territory as a foreign trade zone pursuant to ss. 288.36 and 288.37, F.S. However, the designation of any spaceport territory as a foreign trade zone does not authorize an exemption from any tax imposed by the state or by any political subdivision, agency, or instrumentality.[21]

The Space Florida board of directors is authorized to strike out or correct the description of any land within or claimed to be within the boundary lines of any spaceport territory upon the written consent of the owners of all the land that would be included or excluded from the boundary lines of any spaceport territory or otherwise affected by the taking of such action, and of the owners of not less than the majority in acreage of all lands within any spaceport territory.[22]

Homestead Air Reserve Base and Tyndall Air Force Base

Homestead Air Reserve Base is an Air Force Reserve base and combat unit in Homestead, Florida, located about 25 miles south of Miami. It is home to the 482nd Fighter Wing of the Air Force Reserve Command's Tenth Air Force, as well as the headquarters of Special Operations Command South. This wing has 1,600 members in addition to the 1,200 reservists. This combat unit supplies General Dynamics F-16 Fighting Falcon fighter aircraft, along with mission ready pilots and support personnel,

[16] S. 331.313, F.S.
[17] S. 331.3051(11), F.S.
[18] S. 331.319, F.S.
[19] S. 331.320, F.S.
[20] S. 331.322, F.S.
[21] S. 331.327, F.S.
[22] S. 331.329, F.S.

for short-notice worldwide deployment. The base is utilized as a staging area for operations and palliation efforts in the southern hemisphere and provides assistance in many natural disasters.[23]

Tyndall Air Force Base is located on the Gulf Coast of Florida, 12 miles east of Panama City in Bay County. Tyndall is home to the 325th Fighter Wing, which provides training for F-22 Raptor pilots, maintenance personnel and battle managers for the combat faction of the Air Force. The 325th Fighter Wing also provides training for F-22 intelligence officers, F-22 crew members and officer and enlisted air traffic controllers. The Fighter Wing hosts over 30 tenant organizations which are located on base. The 325th Fighter Wing is comprised of the Operations Group, Maintenance Group, Mission Support Group and the Medical Group, and tenant groups.[24]

Currently, Homestead Air Reserve Base and Tyndal Air Force Base are not designated in Florida Statute as spaceport territories.

According to representatives of the aerospace industry, expansion of Florida's aerospace capabilities and infrastructure is needed in order to accommodate the industry's rapid growth.[25]

Effect of Proposed Changes

The bill designates certain real property in the following areas, as spaceport territory:

- Miami-Dade County which was formerly included within the boundaries of Homestead Air Force Base and is included within the boundaries of Homestead Air Reserve Base or deeded to Miami-Dade County or the City of Homestead.
- Bay County which is included within the boundaries of Tyndall Air Force Base.

B. SECTION DIRECTORY:

Section 1: Amends s. 331.304, F.S., relating to spaceport territory.

Section 2: Creates an effective date of July 1, 2024.

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.

[23] MILITARYBASES.com, *Homestead Air Reserve Base in Miami, FL*, https://militarybases.com/florida/homestead/ (last visited Jan. 10, 2024).
[24] MILITARYBASES.com, *Tyndall Air Force Base in Panama City, FL*, https://militarybases.com/florida/tyndall/ (last visited Jan. 10, 2024).
[25] Caden DeLisa, *SpaceX, Blue Origin urge Florida lawmakers for aerospace sector support*, The CAPITOLIST (Nov. 16, 2023), https://thecapitolist.com/spacex-blue-origin-urge-florida-lawmakers-for-aerospace-sector-support/ (last visited Jan. 10, 2024).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Including additional bases in Florida's spaceport territory system may expand the development of the state's aerospace industry, and have a positive fiscal impact on individuals and businesses in the private sector and related entities in the public sector.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

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 the use of private providers for plans review and inspection; amending s. 553.791, F.S.; defining the term "private provider firm"; requiring certain private provider firms to qualify as a business organization; authorizing a fee owner or the fee owner's contractor to file a complaint with the Department of Commerce against a local jurisdiction if the local jurisdiction does not reduce certain permit fees; requiring a local jurisdiction to immediately refund certain fees under certain circumstances; authorizing the department to assess certain fines against a local jurisdiction; specifying the fund into which such fines must be deposited; prohibiting specified local persons and entities from conducting their own plans review or inspections if a private provider is retained; requiring the local building official to issue a permit or provide specified written notice within a certain time period; requiring such written notice to provide specific information; providing an effective date.

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

Section 1. Paragraphs (o) through (r) of subsection (1) of

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

section 553.791, Florida Statutes, are redesignated as paragraphs (p) through (s), respectively, subsections (2), (5), and (7) are amended, and a new paragraph (o) is added to subsection (1) of that section, to read:

553.791 Alternative plans review and inspection.—

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

(o) "Private provider firm" means a business organization, including a corporation, partnership, business trust, or other legal entity, that offers services under this chapter to the public through licensees who are acting as agents, employees, officers, or partners of the firm. A person who is licensed as a building code administrator under part XII of chapter 468, as an engineer under chapter 471, or as an architect under chapter 481, may act as a private provider as an agent, employee, or officer of the private provider firm.

(2)(a) Notwithstanding any other law or local government ordinance or local policy, the fee owner of a building or structure, or the fee owner's contractor upon written authorization from the fee owner, may choose to use a private provider to provide building code inspection services with regard to such building or structure and may make payment directly to the private provider for the provision of such services. All such services shall be the subject of a written contract between the private provider, or the private provider's firm, and the fee owner or the fee owner's contractor, upon

written authorization of the fee owner. A private provider firm that uses licensed architects and engineers as private providers acting as agents, employees, or officers of the firm must qualify as a business organization under s. 471.023 or s. 481.219. The fee owner may elect to use a private provider to provide plans review or required building inspections, or both. However, if the fee owner or the fee owner's contractor uses a private provider to provide plans review, the local building official, in his or her discretion and pursuant to duly adopted policies of the local enforcement agency, may require the fee owner or the fee owner's contractor to use a private provider to also provide required building inspections.

(b)1. If a fee ~~an~~ owner or the fee owner's contractor retains a private provider for purposes of plans review or building inspection services, the local jurisdiction must reduce the permit fee by the amount of cost savings realized by the local enforcement agency for not having to perform such services. Such reduction may be calculated on a flat fee or percentage basis, or any other reasonable means by which a local enforcement agency assesses the cost for its plans review or inspection services. If the local jurisdiction does not reduce the permit fee as required under this subparagraph, a fee owner or the fee owner's contractor may file a complaint with the Department of Commerce against the local jurisdiction for such failure. If the Department of Commerce finds that a violation

occurred, the local jurisdiction must immediately refund to the fee owner or the fee owner's contractor all fees paid to the local jurisdiction, and the Department of Commerce shall assess a fine equal to the amount charged to the fee owner or the fee owner's contractor on the local jurisdiction to be deposited into the Florida Homeowners Construction Recovery Fund created under s. 489.140.

2. The local jurisdiction may not charge fees for building inspections if the fee owner or contractor hires a private provider to perform such services; however, the local jurisdiction may charge a reasonable administrative fee, which shall be based on the cost that is actually incurred, including the labor cost of the personnel providing the service, by the local jurisdiction or attributable to the local jurisdiction for the clerical and supervisory assistance required, or both.

(c)1. If a fee ~~an~~ owner or the fee owner's ~~a~~ contractor retains a private provider for purposes of plans review or building inspection services, the local jurisdiction must provide equal access to all permitting and inspection documents and reports to the private provider, owner, and contractor if such access is provided by software that protects exempt records from disclosure.

2. If a fee owner or the fee owner's contractor retains a private provider for purposes of plans review or building inspection services, the local enforcement agency, local

building official, or local jurisdiction may not conduct its own plans review for the project.

(5) After construction has commenced and if the local building official is unable to provide inspection services in a timely manner, the fee owner or the fee owner's contractor may elect to use a private provider to provide inspection services by notifying the local building official of the owner's or contractor's intention to do so by 2 p.m. local time, 2 business days before the next scheduled inspection using the notice provided for in paragraphs (4)(a)-(c). If the local building official is notified by the fee owner or the fee owner's contractor that a private provider is being used for inspection services, the local building official and the local enforcement agency may not send an inspector to the building or structure to conduct an inspection and may not charge the owner or contractor a fee for inspection services.

(7)(a) If the private provider is a person licensed as an engineer under chapter 471 or as an architect under chapter 481 and affixes his or her industry seal to the affidavit required under subsection (6), the local building official must issue the requested permit or provide a written notice to the permit applicant identifying the specific plan features that do not comply with the applicable codes, as well as the specific code chapters and sections, within 12 business days after receipt of the permit application and affidavit. The local building

official must provide with specificity the plan's deficiencies, the reasons the permit application failed, and the applicable codes being violated in such written notice. If the local building official does not provide specific written notice to the permit applicant within the prescribed 12-day period, the permit application is deemed approved as a matter of law, and the permit must be issued by the local building official on the next business day.

(b) If the private provider is a person licensed as a building code administrator under part XII of chapter 468, as an engineer under chapter 471, or as an architect under chapter 481 and the private provider does not affix his or her industry seal to the affidavit required under subsection (6), ~~No more than 20 business days after receipt of a permit application and the affidavit from the private provider required pursuant to subsection (6),~~ the local building official must ~~shall~~ issue the requested permit or provide a written notice to the permit applicant identifying the specific plan features that do not comply with the applicable codes, as well as the specific code chapters and sections, within 20 business days after receipt of the permit application and affidavit. If the local building official does not provide a written notice of the plan deficiencies within the prescribed 20-day period, the permit application is ~~shall be~~ deemed approved as a matter of law, and the permit must ~~shall~~ be issued by the local building official

on the next business day.

(c) ~~(b)~~ If the local building official provides a written notice of plan deficiencies to the permit applicant within the time period prescribed in paragraphs (a) and (b) ~~20-day period~~, the time ~~20-day~~ period is ~~shall be~~ tolled pending resolution of the matter. To resolve the plan deficiencies, the permit applicant may elect to dispute the deficiencies pursuant to subsection (14) or to submit revisions to correct the deficiencies.

(d) ~~(c)~~ If the permit applicant submits revisions, the local building official has the remainder of the tolled time ~~20-day~~ period plus 5 business days after ~~from~~ the date of resubmittal to issue the requested permit or to provide a second written notice to the permit applicant stating which of the previously identified plan features remain in noncompliance with the applicable codes, with specific reference to the relevant code chapters and sections. Any subsequent review by the local building official is limited to the deficiencies cited in the written notice. If the local building official does not provide the second written notice within the prescribed time period, the permit is ~~shall be~~ deemed approved as a matter of law, and the local building official must issue the permit on the next business day.

(e) ~~(d)~~ If the local building official provides a second written notice of plan deficiencies to the permit applicant

within the prescribed time period, the permit applicant may elect to dispute the deficiencies pursuant to subsection (14) or to submit additional revisions to correct the deficiencies. For all revisions submitted after the first revision, the local building official has an additional 5 business days after ~~from~~ the date of resubmittal to issue the requested permit or to provide a written notice to the permit applicant stating which of the previously identified plan features remain in noncompliance with the applicable codes, with specific reference to the relevant code chapters and sections.

Section 2. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 579 Use of Private Providers for Plans Review and Inspection
SPONSOR(S): Griffitts
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

Every local government must enforce the building code and issue building permits. Any construction work that requires a building permit also requires plans to be examined by a local plans examiner, and buildings to be inspected periodically by a local building official or inspector. Since 2002, Florida has allowed property owners to hire licensed building code officials, engineers, and architects, that are not associated with the local government, to review building plans, perform building inspections, and prepare certificates of completion, who are referred to as "private providers."

A local government may not charge a permit fee for building inspections when private providers are used, but may charge any amount that is actually incurred by the local government's building official related to the permit. A building official may audit a private provider to ensure the private provider has performed their duties appropriately and may deny a building permit or a certificate of completion or issue a stop work order if the work approved by the private provider does not comply with the Florida Building Code in order to protect public safety and welfare.

Upon receipt of a building permit application from a private provider, a building official has 20 business days to grant or deny the permit.

The bill prohibits a local jurisdiction from conducting its own plans review for the project if a "fee owner" or the "fee owner's" contractor retains a private provider for purposes of plans review.

The bill provides that if the local building official is notified that a private provider is being used for inspection services, the local government may not send an inspector to the building or structure to conduct an inspection and may not charge the owner or contractor a fee for inspection services.

The bill reduces the timeframe, from 20 days to 12 days, that the local government has to grant or deny a permit for projects where a private provider, who is a licensed engineer or architect that affixes his or her industry seal to the affidavit required for building plans.

The bill provides that, if the local jurisdiction does not reduce the permit fee for using private provider services, a fee owner or the fee owner's contractor may file a complaint with the Department of Commerce against the local jurisdiction for such failure and allows the Department of Commerce to assess fines.

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

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Florida Building Code

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

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

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

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

[1] The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs,* p. 4, http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Jan. 13, 2024).
[2] *Id.*
[3] Florida Building Commission Homepage, https://floridabuilding.org/c/default.aspx (last visited Jan. 13, 2024).
[4] *See* s. 553.72(1), F.S.
[5] The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to "construct safe, sustainable, affordable and resilient structures." International Code Council, *About the ICC*, https://www.iccsafe.org/about/who-we-are/ (last visited Jan. 13, 2024).
[6] S. 553.73(7)(a), F.S.

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.[7] Every local government must enforce the Building Code and issue building permits.[8] A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.[9] Any construction work that requires a building permit also requires the review of building plans and inspections of the progress of work completed by the building official, inspector, or plans examiner to ensure the work complies with the Building Code.[10]

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.[11] A building permit is not valid until the fees for the permit have been paid.[12]

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.[13] An application for a permit must include building plans.[14] 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.[15]

Use of Building Code Enforcement Fees

A local government may charge reasonable fees as set forth in a schedule of fees adopted by the enforcing agency for the issuance of a building permit.[16] Such fees shall be used solely for carrying out the local government's responsibilities in enforcing the Building Code.[17] Enforcing the Building Code includes the direct costs and reasonable indirect costs associated with training, review of building plans, building inspections, re-inspections, building permit processing, and fire inspections.[18] Local governments must post all building permit and inspection fee schedules on their website.[19]

Local governments are only allowed to collect building permit fees that are sufficient to cover their costs in enforcing the Building Code. When providing a schedule of reasonable fees, the total estimated annual revenue derived from fees, and the fines and investment earnings related to the fees, may not exceed the total estimated annual costs of allowable activities.[20]

DBPR Surcharges

Current law requires all local governments to assess and collect a 1% surcharge on any building permit issued by their enforcement agency for the purpose of enforcing the Building Code. The local jurisdictions collect the assessment and remit the surcharge fees to DBPR to fund the activities of the Commission, DBPR's Building Code Compliance and Mitigation Program, and the Florida Fire Prevention Code informal interpretations.[21]

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[7] S. 553.72, F.S.
[8] Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.
[9] S. 468.603(2), F.S; § 202, FBC, Building, 7th Ed., (2020).
[10] §§ 107, 110.1, and 110.3, FBC, Building, 7th Ed., (2020).
[11] *See* ss. 125.56(4)(a) and 553.79(1), F.S.
[12] § 109.1 , FBC, Building, 7th Ed., (2020).
[13] Ss. 125.56(4)(b), 553.79(1), and 713.135(5) and (6), F.S.
[14] Ss. 468.603(8), and 553.79(2), F.S.
[15] S. 553.79(2), F.S.
[16] S. 553.80 F.S.
[17] *Id.*
[18] S. 553.80 (7)(a)1., F.S.
[19] Ss.125.56 (4)(c) F.S., and 166.222(2), F.S.
[20] S. 553.80(7)(a), F.S.
[21] S. 553.721, F.S.

Current law also requires all local governments to assess and collect a separate 1.5% surcharge on any building permit issued by their enforcement agency for the purpose of enforcing the Building Code. The local governments collect the assessment and remit the surcharge fees to DBPR, where it is divided equally to fund the activities of the Building Code Administrators and Inspectors Board (BCAIB) and the Florida Homeowners' Construction Recovery Fund.[22]

Local government building departments are permitted to retain 10% of the amount of the surcharges they collect to fund participation by their agencies in the national and state building code adoption processes and to provide education related to enforcement of the Building Code.[23]

Building Permit Delays

Any delays in obtaining a building permit can delay the completion of a construction project. Delays in the completion of a construction project may:[24]

- Lead to increased costs for construction projects, which may be passed onto occupants of a completed project;
- Discourage construction, which can reduce the total supply of buildings in a community and may lead to higher rents in the community;
- Reduce property tax revenue to a local government and other taxing jurisdictions resulting from the delayed start and completion of a construction project; and
- Result in delayed occupancy of a project, including single-family residences and multi-family residences.

Streamlining the process to obtain a building permit can accelerate the completion of construction projects. The goal of streamlining is to remove overlap and duplication and create more efficient administrative procedures while not reducing a building department's ability to enforce the applicable construction codes. Streamlining the building permit process may:[25]

- Increase local government revenues by accelerating completion of a project and thus accelerating property tax collection;
- Create local construction jobs and other indirect jobs supported by local construction jobs, such as jobs at a material supplier, which may increase local tax revenue; and
- Encourage economic development by having an efficient permit system.

Building Officials, Inspectors, Plans Examiners

Building officials, inspectors, and plans examiners are regulated by the BCAIB within DBPR.[26]

A building code administrator, otherwise known as a building official, is a local government employee or a person contracted by a local government who supervises building code activities, including plans review, enforcement, and inspection.[27]

[22] S. 468.631, F.S.; The Florida Homeowners' Construction Recovery Fund is used to compensate homeowners who have suffered a covered financial loss at the hands of state-licensed general, building and residential contractors. Claims are filed with the DBPR, who reviews for completeness and statutory eligibility. The DBPR then presents the claim to the Construction Industry Licensing Board for review. s. 489.1401(2), F.S.
[23] Ss. 468.631, and 553.721, F.S.
[24] City of Austin Development Services Department, *A Program for Expedited Permitting*, http://austintexas.gov/sites/default/files/files/8-9-2016_Report_on_Expedited_Permitting_Program.pdf (last visited Jan. 13, 2024); PricewaterhouseCoopers, *The Economic Impact of Accelerating Permit Processes on Local Development and Government Revenues*, (Dec. 7, 2005).
[25] *Id.*; Institute for Market Transformation, *Streamlining Compliance Processes*, (Winter 2012) https://www.imt.org/wp-content/uploads/2018/02/CaseStudy5.pdf (last visited Jan. 13, 2024).
[26] S. 468.605, F.S.
[27] S. 468.603(2), F.S.

A building code inspector (inspector) inspects construction that requires permits to determine compliance with the Building Code and state accessibility laws. Inspectors are divided into several different categories. An inspector's ability to practice is limited to the category or categories under which the inspector has been licensed. The inspector categories are:[28]

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

A plans examiner reviews plans submitted for building permits to determine design compliance with construction codes. The term includes a residential plans examiner who is qualified to determine that plans submitted for building permits comply with the applicable residential building, plumbing, mechanical, electrical, gas, energy, accessibility, and other applicable construction codes. A plans examiner's ability to practice is limited to the category or categories under which the plans examiner has been licensed. The plans examiner categories are:[29]

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

Professional Engineers

Professional engineers and related qualified business organizations are regulated by Ch. 471, F.S., and by the Florida Board of Professional Engineers under DBPR.[30]

"Engineering" includes the term "professional engineering" and means any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, and design of engineering works and systems, planning the use of land and water, teaching of the principles and methods of engineering design, engineering surveys, and the inspection of construction for the purpose of determining in general if the work is proceeding in compliance with drawings and specifications, any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic, or thermal nature, insofar as they involve safeguarding life, health, or property; and includes such other professional services as may be necessary to the planning, progress, and completion of any engineering services…."[31]

Architects

Architects and related qualified business organizations in the state are regulated by ch. 481, pt. I, F.S., and by the Board of Architecture and Interior Design under DBPR.

"Architecture services" means the rendering or offering to render services in connection with the design and construction of a structure or group of structures which have as their principal purpose human habitation or use, and the utilization of space within and surrounding such structures. These services

[28] *See* s. 468.603(5), F.S.
[29] *See* s. 468.603(8), F.S.
[30] S. 20.165(4)(a)11., F.S.
[31] S. 471.005(7), F.S.

include planning, providing preliminary study designs, drawings and specifications, job-site inspection, and administration of construction contracts.[32]

Private Providers

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

Private providers and their duly authorized representatives are able to approve building plans and perform building code inspections as long as the plans approval and building inspections are within the scope of the provider's or representative's license.

Current law defines "private provider" as person licensed as a building official, engineer, or architect. Licensed building inspectors and plans examiners may perform inspections for additions and alterations that are limited to 1,000 square feet or less in residential buildings.[33]

If an owner or contractor opts to use a private provider, the local government must calculate the cost savings to its building department and reduce the building permit fees accordingly.[34]

A local government may not charge a fee for building inspections when an owner or contractor uses a private provider but may charge a "reasonable administrative fee."[35] A "reasonable administrative fee" must be based on the cost that is actually incurred by the local government, including the labor cost of the personnel providing the service, or the cost attributable to the local government for the clerical and supervisory assistance required, or both.

A building official may audit a private provider to ensure the private provider and their duly authorized agent has reviewed the building plans and is performing the required inspections. A building official may deny a building permit or a request for a certificate of completion if the building construction or plans do not comply with the Building Code. A building official may also issue a stop work order at any time if he or she determines any condition of the construction poses an immediate threat to public safety and welfare.[36]

A private provider who approves building plans must sign a sworn affidavit that the plans comply with the Building Code and the private provider or their duly authorized representative is authorized to review the plans.[37] Upon receipt of a building permit application from a private provider, a building official has 20 business days to grant or deny the permit. Denying a permit automatically tolls the remaining 20 business days.[38]

If the local building official denies the requested permit, they must provide a written notice to the permit applicant identifying the specific plan features that do not comply with the applicable codes, as well as the specific code chapters and sections.[39]

Before a private provider or their duly authorized representative performs building inspections, the private provider must notify the building official of each inspection the business day before the inspection. A local building official may visit a building site as often as necessary to ensure the required inspections are being performed. Construction work on a building may continue as long as the private provider or their duly authorized representative passes each inspection and the private provider gives proper notice of each inspection to the building official.[40]

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[32] S. 481.206(6), F.S.
[33] S. 553.791(1)(n) and (3), F.S.
[34] S. 553.791(2)(b), F.S.
[35] *Id.*
[36] S. 553.791(1), (14), and (19), F.S.
[37] S. 553.791(6), F.S.
[38] S. 553.791(7), F.S.
[39] S. 553.791(7)(a), F.S.
[40] S. 553.791(9) and (18), F.S.

A private provider must post records of every inspection, including the results of the inspections, electronically or on the jobsite and provide the records to the local building official within two business days of posting the records.[41]

Fee Simple Ownership

A fee simple is the greatest possible property interest in land, granting its owner all traditional property rights.[42]

Department of Commerce

The Department of Commerce was created in 2023 to replace the former Department of Economic Opportunity[43] to assist the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to formulate and implement coherent and consistent policies and strategies designed to promote economic opportunities for all Floridians.[44]

The following divisions and offices are established within the Department of Commerce:[45]

- The Division of Economic Development.
- The Division of Community Development.
- The Division of Workforce Services.
- The Division of Finance and Administration.
- The Division of Information Technology.
- The Office of the Secretary.
- The Office of Economic Accountability and Transparency.

Effect of the Bill

The bill provides that a "private provider firm" means a business organization, including a corporation, partnership, business trust, or other legal entity, that offers building administrator, building inspection, and plans review services to the public through licensees who are acting as agents, employees, officers, or partners of the firm. A person who is licensed as a building code administrator, as an engineer, or as an architect, may act as a private provider as an agent, employee, or officer of the private provider firm.

The bill requires a private provider firm that uses licensed architects and engineers as private providers acting as agents, employees, or officers of the firm to qualify as an engineering or architecture business organization.

The bill clarifies that a “fee owner,” not just an owner, has rights to obtain private provider services for a property.

The bill provides that, if the local jurisdiction does not reduce the permit fee for using private provider services, a fee owner or the fee owner's contractor may file a complaint with the Department of Commerce against the local jurisdiction for such failure. If the Department of Commerce finds that a violation occurred, the local jurisdiction must immediately refund to the fee owner or the fee owner's contractor all fees paid to the local jurisdiction, and the Department of Commerce must assess a fine equal to the amount charged to the fee owner or the fee owner's contractor on the local jurisdiction to be deposited into the Florida Homeowners’ Construction Recovery Fund.

[41] S. 553.791(11), F.S.
[42] Cornell Law School, Legal Information Institute, *fee simple*, https://www.law.cornell.edu/wex/fee_simple (last visited Jan. 13, 2024).
[43] Ch. 2023-173, L.O.F.
[44] S. 20.60(4), F.S.
[45] S. 20.60(3)(a), F.S.

The bill prohibits a local jurisdiction from conducting its own plans review for the project if a fee owner or the fee owner's contractor retains a private provider for purposes of plans review or building inspection services.

The bill provides that if the local building official is notified by the fee owner or the fee owner's contractor that a private provider is being used for inspection services, the local building official and the local enforcement agency may not send an inspector to the building or structure to conduct an inspection and may not charge the owner or contractor a fee for inspection services.

The bill reduces the timeframe that the local government has to grant or deny a permit for provides for a private provider who is a licensed as an engineer or as an architect and **affixes** his or her industry seal to the affidavit required for building plans, from 20 days, to **12** days, after receipt of the permit application and affidavit.

If the private provider is a person licensed as a building code administrator, as an engineer, or as an architect and the private provider **does not** affix his or her industry seal to the affidavit required for building plans, the local building official must issue the requested permit or provide a written notice to the permit applicant identifying the specific plan features that do not comply with the applicable codes, as well as the specific code chapters and sections, within **20** business days after receipt of the permit application and affidavit.

The bill makes conforming changes.

B. SECTION DIRECTORY:

Section 1:	Amends s. 553.791, F.S.; providing requirements and time frames for plans review and inspection services performed by a private provider.
Section2:	Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The surcharge collected pursuant to s. 553.791, F.S., and s. 468.631, F.S., could be impacted by the bill.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill may reduce the amount of permit fees that could be collected by local governments in certain circumstances.

2. Expenditures:

   The bill may impact local governments because they may have to hire more employees to meet the prescribed timeframes.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may reduce the cost of permit fees paid by the private sector to local governments based on the local governments failure to meet time requirements. On the other hand, the local jurisdiction may raise permit fees so that they can hire employees to meet the time requirements in the bill.

The streamlined permitting processes in the bill may expedite development across the state.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill would require the Florida Building Commission to amend the Building Code to reflect some of the bill's changes to building permit application processing requirements.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill is unclear why certain complaints about permit fees will be handled by the Department of Commerce, and not DBPR, who regulates the Building Code, Building Commission, Florida Homeowners Construction Recovery Fund, and Building Code Enforcement professionals.

The bill is unclear why it prohibits a local government from performing its own plans review if a fee owner or the fee owner's contractor retains a private provider for purposes of building inspection services. There may be situations where a private provider is retained for inspections services, but not for plans review, which would need to be performed by the local government.

There is a potential life and safety concern with prohibiting a local government from performing onsite inspections when a provider is performing such services.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

HB 665

A bill to be entitled

An act relating to expedited approval of residential building permits; creating s. 177.073, F.S.; providing definitions; requiring certain governing bodies, by a date certain, to create a program to expedite the process for issuing residential building permits before a final plat is recorded; providing requirements for such program; providing an exception and construction; requiring certain governing bodies, by a date certain, to update their programs to conform to the Florida Building Code; providing construction; requiring a governing body to create certain processes for purposes of the program; specifying the length of time a master building permit is valid; authorizing applicants to use a private provider for certain reviews; authorizing a governing body to issue addresses and temporary parcel identification numbers for specified purposes; requiring a governing body to issue a specified number or percentage of building permits requested in an application when certain conditions are met; setting forth certain conditions for applicants who apply to the program; providing that an applicant has a vested right in an approved preliminary plat when certain conditions are met; requiring a local building official and a local

governing body to mail a signed, certified letter with specified information to the Department of Business and Professional Regulation and the Department of Commerce, respectively, after the governing body creates the program; providing an effective date.

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

Section 1. Section 177.073, Florida Statutes, is created to read:

177.073 Expedited approval of residential building permits before a final plat is recorded.—

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

(a) "Applicant" means a homebuilder or developer that files an application with the local governing body to identify the percentage of planned homes that the local governing body must issue for the residential subdivision or planned community.

(b) "Final plat" means the final tracing, map, or site plan presented by the subdivider to a governing body for final approval, and, upon approval by the appropriate governing body, is submitted to the clerk of the circuit court for recording.

(c) "Local building official" has the same meaning as in s. 553.791(1).

(d) "Plans" means any building plans, construction plans, engineering plans, or site plans, or their functional

equivalent, submitted by an applicant for a building permit.

(e) "Preliminary plat" means a map or delineated representation of the subdivision of lands that is a complete and exact representation of the residential subdivision or planned community and contains any additional information needed to be in compliance with the requirements of this chapter.

(2)(a) By August 15, 2024, the governing body of a county that has 75,000 residents or more and the governing body of a municipality that has 30,000 residents or more shall create a program to expedite the process for issuing building permits for residential subdivisions or planned communities in accordance with the Florida Building Code and this section before a final plat is recorded with the clerk of the circuit court. The expedited process must include an application for an applicant to identify the percentage of planned homes that the governing body must issue for the residential subdivision or planned community, not to exceed 50 percent of the residential subdivision or planned community. This subsection does not restrict a local government from issuing building permits that exceed 50 percent of the residential subdivision or planned community.

(b) A governing body that had a program in place before July 1, 2023, to expedite the building permit process, need only update their program to approve an applicant's written application to issue up to 50 percent of the building permits

for the residential subdivision or planned community in order to comply with this section. This paragraph does not prohibit a governing body from issuing more than 50 percent of the building permits for a residential subdivision or planned community. This subsection does not restrict a local government from issuing building permits that exceed 50 percent of the residential subdivision or planned community.

(c) By December 31, 2028, the governing body of a county that has 75,000 residents or more and the governing body of a municipality that has 30,000 residents or more shall update its program to expedite the process for issuing building permits for residential subdivisions or planned communities in accordance with the Florida Building Code and this section before a final plat is recorded with the clerk of the circuit court. The expedited process must contain an application for an applicant to identify the percentage, up to 75 percent, of planned homes that the local governing body must issue for the residential subdivision or planned community. This subsection does not restrict a local government from issuing building permits that exceed 75 percent of the residential subdivision or planned community.

(3) A governing body shall create:

(a) A two-step application process that includes the adoption of a preliminary plat and a final plat in order to expedite the issuance of building permits under this section.

The application must allow an applicant to identify the percentage of planned homes that the governing body must issue for the residential subdivision or planned community. The governing body shall maximize its administrative processes to expedite the review and approval of applications, plats, and plans submitted under this section.

(b) A master building permit process consistent with s. 553.794(3) for applicants seeking multiple building permits for residential subdivisions or planned communities. For purposes of this paragraph, a master building permit is valid for 3 consecutive years after its issuance or until the adoption of a new Florida Building Code, whichever is later. After a new Florida Building Code is adopted, the applicant may apply for a new master building permit, which, upon approval, is valid for 3 consecutive years.

(4) An applicant may use a private provider consistent with s. 553.791 to review a preliminary plat and building permit for each residential building or structure.

(5) A governing body may work with appropriate local government agencies to issue an address and a temporary parcel identification number for lot lines and lot sizes based on the metes and bounds of the plat contained in the application.

(6) If an applicant requests a certain number or percentage of building permits in his or her application, the governing body must issue the number or percentage requested in

accordance with the Florida Building Code, provided the residential buildings or structures are unoccupied and all of the following conditions are met:

(a) The governing body has approved a preliminary plat for each residential building or structure.

(b) The applicant provides proof to the governing body that the applicant has provided a copy of the approved preliminary plat, along with the approved plans, to the relevant electric, water, and wastewater utilities.

(c) The applicant holds a valid performance bond for up to 130 percent of the necessary utilities, roads, and stormwater improvements that have not been completed upon submission of the application under this section. For purposes of master planned communities, as defined in s. 163.3202(5)(b), a valid performance bond is required on a phase-by-phase basis.

(7)(a) An applicant may contract to sell, but may not transfer ownership of, a residential structure or building located in the residential subdivision or planned community until the final plat is approved by the governing body and recorded in the public records by the clerk of the circuit court.

(b) An applicant may not obtain a final certificate of occupancy with respect to each residential structure or building for which a building permit is issued until the final plat is approved by the governing body and recorded in the public

records by the clerk of the circuit court.

(c) An applicant must indemnify and hold harmless the governing body and its agents and employees from damages accruing and directly related to the issuance of a building permit for a residential building or structure located in the residential subdivision or planned community before the approval and recording of the final plat by the governing body. This includes damage resulting from fire, flood, construction defects, and bodily injury.

(8) For purposes of this section, an applicant has a vested right in a preliminary plat that has been approved by a governing body if all of the following conditions are met:

(a) The applicant relies in good faith on the approved preliminary plat.

(b) The applicant substantially changes his or her position, including making improvements pursuant to s. 177.301(9), or incurs other obligations and expenses.

(c) Any change by the governing body and its agents and employees from a cause of action directly related to the issuance of a building permit would constitute an inequitable interference in the approved preliminary plat.

(9) After a governing body creates the program required under this section, the local building official shall send by certified mail, return receipt requested, to the Department of Business and Professional Regulation a signed, certified letter

indicating that the program has been established. The letter must contain a brief explanation of the program, including how the program expedites the process of issuing building permits for residential subdivisions or planned communities before the final plat is recorded.

(10) After a governing body creates the program required under this section, the local governing body shall send by certified mail, return receipt requested, to the Department of Commerce a signed, certified letter indicating that the program has been established. The letter must contain a brief explanation of the program, including how the program expedites the process of issuing building permits for residential subdivisions or planned communities before the final plat is recorded.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 665 Expedited Approval of Residential Building Permits
SPONSOR(S): McClain
TIED BILLS: **IDEN./SIM. BILLS:** SB 812

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Wright	Anstead
2) Local Administration, Federal Affairs & Special Districts Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The Florida Building Code (Building Code) must be applied and enforced uniformly and consistently across the state. Local governments are required to enforce the Building Code and are responsible for issuing building permits.

In Florida law, "plat" means a map or delineated representation of the subdivision of lands, and is generally required whenever a developer wishes to subdivide a large piece of property into smaller parcels and tracts. Generally, a preliminary plat approval is approval of the development plan, and a final plat approval is approval of a finalized development plan; engineering plans, if required; and documents confirming the parties with a property interest; which is then recorded with the clerk of the circuit court.

Some local governments allow a developer to commence construction and issue building permits after a preliminary plat has been issued, but before the plat is finalized.

The bill:

- Requires certain local governments to create a process to expedite the issuance of building permits based on a preliminary plat and to issue the number or percentage of building permits requested by an applicant, if:
  - The governing body has approved a preliminary plat for each residential building or structure.
  - The applicant provides proof to the governing body that the applicant has provided a copy of the approved preliminary plat, along with the approved plans, to the relevant electric, water, and wastewater utilities.
  - The applicant holds a valid performance bond for up to 130 percent of the necessary utilities, roads, and stormwater improvements that have not been completed upon submission of the application.
- Provides that vested rights may be formed in a preliminary plat, under certain circumstances.
- Allows such applicant to contract to sell, but not transfer ownership of, a residential structure or building located in the preliminary plat before the final plat is approved.
- Requires all local governments to create a master building permit process.

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

The bill provides an effective date of upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Plats

In Florida law, "plat" means a map or delineated representation of the subdivision of lands, being a complete exact representation of the subdivision and other information in compliance with the requirement of all applicable state requirements and of any local ordinances.[1] Generally, platting is required whenever a developer wishes to subdivide a large piece of property into smaller parcels and tracts. These smaller areas become the residential lots, streets and parks of a new residential subdivision.[2]

State law establishes consistent minimum requirements for the establishment of plats, and local governing bodies have the power to regulate and control the platting of lands.[3] Prior to approval by the appropriate governing body, the plat must be reviewed for conformity with state and local law and sealed by a professional surveyor and mapper who is either employed by or under contract to the local governing body.[4]

Before a plat is offered for recording with the clerk of the circuit court, it must be approved by the appropriate governing body, and evidence of such approval must be placed on the plat. If not approved, the governing body must return the plat to the professional surveyor and mapper or the legal entity offering the plat for recordation.

Jurisdiction over plat approval is as follows:[5]

- When the plat to be submitted for approval is located wholly within the boundaries of a municipality, the governing body of the municipality has exclusive jurisdiction to approve the plat.
- When a plat lies wholly within the unincorporated areas of a county, the governing body of the county has exclusive jurisdiction to approve the plat.
- When a plat lies within the boundaries of more than one governing body, two plats must be prepared and each governing body has exclusive jurisdiction to approve the plat within its boundaries, unless the governing bodies having said jurisdiction agree that one plat is mutually acceptable.

Every plat of a subdivision offered for recording must have certain information, including providing:[6]

- The name of the plat in bold legible letters, and the name of the subdivision, professional surveyor and mapper or legal entity, and street and mailing address on each sheet.
- The section, township, and range immediately under the name of the plat on each sheet included, along with the name of the city, town, village, county, and state in which the land being platted is situated.
- The dedications and approvals by the surveyor and mapper and local governing body, and the circuit court clerk's certificate and the professional surveyor and mapper's seal and statement.
- All section lines and quarter section lines occurring within the subdivision. If the description is by metes and bounds, all information called for, such as the point of commencement, course bearings and distances, and the point of beginning. If the platted lands are in a land grant or are

[1] S. 177.031(14), F.S.
[2] Harry W. Carls, Florida Condo & HOA Law Blog, May 17, 2018, *Why is a Plat so Important?*, https://www.floridacondohoalawblog.com/2018/05/17/why-is-a-plat-so-important/ (last visited Jan, 11, 2024).
[3] S. 177.011, F.S.
[4] S. 177.081(1), F.S.
[5] S. 177.071(1), F.S.
[6] S. 177.091, F.S.

not included in the subdivision of government surveys, then the boundaries are to be defined by metes and bounds and courses.
- Location, width, and names of all streets, waterways, or other rights-of-way.
- Location and width of proposed easements and existing easements identified in the title opinion or property information report must be shown on the plat or in the notes or legend, and their intended use.
- All lots numbered either by progressive numbers or, if in blocks, progressively numbered in each block, and the blocks progressively numbered or lettered, except that blocks in numbered additions bearing the same name may be numbered consecutively throughout the several additions.
- Sufficient survey data to positively describe the bounds of every lot, block, street easement, and all other areas shown on the plat.
- Designated park and recreation parcels.
- All interior excepted parcels clearly indicated and labeled "Not a part of this plat."
- The purpose of all areas dedicated clearly indicated or stated on the plat.
- That all platted utility easements must provide that such easements are also easements for the construction, installation, maintenance, and operation of cable television services; provided, however, no such construction, installation, maintenance, and operation of cable television services interferes with the facilities and services of an electric, telephone, gas, or other public utility.

Preliminary Plat Approval

Many local governments around the state have a process to approve a preliminary plat before approving a final plat. Generally, a preliminary plat is a technical, graphic representation of a proposed development, including plans for streets, utilities, drainage, easements, and lot lines, for a proposed subdivision. If a preliminary plat is required, it is generally a prerequisite for a final plat approval and the submission of any property improvement plans or permit applications.[7]

Generally, a preliminary plat approval is approval of the development plan, and a final plat approval is approval of a finalized development plan; engineering plans, if required; and documents confirming the parties with a property interest; which is then recorded with the clerk of the circuit court.[8]

Based on a preliminary plat approval, some local governments allow a developer to commence construction before the plat is finalized. For example, the City of Jacksonville, Village of Royal Palm Beach, and the City of Tallahassee allow for a preliminary plat approval process.[9]

In Jacksonville, the Planning and Development Department (Department) of the City of Jacksonville, upon request of an applicant, may allow up to 50 percent of the lots within a proposed subdivision to be developed, but not occupied, based on a preliminary plat approval so long as the developer or owner meets the following conditions for construction:[10]
- Prior to Civil Plans submittal to the Department, the developer must submit the development proposal to Jacksonville Electric Authority (JEA) for review.
- Once JEA has granted preliminary approval, the Department will review the preliminary site plan, the preliminary and final engineering plans for the required improvements, and the sheet identifying the lots being requested for home construction prior to platting as approved by JEA.

[7] For examples, *see* City of Zephyrhills Code of Ordinances s. 11.03.02.01; Palm Beach County Code of Ordinances Art. 11., Ch. A.; Seminole County, SEMINOLE COUNTY PLANNING & DEVELOPMENT DIVISION, Subdivision Application, https://www.seminolecountyfl.gov/core/fileparse.php/3307/urlt/SUBDIVISION-05-2023.ADA.pdf (last visited Jan, 11, 2024).
[8] Advance Surveying & Engineering, *An In-Depth Look At Preliminary and Final Plats*, https://www.advsur.com/2019/07/an-in-depth-look-at-preliminary-and-final-plats/ (last visited Jan, 11, 2024).
[9] City of Jacksonville Code of Ordinances s. 654-109, Village of Royal Palm Beach Code of Ordinances s. 22-22, City of Tallahassee Code of Ordinances s. 9-92.
[10] City of Jacksonville Code of Ordinances s. 654-139(d).

The Department reserves the right to deny authorization for development on a specific lot or lots to protect City interests.
- The developer or owner must provide a guarantee for required improvements and warranty of title.
- A Certificate of Occupancy may not be issued until the final plat is approved by JEA and the Department and recorded in the current public records of Duval County, Florida.
- Approval of the preliminary plat and required supplemental material are valid for 12 months from the date of approval. If the final plat is not submitted to and approved during the 12-month period, the conditional approvals are null and void.[11]

Vested Rights in Property Based on a Plat

In general, vested rights[12] form when a property owner or developer acquires real property rights that cannot be taken by governmental regulation.[13] Property owners or developers who do not have vested rights will be subject to subsequently enacted land regulations, while subsequently enacted land regulations do not apply to the property owners or developers who are determined to have vested rights.[14]

Florida common law provides that vested rights in a property may be established if a property owner or developer has:[15]
- In good faith reliance,
- Upon some act or omission of government,
- Made such a substantial change in position or has incurred such extensive obligations and expenses,
- That it would make it highly inequitable to interfere with the acquired right.

Recordation of a final plat with the clerk of the circuit court alone is not sufficient to establish vested rights[16] in the land development regulations in existence at that time.[17] Instead, the property owner or developer must take meaningful steps towards development of the property, such as applying for development permits or expending certain monies,[18] to constitute a substantial change in position or be considered extensive obligations and expenses towards development of the property in reliance on some action by the local government.[19]

Additionally, a property owner or developer may obtain vested rights in both a local government-approved preliminary plat and a final plat, as long as expenditures or a substantial change have been made by the property owner or developer based on such preliminary plat or plat.[20]

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[11] City of Jacksonville Code of Ordinances s. 654-109(b).
[12] Florida courts have used the concepts of vested rights and equitable estoppel interchangeably in deciding fault in property rights cases. Equitable estoppel, in this instance, means focusing on whether it would be inequitable or fair to allow a local government to deny prior conduct or position on building or development decisions. Robert M. Rhodes and Cathy M. Sellers, *Equitable Estoppel and Vested Rights in Land Use*, The Florida Bar, II Florida Environmental and Land Use Law 8, (1994).
[13] *Id.*; Heeter, *Zoning Estoppel: Application of the Principles of Equitable Estoppel and Vested Rights to Zoning Disputes*, Urb.L.Ann. 63, 64-65 (1971).
[14] *Monroe County v. Ambrose*, 866 So.2d 707, 712 (Fla. 3d DCA 2003); Kristin Melton, de la Parte & Gilbert P.A., *When are Rights Vested in a Platted Development?*, 2016, https://www.dgfirm.com/email/2016summer/article2.html#:~:text=Florida%20common%20law%20provides%20that,it%20would%20make%20it%20highly (last visited Jan, 11, 2024).
[15] *Monroe County*, 866 So.2d at 710.
[16] *Id.*
[17] Melton, *supra* note 14.
[18] *Town of Largo v. Imperial Homes Corp.*, 309 So.2d 571, 573 (Fla. 2d DCA 1975).
[19] *Id.*; Melton, *supra* note 14.
[20] *The Florida Companies v. Orange County*, 411 So.2d 1008, 1011 (Fla. 5th DCA 1982)

The Florida Building Code

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida's minimum standards were met. Local governments could choose from four separate model codes. The state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.[21]

In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. The Governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study's commission recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Building Code), and that first edition replaced all local codes on March 1, 2002.[22] The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.[23]

Chapter 553, part IV, F.S., is known as the "Florida Building Codes Act" (Act). The purpose and intent of the Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.[24]

The Florida Building Commission (Commission) was statutorily created to implement the Building Code. The Commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code. The Commission reviews several International Codes published by the International Code Council,[25] 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.[26]

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.[27] Every local government must enforce the Building Code and issue building permits.[28]

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.[29] 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.[30]

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

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[21] The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs,* p. 4, http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Jan, 11, 2024).
[22] *Id.*
[23] Florida Building Commission Homepage, https://floridabuilding.org/c/default.aspx (last visited Jan, 11, 2024).
[24] *See* s. 553.72(1), F.S.
[25] The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to "construct safe, sustainable, affordable and resilient structures." International Code Council, *About the ICC*, https://www.iccsafe.org/about/who-we-are/ (last visited Jan, 11, 2024).
[26] S. 553.73(7)(a), F.S.
[27] S. 553.72, F.S.
[28] Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.
[29] S. 468.603(2), F.S; § 202, FBC, Building, 7th Ed., (2020).
[30] §§ 107, 110.1, and 110.3, FBC, Building, 7th Ed., (2020).

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.[31] A building permit is not valid until the fees for the permit have been paid.[32]

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.[33] An application for a permit must include building plans.[34] 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.[35]

Building Permit Delays

Any delays in obtaining a building permit can delay the completion of a construction project. For example, delays in the completion of a construction project may:[36]

- Lead to increased costs for construction projects, which may be passed onto occupants of a completed project;
- Discourage construction, which can reduce the total supply of buildings in a community and may lead to higher rents in the community;
- Reduce property tax revenue to a local government and other taxing jurisdictions resulting from the delayed start and completion of a construction project; and
- Result in delayed occupancy of a project, including single-family residences and multi-family residences.

Streamlining the process to obtain a building permit can accelerate the completion of construction projects. The goal of streamlining is to remove overlap and duplication and create more efficient administrative procedures while not reducing a building department's ability to enforce the applicable construction codes. Streamlining the building permit process may:[37]

- Increase local government revenues by accelerating completion of a project and thus accelerating property tax collection;
- Create local construction jobs and other indirect jobs supported by local construction jobs, such as jobs at a material supplier, which may increase local tax revenue; and
- Encourage economic development by having an efficient permit system.

Master Building Permit Program

A master building permit program is a streamlined permitting process created by a local government to help builders who expect to construct identical single-family or two-family dwellings or townhomes on a repetitive basis. Such program must be designed to achieve standardization and consistency during the permitting process and to reduce the time spent by local building departments during the site-specific building permit application process.[38]

If a local building code administrator receives a written request from a licensed contractor for the creation of a master building permit program, the local government must create such program within 6 months after receipt.[39]

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[31] *See* ss. 125.56(4)(a) and 553.79(1), F.S.
[32] § 109.1 , FBC, Building, 7th Ed., (2020).
[33] Ss. 125.56(4)(b), 553.79(1), and 713.135(5) and (6), F.S.
[34] Ss. 468.603(8), and 553.79(2), F.S.
[35] S. 553.79(2), F.S.
[36] City of Austin Development Services Department, *A Program for Expedited Permitting*, http://austintexas.gov/sites/default/files/files/8-9-2016_Report_on_Expedited_Permitting_Program.pdf (last visited Jan, 11, 2024); PricewaterhouseCoopers, *The Economic Impact of Accelerating Permit Processes on Local Development and Government Revenues*, (Dec. 7, 2005).
[37] *Id.*; Institute for Market Transformation, *Streamlining Compliance Processes*, (Winter 2012) https://www.imt.org/wp-content/uploads/2018/02/CaseStudy5.pdf (last visited Jan, 11, 2024).
[38] S. 553.794(1), F.S.
[39] *Id*.

To obtain a master building permit after a program has been implemented, a builder must submit the following information to the local building department:[40]

- A completed master building permit application.
- A general construction plan with:
  - All of the plan pages, documents, and drawings; signed and sealed by the design professional of record;[41] and
  - A written acknowledgment from the design professional that the plan pages, documents, and drawings will be used for future site-specific building permit applications.
  - A model design, which may include up to four alternate exterior elevations, each containing the same living space footprint.[42]
- Truss specifications.
- Energy performance calculations for all building orientations.

Once a master building permit application is approved, the local building department may only require the builder to submit the following documents for each site-specific building permit application:[43]

- A completed site-specific building permit application that includes the master building permit number and identifies the model design to be built, including elevation and garage style.
- Three signed and sealed copies of the lot or parcel survey or site plan.
- An affidavit by the design professional of record affirming that the attached master building permit is a true and correct copy.
- Complete mechanical drawings of the model design.

An approved master building permit remains valid until the Florida Building Code is updated,[44] which is every 3 years.[45]

Effect of the Bill

The bill requires a governing body to create:

- A two-step application process for the adoption of a preliminary plat and for a final plat in order to expedite the issuance of building permits related to such plats. The application must allow an applicant to identify the percentage of planned homes, or the number of building permits, that the governing body must issue for the residential subdivision or planned community indicated in the preliminary plat.
  - The governing body is required to maximize its administrative processes to expedite the review and approval of applications, plats, and plans.
- A master building permit process consistent with existing master building permit application requirements for applicants seeking multiple building permits for residential subdivisions or planned communities.
  - The bill provides that a master building permit issued pursuant to this requirement is valid for 3 consecutive years after its issuance or until the adoption of a new Building Code, whichever is later. After a new Building Code is adopted, the applicant may apply for a new master building permit, which, upon approval, is valid for 3 consecutive years.

By **August 15, 2024**, the bill requires a governing body of a county that has 75,000 residents or more and a governing body of a municipality that has 30,000 residents or more to create a program to expedite the process for issuing building permits for residential subdivisions or planned communities before a final plat is recorded with the clerk of the circuit court.

- Such expedited process must include an application for an applicant to identify **up to 50 percent** of planned homes, or the number of building permits, that the governing body **must**

[40] S. 553.794(3), F.S
[41] The design professional must be a licensed engineer or architect.
[42] S. 553.794(4)(c), F.S
[43] S. 553.794(6), F.S.
[44] S. 553.794(5)(e), F.S.
[45] S. 553.73(7)(a), F.S.

issue for the residential subdivision or planned community. However, such a local government may issue building permits that exceed 50 percent of the residential subdivision or planned community.

By **December 31, 2028**, the bill requires such a governing body to update its expedited process to contain an application that allows an applicant to request an **increased percentage of up to 75 percent** of building permits for planned homes that the local governing body must issue for the residential subdivision or planned community. However, such a local government may issue building permits that exceed 75 percent of the residential subdivision or planned community.

If a governing body had a program in place **before July 1, 2023**, to expedite the building permit process, the bill requires such governing body to only update their program to approve an applicant's written application to issue up to 50 percent of the building permits for the residential subdivision or planned community. However, such a local government may issue building permits that exceed 50 percent of the residential subdivision or planned community.

In accordance with the timelines above, the bill requires the governing body to issue the number or percentage of building permits requested by an applicant, provided the residential buildings or structures are unoccupied and all of the following conditions are met:

- The governing body has approved a preliminary plat for each residential building or structure.
- The applicant provides proof to the governing body that the applicant has provided a copy of the approved preliminary plat, along with the approved plans, to the relevant electric, water, and wastewater utilities.
- The applicant holds a valid performance bond for up to 130 percent of the necessary utilities, roads, and stormwater improvements that have not been completed upon submission of the application under this section. For purposes of master planned communities,[46] a valid performance bond is required on a phase-by-phase basis.

The bill allows an applicant to use a **private provider** to review a preliminary plat and to obtain a building permit for each residential building or structure.

The bill allows a governing body to work with appropriate local government agencies to issue an address and a temporary parcel identification number for lot lines and lot sizes based on the metes and bounds of the plat contained in an application.

The bill allows an applicant to contract to sell, but not transfer ownership of, a residential structure or building located in the residential subdivision or planned community until the final plat is approved by the governing body and recorded in the public records by the clerk of the circuit court.

The bill prohibits an applicant from obtaining a final certificate of occupancy for each residential structure or building for which a building permit is issued until the final plat is approved by the governing body and recorded in the public records by the clerk of the circuit court.

The bill provides that an applicant has a vested right in a preliminary plat that has been approved by a governing body if all of the following conditions are met:

- The applicant relies in good faith on the approved preliminary plat.
- The applicant substantially changes his or her position, including making improvements pursuant to s. 177.031(9), F.S.[47] or incurs other obligations and expenses.

[46] "Planned unit development" or "master planned community" means an area of land that is planned and developed as a single entity or in approved stages with uses and structures substantially related to the character of the entire development, or a self-contained development in which the subdivision and zoning controls are applied to the project as a whole rather than to individual lots. S. 163.3203(5)(b), F.S.

[47] Such improvements include, but are not limited to, street pavements, curbs and gutters, sidewalks, alley pavements, walkway pavements, water mains, sanitary sewers, storm sewers or drains, street names, signs, landscaping, permanent reference monuments (P.R.M.s), permanent control points (P.C.P.s), monuments, or any other improvement required by a governing body. S. 177.031(9), F.S.

- Any change by the governing body and its agents and employees from a cause of action directly related to the issuance of a building permit would constitute an inequitable interference in the approved preliminary plat.

The bill requires an applicant to indemnify and hold harmless the governing body and its agents and employees from damages accruing and directly related to the issuance of a building permit for a residential building or structure located in the residential subdivision or planned community before the approval and recording of the final plat by the governing body. This includes damage resulting from fire, flood, construction defects, and bodily injury.

The bill provides the following definitions:

- "Applicant" means a homebuilder or developer that files an application with the local governing body to identify the percentage of planned homes that the local governing body must issue for the residential subdivision or planned community.
- "Final plat" means the final tracing, map, or site plan presented by the subdivider to a governing body for final approval, and, upon approval by the appropriate governing body, is submitted to the clerk of the circuit court for recording.
- "Preliminary plat" means a map or delineated representation of the subdivision of lands that is a complete and exact representation of the residential subdivision or planned community and contains required land boundary information.

The bill requires the local building official to send to DBPR and the Department of Commerce, by certified mail, return receipt requested, a signed, certified letter indicating that the program has been established. The letter must contain a brief explanation of the program, including how the program expedites the process of issuing building permits for residential subdivisions or planned communities before the final plat is recorded.

Provides an effective date of upon becoming law

B. SECTION DIRECTORY:

Section 1: Creates s. 177.073, F.S.; relating to approval of certain building permits pursuant to a preliminary plat.
Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   This bill may impact local governments because they may have to hire more employees to meet the prescribed timeframes.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The streamlined permitting and development processes in the bill may expedite development across the state. However, permit fees may be raised by local governments in order to meet timing requirements.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

REGULATORY REFORM AND ECONOMIC DEVELOPMENT SUBCOMMITTEE

HB 665 by Rep. McClain
Expedited Approval of Residential Building Permits

AMENDMENT SUMMARY
January 17, 2024

Amendment 1 by Rep. McClain (strike):

- Clarifies that an applicant must commence construction and continue to develop the property in good faith in order to obtain vested rights.
- Requires the governing body to obtain written consent of the applicant before it may make substantive changes to the preliminary plat.
- Requires the applicant to indemnify and hold harmless the local government, governing body, its agents, and its employees, from certain liability related to the improvement of the property, including to any associated utilities, and from certain disputes related to obtaining a certificate of occupancy.
    - However, such indemnification does not extend to governmental action that infringe on the applicant's vested rights.
- Changes the date by which a governing body must allow an applicant to obtain up to 50 percent of permits pursuant to a preliminary plat, to October 1, 2024, from August 1, 2024.
- Exempts Monroe County from the provisions which require the governing body to issue a certain percentage of permits pursuant to a preliminary plat.
- Provides that a master building permit is valid for 3 consecutive years after its issuance or until the adoption of a new Florida Building Code, whichever is earlier, instead of later.
- Requires an applicant for permits pursuant to a preliminary plat to provide a copy of the approved plat to relevant gas utilities.
- Removes provisions requiring certain reporting to the Department of Business and Professional Regulation and the Department of Commerce.
- Clarifies language and corrects grammatical errors.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Regulatory Reform & Economic Development Subcommittee
Representative McClain offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 177.073, Florida Statutes, is created to read:

177.073 Expedited approval of residential building permits before a final plat is recorded.—

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

(a) "Applicant" means a homebuilder or developer who files an application with the local governing body to identify the percentage of planned homes, or the number of building permits, that the local governing body must issue for a residential subdivision or planned community.

(b) "Final plat" means the final tracing, map, or site plan presented by the subdivider to a governing body for final approval, and, upon approval by the appropriate governing body, is submitted to the clerk of the circuit court for recording.

(c) "Local building official" has the same meaning as in s. 553.791(1).

(d) "Plans" means any building plans, construction plans, engineering plans, or site plans, or their functional equivalent, submitted by an applicant for a building permit.

(e) "Preliminary plat" means a map or delineated representation of the subdivision of lands that is a complete and exact representation of the residential subdivision or planned community and contains any additional information needed to be in compliance with the requirements of this chapter.

(2)(a) By October 1, 2024, the governing body of a county that has 75,000 residents or more and the governing body of a municipality that has 30,000 residents or more shall create a program to expedite the process for issuing building permits for residential subdivisions or planned communities in accordance with the Florida Building Code and this section before a final plat is recorded with the clerk of the circuit court. The expedited process must include an application for an applicant to identify the percentage of planned homes, not to exceed 50 percent of the residential subdivision or planned community, or the number of building permits that the governing body must

issue for the residential subdivision or planned community. This paragraph does not:

1. Restrict the governing body from issuing more than 50 percent of the building permits for the residential subdivision or planned community.

2. Apply to a county subject to s. 380.0552.

(b) A governing body that had a program in place before July 1, 2023, to expedite the building permit process, need only update their program to approve an applicant's written application to issue up to 50 percent of the building permits for the residential subdivision or planned community in order to comply with this section. This paragraph does not restrict a governing body from issuing more than 50 percent of the building permits for the residential subdivision or planned community.

(c) By December 31, 2027, the governing body of a county that has 75,000 residents or more and the governing body of a municipality that has 30,000 residents or more shall update its program to expedite the process for issuing building permits for residential subdivisions or planned communities in accordance with the Florida Building Code and this section before a final plat is recorded with the clerk of the circuit court. The expedited process must include an application for an applicant to identify the percentage of planned homes, not to exceed 75 percent of the residential subdivision or planned community, or the number of building permits that the governing body must

issue for the residential subdivision or planned community. This paragraph does not:

1. Restrict the governing body from issuing more than 75 percent of the building permits for the residential subdivision or planned community.

2. Apply to a county subject to s. 380.0552.

(3) A governing body shall create:

(a) A two-step application process for the adoption of a preliminary plat, inclusive of any plans, in order to expedite the issuance of building permits under this section. The application must allow an applicant to identify the percentage of planned homes or the number of building permits that the governing body must issue for the residential subdivision or planned community.

(b) A master building permit process consistent with s. 553.794 for applicants seeking multiple building permits for residential subdivisions or planned communities. For purposes of this paragraph, a master building permit is valid for 3 consecutive years after its issuance or until the adoption of a new Florida Building Code, whichever is earlier. After a new Florida Building Code is adopted, the applicant may apply for a new master building permit, which, upon approval, is valid for 3 consecutive years.

(4) An applicant may use a private provider consistent with s. 553.791 to expedite the application process as described in this section.

(5) A governing body may work with appropriate local government agencies to issue an address and a temporary parcel identification number for lot lines and lot sizes based on the metes and bounds of the plat contained in the application.

(6) The governing body must issue the number or percentage of building permits requested by an applicant in accordance with the Florida Building Code and this section, provided the residential buildings or structures are unoccupied and all of the following conditions are met:

(a) The governing body has approved a preliminary plat for each residential subdivision or planned community.

(b) The applicant provides proof to the governing body that the applicant has provided a copy of the approved preliminary plat, along with the approved plans, to the relevant electric, gas, water, and wastewater utilities.

(c) The applicant holds a valid performance bond for up to 130 percent of the necessary improvements, as defined in s. 177.031(9), that have not been completed upon submission of the application under this section. For purposes of a master planned community as defined in s. 163.3202(5)(b), a valid performance bond is required on a phase-by-phase basis.

(7)(a) An applicant may contract to sell, but may not transfer ownership of, a residential structure or building located in the residential subdivision or planned community until the final plat is approved by the governing body and recorded in the public records by the clerk of the circuit court.

(b) An applicant may not obtain a final certificate of occupancy for each residential structure or building for which a building permit is issued until the final plat is approved by the governing body and recorded in the public records by the clerk of the circuit court.

(8) For purposes of this section, an applicant has a vested right in a preliminary plat that has been approved by a governing body if all of the following conditions are met:

(a) The applicant relies in good faith on the approved preliminary plat or any amendments thereto.

(b) The applicant incurs obligations and expenses, commences construction of the residential subdivision or planned community, and is continuing in good faith with the development of the property.

(9) Upon the establishment of an applicant's vested rights in accordance with subsection (8), a governing body may not make substantive changes to the preliminary plat without the applicant's written consent.

(10) An applicant must indemnify and hold harmless the local government, its governing body, its employees, and its agents from liability or damages resulting from the issuance of a building permit or the construction, reconstruction, or improvement or repair of a residential building or structure, including any associated utilities, located in the residential subdivision or planned community. Additionally, an applicant must indemnify and hold harmless the local government, its governing body, its employees, and its agents from liability or disputes resulting from the issuance of a certificate of occupancy for a residential building or structure that is constructed, reconstructed, improved, or repaired before the approval and recordation of the final plat of the qualified project. This indemnification includes, but is not limited to, any liability and damage resulting from wind, fire, flood, construction defects, bodily injury, and any actions, issues, or disputes arising out of a contract or other agreement between the developer and a utility operating in the residential subdivision or planned community. However, this indemnification does not extend to governmental actions that infringe on the applicant's vested rights.

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

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to expedited approval of residential building permits; creating s. 177.073, F.S.; providing definitions; requiring certain governing bodies, by a date certain, to create a program to expedite the process for issuing residential building permits before a final plat is recorded; requiring the expedited process to include a certain application; requiring certain governing bodies to update its program in a specified manner; providing applicability; requiring a governing body to create certain processes for purposes of the program; authorizing applicants to use a private provider to expedite the process for certain building permits; authorizing a governing body to issue addresses and temporary parcel identification numbers for specified purposes; requiring a governing body to issue a specified number or percentage of building permits requested in an application when certain conditions are met; setting forth certain conditions for applicants who apply to the program; providing that an applicant has a vested right in an approved preliminary plat when certain conditions are met; prohibiting a governing body from making substantive

changes to a preliminary plat without written consent; requiring an applicant to indemnify and hold harmless certain entities and persons; providing an exception; providing an effective date.

HB 1203

A bill to be entitled

An act relating to homeowners' associations; amending s. 720.303, F.S.; providing that officers and directors of a homeowners' association are subject to certain standards; requiring a detailed accounting of amounts due to the association be given to certain persons within a certain timeframe upon written request; providing for a complete waiver of outstanding fines under certain circumstances; amending s. 720.3035, F.S.; prohibiting an association or certain committees of the association from enforcing or adopting certain covenants, rules, or guidelines; authorizing a parcel owner to appeal certain decisions of the association or certain committees of the association to an appeals committee within a specified time frame; providing for membership and authority of the appeals committee; requiring the appeals committee to make its decisions within a specified time frame; amending s. 720.3045, F.S.; authorizing parcel owners or their tenants to install, display, or store clotheslines and vegetable gardens under certain circumstances; amending s. 720.305, F.S.; prohibiting certain fines from being aggregated and becoming a lien on a parcel without a supermajority vote of a certain percentage of the

voting members; specifying how fines, suspensions, attorney fees, and costs are determined; requiring certain notices to be provided to parcel owners and, if applicable, an occupant, a licensee, or an invitee of the parcel owner; requiring certain hearings to be held within a specified timeframe and authorizing such hearings to be held by telephone or other electronic means; prohibiting the accrual of attorney fees and costs after a specified time; specifying the priority of payments made by a parcel owner to an association; authorizing certain persons to request a hearing to dispute certain fees and costs; providing that certain fines may not become a lien on a parcel; requiring fines or suspensions related to traffic infractions to be determined and issued by a certain person; prohibiting a parcel owner from being fined for certain traffic infractions; defining the term "traffic infraction"; prohibiting an association from levying a fine or imposing a suspension for certain actions; prohibiting an association from enforcing certain rules or covenants under certain circumstances; amending s. 720.3075, F.S.; prohibiting certain homeowners' association documents from precluding property owners from taking certain actions; prohibiting homeowners' association documents

from limiting or requiring certain actions; amending s. 720.308, F.S.; prohibiting a board from increasing assessments by more than specified percentages without a supermajority vote of a certain percentage of the voting members; providing an exception; prohibiting certain assessments from becoming a lien on a parcel without a supermajority vote of a certain percentage of the voting members; amending s. 720.318, F.S.; authorizing a law enforcement officer to park his or her assigned law enforcement vehicle on public roads and rights-of-way; providing an effective date.

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

Section 1. Subsection (1) of section 720.303, Florida Statutes, is amended, and subsection (13) is added to that section, to read:

720.303 Association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.—

(1) POWERS AND DUTIES.—An association that ~~which~~ operates a community as defined in s. 720.301, must be operated by an association that is a Florida corporation. After October 1, 1995, the association must be incorporated and the initial governing documents must be recorded in the official records of

the county in which the community is located. An association may operate more than one community. The officers and directors of an association are subject to s. 617.0830 and have a fiduciary relationship to the members who are served by the association. The powers and duties of an association include those set forth in this chapter and, except as expressly limited or restricted in this chapter, those set forth in the governing documents. After control of the association is obtained by members other than the developer, the association may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all members concerning matters of common interest to the members, including, but not limited to, the common areas; roof or structural components of a building, or other improvements for which the association is responsible; mechanical, electrical, or plumbing elements serving an improvement or building for which the association is responsible; representations of the developer pertaining to any existing or proposed commonly used facility; and protesting ad valorem taxes on commonly used facilities. The association may defend actions in eminent domain or bring inverse condemnation actions. Before commencing litigation against any party in the name of the association involving amounts in controversy in excess of $100,000, the association must obtain the affirmative approval of a majority of the voting interests at a meeting of the membership at which a quorum has been attained. This subsection

does not limit any statutory or common-law right of any individual member or class of members to bring any action without participation by the association. A member does not have authority to act for the association by virtue of being a member. An association may have more than one class of members and may issue membership certificates. An association of 15 or fewer parcel owners may enforce only the requirements of those deed restrictions established prior to the purchase of each parcel upon an affected parcel owner or owners.

(13) REQUIREMENT TO PROVIDE AN ACCOUNTING.—A parcel owner or any occupant, licensee, or invitee of the parcel owner may, at any time, make a written request to the board for a detailed accounting of any amounts he or she owes to the association and the board shall provide such information within 10 days after receipt of the written request. Failure by the board to respond in 10 days to a written request for a detailed accounting constitutes a complete waiver of any outstanding fines of the person who requested such accounting.

Section 2. Subsections (1) and (4) of section 720.3035, Florida Statutes, are amended to read:

720.3035 Architectural control covenants; parcel owner improvements; rights and privileges.—

(1)(a) The authority of an association or any architectural, construction improvement, or other such similar committee of an association to review and approve plans and

specifications for the location, size, type, or appearance of any structure or other improvement on a parcel, or to enforce standards for the external appearance of any structure or improvement located on a parcel, shall be permitted only to the extent that the authority is specifically stated or reasonably inferred as to such location, size, type, or appearance in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants.

(b) An association or any architectural, construction improvement, or other such similar committee of an association may not enforce or adopt a covenant, rule, or guideline that:

1. Limits or places requirements on the interior of a structure that is not visible from the parcel's frontage or an adjacent parcel.

2. Requires the review and approval of plans and specifications for a central air-conditioning, refrigeration, heating, or ventilating system by the association or any architectural, construction improvement, or other such similar committee of an association, if such system is not visible from the parcel's frontage and is substantially similar to a system that is approved or recommended by the association or a committee thereof.

(4)(a) Each parcel owner is ~~shall be~~ entitled to the rights and privileges set forth in the declaration of covenants or other published guidelines and standards authorized by the

declaration of covenants concerning the architectural use of the parcel, and the construction of permitted structures and improvements on the parcel. ~~and~~ Such rights and privileges may ~~shall~~ not be unreasonably infringed upon or impaired by the association or any architectural, construction improvement, or other such similar committee of the association.

(b) If a parcel owner's rights and privileges have been unreasonably infringed upon or impaired by a decision concerning the architectural use of his or her parcel or the construction of permitted structures and improvements on such parcel by the association or any architectural, construction improvement, or other such similar committee of the association, the association must provide the parcel owner with the ability to appeal such decision to an appeals committee that consists of at least three members appointed by the board who are not officers, directors, or employees of the association or members of the architectural, construction improvement, or other similar committee of the association. The appeals committee has the right to reverse, modify, or affirm the decision being appealed. A parcel owner may appeal a decision of the association or any architectural, construction improvement, or other such similar committee of the association within 90 days after the owner receives written notification of the initial decision. The appeals committee must make a decision on the issue under appeal within 60 days after receiving a parcel owner's request for an appeal.

(c) If the association or any architectural, construction improvement, or other such similar committee of the association should unreasonably, knowingly, and willfully infringe upon or impair the rights and privileges set forth in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants, the adversely affected parcel owner is ~~shall be~~ entitled to recover damages caused by such infringement or impairment, including any costs and reasonable attorney ~~attorney's~~ fees incurred in preserving or restoring the rights and privileges of the parcel owner set forth in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants.

Section 3. Section 720.3045, Florida Statutes, is amended to read:

720.3045 Installation, display, and storage of items.—Regardless of any covenants, restrictions, bylaws, rules, or requirements of an association, and unless prohibited by general law or local ordinance, an association may not restrict parcel owners or their tenants from installing, displaying, or storing any items on a parcel which are not visible from the parcel's frontage or an adjacent parcel, including, but not limited to, artificial turf, boats, flags, vegetable gardens, clotheslines, and recreational vehicles.

Section 4. Subsection (2) of section 720.305, Florida Statutes, is amended, and subsections (7) through (10) are added

to that section, to read:

720.305 Obligations of members; remedies at law or in equity; levy of fines and suspension of use rights.—

(2) An association may levy reasonable fines for violations of the declaration, association bylaws, or reasonable rules of the association. A fine may not exceed $100 per violation against any member or any member's tenant, guest, or invitee for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association unless otherwise provided in the governing documents. A fine may be levied by the board for each day of a continuing violation, with a single notice and opportunity for hearing, except that the fine may not exceed $1,000 in the aggregate unless otherwise provided in the governing documents. A fine of less than $1,000 may not become a lien against a parcel. A fine that amounts to less than 1 percent of the parcel's property value at the time the fine was levied may only become a lien against the parcel with approval by 75 percent of the total membership of parcel owners, and fines may not be aggregated to create a lien against a parcel. In any action to recover a fine, the prevailing party is entitled to reasonable attorney fees and costs from the nonprevailing party as determined by the court.

(a) An association may suspend, for a reasonable period of

time, the right of a member, or a member's tenant, guest, or invitee, to use common areas and facilities for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. This paragraph does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may not prohibit an owner or tenant of a parcel from having vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

(b) A fine or suspension levied by the board of administration may not be imposed unless the board first provides at least 14 days' written notice of the parcel owner's right to a hearing to the parcel owner at his or her designated mailing or e-mail address in the association's official records and, if applicable, to any occupant, licensee, or invitee of the parcel owner, sought to be fined or suspended. Such ~~and a~~ hearing must be held within 30 days after issuance of the notice before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. The committee may hold the hearing by telephone or other electronic means. The notice must include a description of the alleged violation; the specific action required to cure such violation, if applicable; and the

hearing date, ~~and~~ location, and access information if held by telephone or other electronic means ~~of the hearing~~. A parcel owner has the right to attend a hearing by telephone or other electronic means.

(c) If the committee, by majority vote, does not approve a proposed fine or suspension, the proposed fine or suspension may not be imposed. The role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the board.

(d) Within 7 days after the hearing, the committee shall provide written notice to the parcel owner at his or her designated mailing or e-mail address in the association's official records and, if applicable, any occupant, licensee, or invitee of the parcel owner, of the committee's findings related to the violation, including any applicable fines or suspensions that the committee approved or rejected, and how the parcel owner or any occupant, licensee, or invitee of the parcel owner may cure the violation, if applicable, or fulfill a suspension, or the date by which a fine must be paid.

(e) If a violation is found by the committee, but has been cured before the hearing or in the manner specified in the written notice required in paragraph (b) or paragraph (d), a fine or suspension may not be imposed.

(f) ~~(e)~~ If a violation found by the committee is not cured and the proposed fine or suspension levied by the board is

approved by the committee by a majority vote, the committee must set a date by which the fine must be paid, which date must be at least 30 days after delivery of the written notice required in paragraph (d).

(g) If a violation is found by the committee and the proposed fine or suspension levied by the board is approved by the committee and the violation is not cured or the fine is not paid per the written notice required in paragraph (d), reasonable attorney fees and costs may be awarded to the association. Attorney fees and costs may not begin to accrue until after the date noticed for payment under paragraph (d) and the time for an appeal has expired.

(h) Upon receipt of a payment for any outstanding fines from a parcel owner or any occupant, licensee, or invitee of the parcel owner, the board must apply the payment first to the fine before satisfying any other amounts due to the association. Attorney fees and costs may not continue to accrue after a parcel owner or any occupant, licensee, or invitee of the parcel owner pays the fine.

(i) A parcel owner or any occupant, licensee, or invitee of the parcel owner may request a hearing before the board to dispute the reasonableness of the attorney fees and costs awarded to the association.

(7) If an association allows a fine to be levied for an infraction relating to lawn, landscaping, or grass maintenance,

such fine may not become a lien on a parcel.

(8) If an association allows a fine to be levied or a suspension to be imposed against a parcel owner or an occupant, a licensee, a guest, or an invitee of the parcel owner for a traffic infraction, such infraction must be determined and issued by a board-approved nonaffiliated third party specializing in traffic infractions before such fine may be levied or suspension imposed. A fine for a traffic infraction may not become a lien on a parcel. However, a fine may not be imposed against a parcel owner for a speeding violation committed by his or her occupant, licensee, guest, or invitee. For purposes of this paragraph, the term "traffic infraction" means a noncriminal violation of parking and traffic rules adopted by the state, county, municipality, or association.

(9) Notwithstanding any provision to the contrary in an association's governing documents, an association may not levy a fine or impose a suspension for any of the following:

(a) Leaving garbage receptacles at the curb or end of the driveway within 24 hours before or after the designated garbage collection day or time.

(b) Leaving holiday decorations or lights on a structure or other improvement on a parcel longer than indicated in the governing documents, unless such decorations or lights are left up for longer than 1 week after the association provides written notice of the violation to the parcel owner.

(10) An association may not enforce a new rule or covenant against a parcel owner for an action that took place before the new rule or covenant was enacted ~~fine payment is due 5 days after notice of the approved fine required under paragraph (d) is provided to the parcel owner and, if applicable, to any occupant, licensee, or invitee of the parcel owner. The association must provide written notice of such fine or suspension by mail or hand delivery to the parcel owner and, if applicable, to any occupant, licensee, or invitee of the parcel owner~~.

Section 5. Subsection (3) of section 720.3075, Florida Statutes, is amended, and paragraph (c) is added to subsection (4) of that section, to read:

720.3075 Prohibited clauses in association documents.—

(3) Homeowners' association documents, including declarations of covenants, articles of incorporation, or bylaws, may not preclude:

(a) The display of up to two portable, removable flags as described in s. 720.304(2)(a) by property owners. However, all flags must be displayed in a respectful manner consistent with the requirements for the United States flag under 36 U.S.C. chapter 10.

(b) A property owner or a tenant, a guest, or an invitee of the property owner from parking his or her personal vehicle, including a pickup truck, in the property owner's driveway, in

common parking lots, on public roads and rights-of-way, or in any other area at which the property owner or the property owner's tenant, guest, or invitee has a right to park. The homeowners' association documents, including declarations of covenants, articles of incorporation, or bylaws, may not prohibit a property owner or a tenant, a guest, or an invitee of the property owner from parking his or her work vehicle, which is not a commercial motor vehicle as defined in s. 320.01(25), in the property owner's driveway.

(c) A property owner from inviting, hiring, or allowing entry to a contractor or worker on the owner's parcel solely because the contractor or worker is not on a preferred vendor list of the association. Additionally, homeowners' association documents may not preclude a property owner from inviting, hiring, or allowing entry to a contractor or worker on his or her parcel solely because the contractor or worker does not have a professional or an occupational license. The association may not require a contractor or worker to present or prove possession of a professional or an occupational license to be allowed entry onto a property owner's parcel.

(d) Operating a vehicle that is not a commercial motor vehicle as defined in s. 320.01(25) in conformance with state traffic laws, on public roads or rights-of-way or the property owner's parcel.

(e) A property owner from installing code-compliant

hurricane protection or home hardening, such as hurricane shutters, impact glass, code-compliant windows or doors, or other similar protection that complies with or exceeds the applicable building code.

(f) A property owner from installing a metal roof, artificial turf, vegetable garden, or clotheslines or other energy-efficient device.

(4)

(c) Homeowners' association documents, including declarations of covenants, articles of incorporation, or bylaws, may not limit landscaping to grass-only or grass-majority lawns, or issue a mandatory watering schedule to property owners. However, the association's documents may generally require that a property owner keep any lawn, landscaping, and grass on the property owner's parcel well-maintained.

Section 6. Subsection (3) of section 720.308, Florida Statutes, is amended, and subsection (7) is added to that section, to read:

720.308 Assessments and charges.—

(3) MAXIMUM LEVEL OF ASSESSMENTS.—

(a) The stated dollar amount of the guarantee must ~~shall~~ be an exact dollar amount for each parcel identified in the declaration. Regardless of the stated dollar amount of the guarantee, assessments charged to a member may ~~shall~~ not exceed the maximum obligation of the member based on the total amount

of the adopted budget and the member's proportionate share of the expenses as described in the governing documents.

(b) Notwithstanding more restrictive limitations placed on the board by the governing documents and paragraph (c), the board may not impose a regular assessment that is more than 10 percent greater than the regular assessment for the association's preceding fiscal year or impose special assessments that in the aggregate exceed 5 percent of the budgeted gross expenses of the association for that fiscal year without the approval of 75 percent of voting members at a member meeting.

(c) The board may increase regular assessments beyond the limits in paragraph (b) if the board can prove that such increase is necessary for the immediate physical protection of property or public safety.

(7) LIENS.—An assessment that amounts to less than 1 percent of the parcel's property value at the time of the assessment may not become a lien against the parcel or the basis of a claim of lien against a parcel without the approval of 75 percent of voting members at a member meeting.

Section 7. Section 720.318, Florida Statutes, is amended to read:

720.318 Law enforcement vehicles.—An association may not prohibit a law enforcement officer, as defined in s. 943.10(1), who is a parcel owner, or who is a tenant, guest, or invitee of

a parcel owner, from parking his or her assigned law enforcement vehicle in an area where the parcel owner, or the tenant, guest, or invitee of the parcel owner, otherwise has a right to park, including on public roads or rights-of-way.

Section 8. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1203 Homeowners' Associations
SPONSOR(S): Esposito and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Larkin	Anstead
2) Civil Justice Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners where membership is a mandatory. HOAs are authorized to impose assessments that, if unpaid, may become a lien on the parcel. HOAs may levy fines against or suspend certain access rights of a parcel owner for failing to comply with the HOA's governing documents. In Florida, approximately 45 percent of homes are part of an HOA.

The bill:

- Clarifies that directors and officers are subject to the general standards for directors outlined in the Florida Not For Profit Corporation Act.
- Allows HOA members to make a written request for a detailed accounting of any amounts owed to the HOA, and the HOA must provide such information or else the board forfeits any outstanding fine.
- Requires that an HOA or Architecture Review Committees (ARCs) allow homeowners to appeal a decisions of the ARC.
- Allows fines or suspensions to be canceled if a violation has been cured.
- Prohibits certain fines from becoming a lien on a parcel such as: lawn, landscaping, grass maintenance, and traffic violations.
- Prohibits fines from being aggregated to create a lien against a parcel; and only allows a fine or an assessment of less than 1 percent of a parcel's property value at the time the fine was levied to become a lien against the parcel if approved by 75 percent of the total membership of parcel owners;
- Prohibits HOAs from issuing fines:
  - based on traffic infractions that were not committed by the parcel owner,
  - based on leaving garbage receptacles on the street for a certain time period, and
  - based on leaving holiday decorations or lights up under certain circumstances.
- Prohibits an HOA from preventing a homeowner from installing or displaying vegetable gardens and clotheslines in areas not visible from the frontage or adjacent parcels.
- Provides that without the approval of 75% of the voting members at a member meeting, the HOA may not impose:
  - A regular assessment that is more than 10 percent greater than the regular assessment for the HOA's preceding fiscal year unless it can be shown that a higher increase is necessary for property protection and public safety, or
  - Special assessments that in the aggregate exceed 5 percent of the budgeted gross expenses of the HOA for that fiscal year.

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

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners and membership is a mandatory condition of parcel ownership. HOAs are authorized to impose assessments that, if unpaid, may become a lien on the parcel.[1] In Florida, approximately 45 percent of homes are part of an HOA.[2]

Only HOAs whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S., the Homeowners' Association Act (HOA Act). Like a condominium, an HOA is administered by an elected board of directors. The powers and duties of an HOA include the powers and duties provided in the HOA Act, and in the association's governing documents, which include the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments to those documents.[3]

An HOA must be a Florida corporation and the initial governing documents must be recorded in the official records of the county in which the community is located. The powers and duties of an association include those set forth in the HOA Act and in the governing documents, except as expressly limited or restricted in the HOA Act.

After control of the HOA is obtained by members other than the developer, the HOA may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all members concerning matters of common interest to the members. The HOA may defend actions in eminent domain or bring inverse condemnation actions. Any individual member or class of members may bring any action without participation by the HOA, but a member does not have authority to act for the HOA by virtue of being a member.[4]

No state agency has direct oversight over HOAs. However, Florida law provides for a limited mandatory binding arbitration program, administered by the Division of Condominiums, Timeshares and Mobile Homes, within the Department of Business and Professional Regulation, for certain election and recall disputes.[5]

HOA Governing Documents

An HOA's governing documents include the:

- Recorded declaration of covenants for a community and all duly adopted amendments thereto;
- HOA's articles of incorporation and bylaws and any duly adopted amendments thereto; and
- Rules and regulations adopted under the authority of the recorded declaration, articles of incorporation, or bylaws and any duly adopted amendments thereto.[6]

The declaration of covenants, much like a constitution, establishes the community's basic covenants and restrictions.[7] The articles of incorporation establish the HOA's existence, basic structure, and

[1] S. 720.301(9), F.S.
[2] Patrick Regan, "45% of Florida Homes Are Part of an HOA, the Highest Percentage in the Nation." *South Florida Agent Magazine*, Apr. 21, 2023, https://southfloridaagentmagazine.com/2023/04/20/45-of-florida-homes-are-part-of-an-hoa-the-highest-percentage-in-the-nation/ (last visited Jan. 12, 2024).
[3] *See generally* ch. 720, F.S.
[4] S. 720.303(1), F.S.
[5] S. 720.311, F.S.
[6] S. 720.301(8), F.S.
[7] Joseph Adams, *HOA Governing Documents Explained* (July 1, 2018), https://www.floridacondohoalawblog.com/2018/07/01/hoa-governing-documents-explained/ (last visited Jan. 9, 2024).

governance.[8] The bylaws govern the HOA's operation and administration, while the rules and regulations typically supplement the other documents, addressing matters of everyday policy.[9]

Unless otherwise provided in the governing documents or required by law, an HOA's governing documents may be amended by the affirmative vote of two-thirds of the HOA's voting interests.[10] Within 30 days after recording a governing document amendment, the HOA must give its members copies thereof unless a copy was provided to the members before the vote on the amendment, in which case the HOA must only provide the members with notice of the amendment's adoption.[11]

Official Records

An HOA must maintain each of the following items, when applicable, which constitute the official records of the HOA:[12]

- A copy of the HOA's governing documents:
  - declaration of covenants and each amendment,
  - bylaws and each amendment,
  - articles of incorporation and each amendment, and
  - current rules.
- Copies of any plans, specifications, permits, and warranties related to improvements constructed on the common areas or other property that the HOA is obligated to maintain, repair, or replace.
- The minutes of all meetings of the board of directors and of the members, which minutes must be retained for at least 7 years.
- A current roster of all members and their designated mailing addresses and parcel identifications. A member's designated mailing address is the member's property address, unless the member has sent written notice to the association requesting that a different mailing address be used for all required notices.
  - The association shall also maintain the e-mail addresses and the facsimile numbers designated by members for receiving notice sent by electronic transmission of those members consenting to receive notice by electronic transmission. A member's e-mail address is the e-mail address the member provided when consenting in writing to receiving notice by electronic transmission, unless the member has sent written notice to the association requesting that a different e-mail address be used for all required notices. The e-mail addresses and facsimile numbers provided by members to receive notice by electronic transmission must be removed from association records when the member revokes consent to receive notice by electronic transmission.
- All of the HOA's insurance policies, which must be retained for at least 7 years.
- A current copy of all contracts to which the HOA is a party, including, without limitation, any management agreement, lease, or other contract under which the HOA has any obligation or responsibility.
  - Bids received by the HOA for work to be performed must also be considered official records and must be kept for a period of 1 year.
- The financial and accounting records of the HOA, kept according to good accounting practices. All financial and accounting records must be maintained for a period of at least 7 years. The financial and accounting records must include:
  - Accurate, itemized, and detailed records of all receipts and expenditures.
  - A current account and a periodic statement of the account for each member, designating the name and current address of each member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due.
  - All tax returns, financial statements, and financial reports of the HOA.
  - Any other records that identify, measure, record, or communicate financial information.

[8] *Id.*
[9] *Id.*
[10] S. 720.306(1), F.S.
[11] *Id.*
[12] S. 720.303(4), F.S.

- A copy of the disclosure summary.
- Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by parcel owners, which must be maintained for at least 1 year after the date of the election, vote, or meeting.
- All affirmative acknowledgments made pursuant to s. 720.3085(3)(c)3, F.S.
- All other written records of the HOA which are related to the operation of the HOA.

The HOA bylaws must require the HOA to post all notices of board meetings in a conspicuous place in the community at least 48 hours in advance of a meeting, except in an emergency.[13]

Access to Official Records

The official records must be maintained within the state for at least 7 years and be made available to a parcel owner for inspection or photocopying within 45 miles of the community or within the county in which the HOA is located within 10 business days after receipt by the board or its designee of a written request.

An HOA may comply with these requirements by having a copy of the official records available for inspection or copying in the community or, at the option of the HOA, by making the records available to a parcel owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request.

If the HOA has a photocopy machine available where the records are maintained, it must provide parcel owners with copies on request during the inspection if the entire request is limited to no more than 25 pages. However, an HOA may impose fees to cover the costs of providing copies of the official records.[14] An association must allow a member or authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of providing the member or authorized representative with a copy of such records. The association may not charge a fee to a member or his or her authorized representative for the use of a portable device.[15]

The failure of an association to provide access to the records within 10 business days after receipt of a written request submitted by certified mail, return receipt requested, creates a rebuttable presumption that the association willfully failed to comply with this requirement.[16]

A member who is denied access to official records is entitled to the actual damages or minimum damages for the HOA's willful failure to comply with this requirement. The minimum damages are to be $50 per calendar day up to 10 days, the calculation to begin on the 11th business day after receipt of the written request.[17]

The HOA may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not require a parcel owner to demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a parcel owner's right to inspect records to less than one 8-hour business day per month.[18]

The following records are not accessible to members or parcel owners:[19]

[13] S. 720.303(2)(c), F.S.
[14] The association may impose fees to cover the costs of providing copies of the official records, including the costs of copying and the costs required for personnel to retrieve and copy the records if the time spent retrieving and copying the records exceeds one-half hour and if the personnel costs do not exceed $20 per hour. Personnel costs may not be charged for records requests that result in the copying of 25 or fewer pages. The association may charge up to 25 cents per page for copies made on the association's photocopier. S. 720.303(5)(c), F.S.
[15] S. 720.303(5), F.S.
[16] S. 720.303(5)(a), F.S.
[17] S. 720.303(5)(b), F.S.
[18] S. 720.303(5)(c), F.S.
[19] S. 720.303(5)(c)1.-9., F.S.

- Any record protected by the lawyer-client privilege as described in s. 90.502, F.S., and any record protected by the work-product privilege.
- Information obtained in connection with the approval of the lease, sale, or other transfer of a parcel.
- Information obtained in a gated community in connection with guests' visits to parcel owners or community residents.
- Personnel records of HOA or management company employees.
- Medical records of parcel owners or community residents.
- Personal identifying information of a parcel owner other than as provided for HOA notice requirements, excluding the person's name, parcel designation, mailing address, and property address.
- Any electronic security measure that is used to safeguard data, including passwords.
- The software and operating system which allows the manipulation of data; however, the data is part of the official records.
- All affirmative acknowledgments made pursuant to s. 720.3085(3)(c)3, F.S.

Powers and Duties of Officers and Directors – Current Situation

The officers and directors of an HOA have a fiduciary relationship to the members who are served by the HOA.[20] An officer, director, or manager may not solicit, offer to accept, or accept any good or service of value for which consideration has not been provided for his or her benefit or for the benefit of a member of his or her immediate family from any person providing or proposing to provide goods or services to the HOA.[21] If the board finds that an officer or director has violated this condition, the board must immediately remove the officer or director from office. The vacancy must be filled according to law until the end of the director's term of office.

However, an officer, director, or manager may accept food to be consumed at a business meeting with a value of less than $25 per individual or a service or good received in connection with trade fairs or education programs.[22]

If the HOA enters into a contract or other transaction with any of its directors or a corporation, firm, association that is not an affiliated HOA, or other entity in which a director is also a director or officer or is financially interested, the board must:[23]

- Comply with the requirements for conflicts of interest in a corporation not for profit.[24]
- Enter certain disclosure requirements into the written minutes of the meeting.
- Approve the contract or other transaction by an affirmative vote of two-thirds of the directors present.
- At the next regular or special meeting of the members, disclose the existence of the contract or other transaction to the members. Upon motion of any member, the contract or transaction must be brought up for a vote and may be canceled by a majority vote of the members present. If the members cancel the contract, the HOA is only liable for the reasonable value of goods and services provided up to the time of cancellation and is not liable for any termination fee, liquidated damages, or other penalty for such cancellation.

Powers and Duties of Officers and Directors – Effect of the Bill

The bill clarifies that the officers and directors of an HOA are subject to the general standards for directors outlined in section 617.0830 of the Florida Not for Profit Corporation Act. HOA directors were

[20] S. 720.303(1), F.S.
[21] However, an officer, director, or manager may accept food to be consumed at a business meeting with a value of less than $25 per individual or a service or good received in connection with trade fairs or education programs. S. 720.303(3), F.S.
[22] S. 720.3033(3), F.S.
[23] S. 720.3033(2), F.S.
[24] A contract or transaction with a conflict of interest is not voidable if the relationship or interest is disclosed or known to the board; the board authorized, approved, or ratified it by vote or written consent; or the contract or transaction is fair and reasonable at the time it is authorized. Such contract or transaction must be authorized, approved, or ratified by a majority of the directors on the board who have no relationship or interest in such transaction. S. 617.0832, F.S.

likely obligated to comply with these standards under current law as long as they were not inconsistent with the provisions of the HOA governing documents, but the bill would expand the standards to HOA officers and require HOA governing provisions to be consistent with the director standards outlined in section 617.0830 of the Florida Not for Profit Corporation Act. Under the bill, officers and directors would be required to discharge their duties:

- In good faith[25];
- With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- In a manner he or she reasonably believes to be in the best interests of the corporation.

The bill also provides that in discharging his or her duties, officers and directors would be permitted to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

- One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
- Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the persons' professional or expert competence; or
- A committee of the board of directors of which he or she is not a member if the director reasonably believes the committee merits confidence.

The bill also provides officers and directors are not liable for any action taken as an officer or director, or any failure to take any action, if he or she performed the duties of his or her office in compliance with standards outlined in section 617.0830 of the Florida Not for Profit Corporation Act.

Accounting of Balance Due- Current Situation

The HOA's financial and accounting records are considered official records and must be maintained by the HOA as discussed above.[26] More specifically, the HOA is required to maintain the current account and a periodic statement of the account for each member, designating the name and current address of each member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due. These records are available upon written request for the requester to inspect and copy. Currently, Florida Law does not require an HOA to give a detailed accounting to an individual of any amounts he or she owes to the HOA.

Accounting of Balance Due- Effect of the Bill

The bill provides that a parcel owner or any occupant, licensee, or invitee of the parcel may, at any time, make a written request to the board for a detailed accounting of any amounts he or she owes to the association and the board shall provide such information within 10 days after receipt of the written request. Failure by the board to respond to a written request for a detailed accounting constitutes a complete waiver of any outstanding fines of the person who requested such accounting.

HOA Architectural and Construction Improvement Covenants and Rules - Current Situation

If the governing documents allow, an HOA or its architectural, construction improvement, or other similar committee (ARC) may:[27]

- Require a review and approval of plans and specifications for the location, size, type, or appearance of any structure or other improvement on a parcel before a parcel owner makes such improvement.
- Enforce standards for the external appearance of any structure or improvement located on a parcel.

[25] S. 617.0830(3), F.S. provides an example of when a director or officer is not acting in good faith. A director or officer is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by s. 617.083 0 (2), F.S. unwarranted.
[26] S. 720.303(4), F.S.
[27] S. 720.3035(1), F.S.

The HOA or ARC may not restrict the right of a parcel owner to select from any options given in the governing documents for the use of material, the size of the structure or improvement, the design of the structure or improvement, or the location of the structure or improvement on the parcel.[28]

Each parcel owner is entitled to the rights and privileges set forth in the governing documents concerning the architectural use of the parcel, and the construction of permitted structures and improvements on the parcel and such rights and privileges may not be unreasonably infringed upon or impaired by the HOA or ARC. If the an HOA or ARC unreasonably, knowingly, and willfully infringes upon or impairs such rights and privileges, the adversely affected parcel owner may recover damages, including any costs and reasonable attorney's fees.[29]

An HOA or ARC may not enforce any policy or restriction that is inconsistent with the rights and privileges of a parcel owner set forth in the governing documents, whether uniformly applied or not.[30]

HOA Architectural and Construction Improvement Covenants and Rules – Effect of the Bill

The bill **prohibits** an HOA or ARC from enforcing or adopting a covenant, rule, or guideline that:

- Limits or places requirements on the interior of a structure that is not visible from the parcel's frontage or an adjacent parcel.
- Requires the review and approval of plans and specifications for a central air-conditioning, refrigeration, heating, or ventilating system by the association or any architectural, construction improvement, or other such similar committee of an association, if such system is not visible from the parcel's frontage and is substantially similar to a system that is approved or recommended by the association or a committee thereof.

The bill provides that if parcel owner's rights and privileges have been unreasonably infringed upon or impaired by a decision concerning the architectural use of his or her parcel or the construction of permitted structures and improvements on such parcel by the HOA or ARC, the HOA must provide the parcel owner with the ability to appeal such decision to an appeals committee that consists of at least three members appointed by the board. The members of the appeals committee cannot be:

- An officer,
- Director,
- An employee of the association, or
- Members of the ARC.

Furthermore, the bill provides that appeals committee has the right to reverse, modify, or affirm the decision being appealed. A parcel owner may appeal a decision of the HOA or ARC within 90 days after the owner receives written notification of the initial decision. The bill requires that the appeals committee must make a decision on the issue under appeal within 60 days after receiving a parcel owner's request for appeal.

Prohibited Clauses in Governing Documents- Current Situation

Under current Florida law, HOAs may not restrict the installation, display and storage of any items on a parcel that are not visible from the parcel's frontage or an adjacent parcel, unless the item is prohibited by general law or local ordinance. Such items include, but are not limited to:[31]

- Artificial turf;
- Boats;
- Flags; and
- Recreational vehicles.

[28] S. 720. 3035(2), F.S.
[29] S. 720.3035(4), F.S.
[30] S. 720.3035(5), F.S.
[31] S. 720.3045, F.S.

HOA governing documents may not prohibit:

- A homeowner from displaying up to two portable, removable flags in a respectful manner. However, all flags must be displayed in a respectful manner consistent with the requirements for the United States flag.[32]
- Any property owner from implementing Florida-friendly landscaping[33] on his or her land or create any requirement or limitation in conflict with any provision of part II of chapter 373 regarding the permitting of consumptive uses of water or a water shortage order, other order, consumptive use permit, or rule adopted or issued pursuant to part II of chapter 373.

Furthermore, HOAs are prohibited from a preventing a law enforcement officer[34] who is a parcel owner, or who is a tenant, guest, or invitee of a parcel owner, from parking his or her assigned law enforcement vehicle where the parcel owner, or the tenant, guest, or invitee of the parcel owner has a right to park.

Prohibited Clauses in Governing Documents - Effect of the Bill

The bill expands the list of items that an HOA is prohibited from preventing a homeowner from installing, displaying, or storing on their property to allow vegetable gardens and clotheslines in areas not visible from the frontage or adjacent parcels.

The bill provides that HOA governing documents cannot prohibit:

- a property owner, a guest, tenant, or invitee from parking his or her personal vehicle, including a pickup truck:
  - in the property owner's driveway,
  - in common parking lots,
  - on public roads and rights-of-way, or
  - in any other area at which the property owner or the property owner's tenant, guest, or invitee has a right to park.
- a property owner, a guest, tenant, or invitee from parking his or her work vehicle, which is not a commercial motor vehicle[35], in the property owner's driveway.
- a property owner from inviting, hiring, or allowing entry to a contractor or worker on the owner's parcel solely because the contractor or worker is not on a preferred vendor list of the HOA.
- a property owner from inviting, hiring, or allowing entry to a contractor or worker on his or her parcel solely because the contractor or worker does not have a professional or an occupational license. The HOA may not require a contractor or worker to present or prove possession of a professional or an occupational license to be allowed entry onto a property owner's parcel.
- a property owner from installing code-compliant hurricane protection or home hardening, such as hurricane shutters, impact glass, code-compliant windows or doors, or other similar protection that complies with or exceeds the applicable building code.
- a property owner from installing a metal roof, artificial turf, vegetable garden, or clotheslines or other energy-efficient device.[36]

The bill provides that HOA documents may not limit landscaping to grass-only or grass-majority lawns, or issue a mandatory watering schedule to property owners. However, the HOA's documents may generally require that a property owner keep any lawn, landscaping, and grass on the property owner's parcel well-maintained.

[32] S. 720.3075(3), F.S.
[33] Defined in s. 373.185, F.S.
[34] A law enforcement officer is defined in s. 943.10(1), F.S.
[35] "Commercial motor vehicle" means any vehicle which is not owned or operated by a governmental entity, which uses special fuel or motor fuel on the public highways, and which has a gross vehicle weight of 26,001 pounds or more, or has three or more axles regardless of weight, or is used in combination when the weight of such combination exceeds 26,001 pounds gross vehicle weight. S. 320.0, F.S.

[36] Similar to s. 163.04(2), F.S regarding local governments.

The bill clarifies that homeowners or their tenant, guest, or invitee may park their assigned law enforcement vehicle on public roads or rights-of-way within the HOA.

The bill also states that an HOA is prohibited from enforcing a new rule or covenant against a parcel owner for an action that took place before the new rule or covenant was enacted.

Fines and Suspension- Current Situation

Owners, tenants, and guests must comply with an HOA's declaration, bylaws, and rules. HOAs may levy fines against or suspend the right of a parcel owner, occupant, or a guest of an owner or occupant, to use the common areas[37] or any other association property for failing to comply with any provision in the HOA's governing documents. A suspension for failing to comply with an HOA's declaration, bylaws, or rules may not be for an unreasonable amount of time.[38]

An HOA may levy reasonable fines for violations of the declaration, bylaws, or reasonable rules of the HOA. No fine may exceed $100 per violation, although a fine may be levied on the basis of each day of a continuing violation provided that fine does not exceed $1,000 in the aggregate. However, a fine may exceed $1,000 if the HOA's governing documents authorize it. Fines may not become a lien on the property unless the fines exceed $1,000.[39]

Before an HOA levies a fine or a suspension, it must give the person receiving the fine or suspension at least 14 days' notice of an opportunity for a hearing. Notice must be provided at the designated mailing or e-mail address in the HOA's official records. A hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee must be provided. The notice must include a description of the alleged violation, the specific action required to cure such violation, and the date and location of the hearing. A parcel owner has the right to attend a hearing by telephone or other electronic means.

A fine and suspension committee of at least three members selected by the board must hold a hearing to reject or approve the fine or suspension. Board directors, officers, and employees of the HOA and family of such people may not serve on the committee. The committee must approve the fine or suspension by majority vote otherwise the proposed fine or suspension may not be imposed.[40] After the hearing, the committee shall provide written notice to the parcel owner at his or her designated mailing or e-mail address in the association's official records of the parcel owner, of the committee's findings related to the violation, including any applicable fines or suspensions that the committee approved or rejected, and how the parcel owner or any occupant, licensee, or invitee of the parcel owner may cure the violation, if applicable.[41]

If the proposed fine or suspension levied by the board is approved by the committee by a majority vote, the fine payment is due 5 days after notice of the approved fine is provided to the parcel owner and, if applicable, to any occupant, licensee, or invitee of the parcel owner. Written notice of the fine or suspension must be provided to the person by mail or hand delivery.[42]

If a member is more than 90 days delinquent in paying any fee, fine, or other monetary obligation due to the HOA, the HOA may suspend the rights of the member, or the member's tenant, guest, or invitee, to use common areas and facilities[43] until it is paid in full.

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[37] This does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may not prohibit an owner or tenant of a parcel from having vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park. S. 720.305(2)(a), F.S.

[38] S. 720.305(2), F.S.

[39] S. 720.305(2), F.S.

[40] *Id*.

[41] *Id*.

[42] *Id*.

[43] A suspension may not prohibit an owner or tenant of a parcel from having access a portion of common areas used to provide access or utility services to the parcel, or from having vehicular and pedestrian ingress to and egress from the parcel. S. 720.305(4), F.S.

An HOA may suspend the voting rights of a parcel or member for the nonpayment of any fee, fine, or other monetary obligation due to the HOA that is more than 90 days delinquent. The suspension ends upon full payment of all obligations currently due or overdue to the HOA.[44]

The notice and hearing requirements for levying fines do not apply to a suspension imposed for delinquent payment.[45]

All suspensions imposed for delinquent payment of any fee, fine, or other monetary obligation due to the HOA must be approved at a properly noticed board meeting. Upon approval, the HOA must send written notice to the parcel owner and, if applicable, the parcel's occupant, licensee, or invitee by mail or hand delivery to the parcel owner's designated mailing or e-mail address in the association's official records.[46]

Fines and Suspension- Effect of the Bill

Levying Fines

The bill requires that a fine or suspension levied by the board of administration may not be imposed unless the board first provides at least 14 days' **written** notice **of the parcel owner's right to a hearing.** Furthermore, the bill requires that the hearing must be held within 30 days after issuance of the notice. The bill provides that the committee is authorized to hold the hearing by telephone or other electronic means. If the hearing is held by telephone or other electronic means, the notice must include the access information required to attend the telephonic conference or the electronic medium.

The bill provides that the committee must provide a written notice of the committee's findings related to the violation to the applicable person described in the statute within **7 days** after the hearing. If applicable, the written notice of the committee's findings is required to provide instructions on how the parcel owner or any occupant, licensee, or invitee of the parcel owner to **fulfill a suspension, or the date by which a fine must be paid.**

The bill provides new procedures for imposing a fine:

- If a violation is found by the committee, but has been cured before the hearing or as specified in the applicable written notice, a fine or suspension may not be imposed.
- The HOA must indicate on the notice of fine the date it is due, and it must be at least 30 days after the notice is delivered.
- Prohibits attorney fees and costs from accruing until after the due date for the fine and time for an appeal has expired.
- Upon receipt of a payment for any outstanding fines, the HOA must apply the payment first to the fine before satisfying any other amounts due to the HOA. Attorney fees and costs may not continue to accrue after the fine is paid.
- A parcel owner or any occupant, licensee, or invitee may request a hearing before the board to dispute the reasonableness of the attorney fees and costs awarded to the HOA.

Limitations on Fines

The bill limits when an HOA may impose a fine. The bill provides that:

- A fine may not be imposed against a parcel owner for a speeding violation committed by his or her occupant, licensee, guest, or invitee.

[44] S. 720.305(4), F.S.
[45] S. 720.305(3), (4), F.S.
[46] S. 720.305(5), F.S.

- If an HOA allows a fine to be levied or a suspension to be imposed against a parcel owner or an occupant, a licensee, a guest, or an invitee for a traffic infraction[47], such infraction must be determined and issued by a board-approved nonaffiliated third party specializing in traffic infractions.
- HOAs may not issue a fine or suspension for:
    - Leaving garbage receptacles at the curb or end of the driveway less than 24 hours before or after the designated garbage collection day or time.
    - Leaving holiday decorations or lights up longer than indicated in the governing documents, unless such decorations or lights are left up for longer than 1 week after the association provides written notice of the violation to the parcel owner.

The bill restricts when an HOA fine can become a lien:

- A fine that amounts to less than 1 percent of the parcel's property value at the time the fine was levied may only become a lien against the parcel with the approval by 75 percent of the total membership of parcel owners, and fines may not be aggregated to create a lien against a parcel.
- If an HOA allows a fine to be levied for an infraction relating to lawn, landscaping, or grass maintenance, such fine may not become a lien on a parcel.

Assessments and Charges- Current Situation

Overview

Current law gives HOAs the ability to levy and collect assessments[48] from unit or parcel owners. This allows the association to carry out its responsibility for the association's management, operation, and maintenance.[49] In addition to levying assessments, HOAs also have the power to establish the time when each assessment is due, including when an assessment becomes delinquent.[50]

The most common assessments are those required to fund an HOA's common expenses identified in an HOA's annual budget. The amount to fund the common expenses and the assessments required to meet that amount are determined when an association's budget is adopted.[51] In contrast, a special assessment is an assessment levied against unit or parcel owners for unexpected expenses that are over and above those anticipated by the annual budget.[52]

When the amount of an assessment has been determined, the association must establish a payment schedule for the owners in accordance with the association's bylaws. The payments must be sufficient to provide the funds necessary to pay all the anticipated operating expenses and all unpaid expenses previously incurred.[53]

A unit or parcel owner may not avoid paying assessments by waiving the use of common elements or services in the association. No unit or parcel owner may be relieved from liability for all or part of an assessment.[54] Boards must keep account of the assessments levied against every unit or parcel owner and the assessments paid by every owner. These records are part of the association's official records.[55]

[47] The term "traffic infraction" means a noncriminal violation of parking and traffic rules adopted by the state, county, municipality, or association.
[48] S. 720.301(1), F.S. provides that an "assessment" or "amenity fee" means a sum or sums of money payable to the association, to the developer or other owner of common areas, or to recreational facilities and other properties serving the parcels by the owners of one or more parcels as authorized in the governing documents, which if not paid by the owner of a parcel, can result in a lien against the parcel.
[49] S. 720.301(1), and 720.308(1), F.S.
[50] *See generally*, ch. 720, F.S.
[51] S. 720.303(6)(a), F.S.
[52] S. 720.303(6), F.S.
[53] S.720.30851(1), F.S.
[54] S. 720.3085(2)(a), F.S.
[55] S. 720.303(4)-(5), F.S.

Claim of Lien

An HOA may lien for all unpaid assessments, but not for all unpaid fines.[56] An association may file a claim of lien for a delinquent assessment with the Clerk of Court in the county where the association is located. The claim of lien must state the legal description of the unit or parcel, the owner of the unit or parcel, the association's name and address, and the assessment amount owed and the due date. An officer or agent of the association must sign the claim of lien.[57] A filed claim of lien is valid for one year.[58]

Prior to filing a claim of lien, an HOA must give a unit or parcel owner the opportunity to pay a delinquent assessment. At least 45 days before filing a claim of lien, an HOA must provide written notice of the association's intent to file a lien to the unit owner. The notice of intent to record a claim of lien must include the following information:[59]

- The amount owed on the owner's account;
- The interest rate for the amounts owed;
- A statement that the owner has 45 days after receipt of this notice to pay the amount owed or the HOA will file a claim of lien against the unit or parcel; and
- A breakdown of the amount owed including:
    - Maintenance costs due;
    - Late fee, if applicable;
    - Interest;
    - Certified mail charges;
    - Other costs; and
    - Total amount owed.

The notice must be sent by certified or registered mail, return receipt requested, and by first-class mail to the owner's address listed in the official records.[60] If the address is different than the unit or parcel address, the notice must also be sent to the unit or parcel. If the address is different than the unit or parcel address and the address is outside the United States, the association may send the notice by first class mail, instead of first class and certified/registered mail.

A unit or parcel owner may challenge a claim of lien by filing a notice of contest of lien with the Clerk of Court. After a unit owner files a notice of contest, an association has 90 days to commence enforcement of the lien.[61]

An HOA may bring an action to foreclose on a unit or parcel for unpaid assessments in circuit court in the same way that a mortgage on real estate is foreclosed. The homestead protections provided by Florida's Constitution do not prevent the foreclosure and sale of a unit or parcel.[62] In addition to an action of foreclosure, an HOA may also bring a civil action to recover a money judgment for the unpaid assessments without waiving any claim of lien.[63]

Prior to foreclosing on a lien, a condominium association or an HOA must provide written notice to the owner of its intent to foreclose on the lien. A condominium association must provide the notice at least **30 days** before foreclosing on the lien. However, an HOA must give a parcel owner the written notice at least **45 days** before foreclosing on the lien. The notice must include the following information:[64]

- A claim of lien has been filed against the owner's property for failing to pay an assessment(s);

[56] An HOA has a lien on a parcel for a fine that is $1,000 or more. S. 720.305(2), F.S.
[57] Ss. 720.301(1), and (11), 720.305(2), and 720.3085(1), F.S.
[58] S. 713.22(1), F.S.
[59] S. 720.3085(4), F.S.
[60] S. 720.3085(4)(b), F.S.
[61] S. 720.3085(1), F.S.
[62] *Bessemer v. Gersten*, 381 So. 2d 1344, 1347 (Fla. 1980).
[63] S. 720.3085(1) F.S.
[64] Ss. 718.116(6)(a) and 720.3085(5), F.S.

- The association intends to foreclose on the lien in 30 or 45 days;
- The total amount owed;
- The interest rate and the interest owed; and
- The contact information for the association's attorney or representative.

Maximum Level of Assessments

Assessments charged to a member must not exceed the maximum obligation of the member based on the total amount of the adopted budget and the member's proportionate share of the expenses as described in the governing documents.[65] Currently in Florida, there is not a cap on how much an HOA can raise assessments. However, the HOA's governing documents may have specific provisions about raising regular assessments or imposing special assessments.[66] California has placed a cap on how much an HOA can increase assessments.[67]

Assessments and Charges- Effect of Bill

The bill **prohibits** the board from imposing a regular assessment that is 10 percent greater than the regular assessment of the HOA's previous fiscal year or imposing special assessments that as a whole are valued more than 5 percent of the current fiscal year's gross expense budget without the approval of 75 percent of voting members at the meeting.

The bill also provides an exception to the cap on regular assessments described above. The exception states that the board has the right to increase regular assessments if the board can prove that such increase is necessary for the immediate physical protection of property or public safety. This may include an emergency that creates a threat to the health or safety of the members or of the association.

The bill prohibits assessments below 1 percent of the property value at the time of the assessment, from becoming a lien on a property without the approval of 75 percent of voting members at a member meeting.

B. SECTION DIRECTORY:

Section 1: Amends s. 720.303, F.S., relating to requirements for HOA officers and directors and to provide an accounting.
Section 2: Amends s. 720.3035, F.S., relating to architectural control covenants.
Section 3: Amends s. 720.3045, F.S., relating to installation, display, and storage of items.
Section 4: Amends s. 720.305, F.S., relating to HOA fines and appeals.
Section 5: Amends s. 720.3075, F.S., relating to prohibited clauses in association documents.
Section 6: Amends s. 720.308, F.S., relating to assessments and charges.
Section 7: Amends s. 720.318, F.S., relating to law enforcement vehicles.
Section 8: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

[65] S. 720.308(3).
[66], Dania S. Fernandez, "How Much Can an HOA Raise Dues Each Year in Florida?", Dania Fernandez and Associates, P.A., Feb. 26, 2021, www.daniafernandez.com/2021/03/30/how-much-can-an-hoa-raise-dues-each-year-in-florida/ (last visited Jan. 12, 2024).
[67] California Civil Code § 5605.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may reduce fines paid by members to the HOA.

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:

Impairment of Contracts and Due Process

Both the Florida and the United States Constitutions prohibit the state from passing a law impairing contractual obligations.[68] However, the Legislature may provide that a non-criminal law, including one that affects existing contractual obligations, applies retroactively in certain situations.[69] In determining whether a law may be applied retroactively, courts first determine whether the law is procedural, remedial, or substantive in nature.[70] A purely procedural or remedial law may apply retroactively without offending the Constitution, but a substantive law generally may not apply retroactively absent clear legislative intent to the contrary.[71] However, even where the Legislature has expressly stated that a law will have retroactive application, a court may reject that application if the law impairs a vested right, creates a new obligation, or imposes a new penalty.[72] Further, where a law is designed to serve a remedial purpose, a court may decide not to apply the law retroactively where doing so "would attach new legal consequences to events completed before its enactment."[73]

Both the Florida and United States Constitutions prohibit the taking of life, liberty, or property without due process of law.[74] The right to contract, as long as no fraud or deception is involved and the contract is otherwise legal, is both a liberty and a property right subject to due process protections, and the impairment of contracts may, in certain instances, be viewed as the taking of property without due process.[75]

[68] U.S. Const. art. I, s. 10; Art. I, s. 10, Fla. Const.
[69] U.S. Const. art. I, ss. 9 and 10; Art. 1, s. 10, Fla. Const.
[70] A procedural law merely establishes the means and methods for applying or enforcing existing duties or rights. A remedial law confers or changes a remedy, i.e., the means employed in enforcing an existing right or in redressing an injury. A substantive law creates, alters, or impairs existing substantive rights. *Windom v. State*, 656 So. 2d 432 (Fla. 1995); *St. John's Village I, Ltd. v. Dept. of State*, 497 So. 2d 990 (Fla. 5th DCA 1986); *McMillen v. State Dept. of Revenue*, 74 So. 2d 1234 (Fla. 1st DCA 1999).
[71] *State Farm Mutual Automobile Ins. Co. v. Laforet*, 658 So. 2d 55 (Fla. 1995).
[72] *Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So. 3d 873 (Fla. 2010).
[73] *L. Ross, Inc. v. R.W. Roberts Const. Co.*, 481 So. 2d 484 (Fla. 1986).
[74] U.S. Const. amends. V and XIV; Art. I, s. 21, Fla. Const.
[75] *Miles v. City of Edgewater Police Dept.*, 190 So. 3d 171 (Fla. 1st DCA 2016); s*ee, e.g., Griffin v. Sharpe*, 65 So. 2d 751 (Fla. 1953) (finding that a statute removing a specific deed restriction's expiration date both impaired contracts and constituted a taking of private property without due process).

Whether some of bill's language is procedural, remedial, or substantive, and whether such modification implicates the constitutional right to contract or the constitutional right to due process, is for the courts to decide.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

REGULATORY REFORM & ECONOMIC DEVELOPMENT SUBCOMMITTEE

HB 1203 by Rep. Esposito and Lopez, V.
Homeowners' Associations

AMENDMENT SUMMARY
January 17, 2024

Amendment 1 by Rep. Esposito (line 110):

- Clarifies that the board must respond to a written request for a detailed accounting within 10 **business** days.
- Provides that after a person makes a written request for a detailed accounting, the person may not ask for another detailed accounting for 90 calendar days.

Amendment 2 Rep. Esposito (line 420):

- Provides that the lien of the association is subordinate to that of a mortgage, rather than only a first mortgage, that was recorded prior to the filing of a notice of association lien.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Regulatory Reform & Economic Development Subcommittee
Representative Esposito offered the following:

Amendment

Remove lines 110-118 and insert:

(13) REQUIREMENT TO PROVIDE AN ACCOUNTING.—A parcel owner or any occupant, licensee, or invitee of the parcel owner may make a written request to the board for a detailed accounting of any amounts he or she owes to the association and the board shall provide such information within 10 business days after receipt of the written request. After the parcel owner or any occupant, licensee, or invitee of the parcel owner makes such written request to the board, the person may not ask for another detailed accounting for 90 calendar days. Failure by the board to respond in 10 business days to a written request for a

detailed accounting constitutes a complete waiver of any outstanding fines of the person who requested such accounting.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Regulatory Reform & Economic Development Subcommittee
Representative Esposito offered the following:

Amendment (with title amendment)

Between lines 420 and 421, insert:

Section 7. Subsection (1) of section 720.3085, Florida Statutes, is amended to read:

720.3085 Payment for assessments; lien claims.—

(1) When authorized by the governing documents, the association has a lien on each parcel to secure the payment of assessments and other amounts provided for by this section. Except as otherwise set forth in this section, the lien is effective from and shall relate back to the date on which the original declaration of the community was recorded. However, as to ~~first~~ mortgages of record, the lien is effective from and

after recording of a claim of lien in the public records of the county in which the parcel is located. ~~This subsection does not bestow upon any lien, mortgage, or certified judgment of record on July 1, 2008, including the lien for unpaid assessments created in this section, a priority that, by law, the lien, mortgage, or judgment did not have before July 1, 2008.~~

(a) To be valid, a claim of lien must state the description of the parcel, the name of the record owner, the name and address of the association, the assessment amount due, and the due date. The claim of lien secures all unpaid assessments that are due and that may accrue subsequent to the recording of the claim of lien and before entry of a certificate of title, as well as interest, late charges, and reasonable costs and attorney fees incurred by the association incident to the collection process. The person making payment is entitled to a satisfaction of the lien upon payment in full.

(b) By recording a notice in substantially the following form, a parcel owner or the parcel owner's agent or attorney may require the association to enforce a recorded claim of lien against his or her parcel:

NOTICE OF CONTEST OF LIEN

TO: (Name and address of association)

You are notified that the undersigned contests the claim of lien filed by you on , (year) , and recorded in Official Records Book at page , of the public records of County,

Florida, and that the time within which you may file suit to enforce your lien is limited to 90 days following the date of service of this notice. Executed this day of , (year) .

Signed: (Owner or Attorney)

After the notice of a contest of lien has been recorded, the clerk of the circuit court shall mail a copy of the recorded notice to the association by certified mail, return receipt requested, at the address shown in the claim of lien or the most recent amendment to it and shall certify to the service on the face of the notice. Service is complete upon mailing. After service, the association has 90 days in which to file an action to enforce the lien and, if the action is not filed within the 90-day period, the lien is void. However, the 90-day period shall be extended for any length of time that the association is prevented from filing its action because of an automatic stay resulting from the filing of a bankruptcy petition by the parcel owner or by any other person claiming an interest in the parcel.

(c) The association may bring an action in its name to foreclose a lien for assessments in the same manner in which a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien. The association is entitled to recover its reasonable attorney's fees incurred in an action to foreclose a lien or an action to recover a money judgment for unpaid assessments.

(d) A release of lien must be in substantially the following form:

RELEASE OF LIEN

The undersigned lienor, in consideration of the final payment in the amount of $, hereby waives and releases its lien and right to claim a lien for unpaid assessments through , (year) , recorded in the Official Records Book at Page , of the public records of County, Florida, for the following described real property:

(PARCEL NO. OR LOT AND BLOCK) OF (subdivision name) SUBDIVISION AS SHOWN IN THE PLAT THEREOF, RECORDED AT PLAT BOOK , PAGE , OF THE OFFICIAL RECORDS OF COUNTY, FLORIDA.

(or insert appropriate metes and bounds description here)

(Signature of Authorized Agent) (Signature of Witness)

(Print Name) (Print Name)

(Signature of Witness)

(Print Name)

Sworn to (or affirmed) and subscribed before me this day of , (year) , by (name of person making statement) .

(Signature of Notary Public)

(Print, type, or stamp commissioned name of Notary Public)

Personally Known OR Produced as identification.

(e) If the parcel owner remains in possession of the parcel after a foreclosure judgment has been entered, the court may require the parcel owner to pay a reasonable rent for the parcel. If the parcel is rented or leased during the pendency of the foreclosure action, the association is entitled to the appointment of a receiver to collect the rent. The expenses of the receiver must be paid by the party who does not prevail in the foreclosure action.

(f) The association may purchase the parcel at the foreclosure sale and hold, lease, mortgage, or convey the parcel.

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

Remove line 58 and insert:
of the voting members; amending s. 720.3085, F.S.; providing an effective date for mortgages; amending s. 720.318, F.S.;

PCS for HB 189

A bill to be entitled

An act relating to gaming control; amending s. 843.08, F.S.; prohibiting a person from falsely personating any personnel or representative from the Florida Gaming Control Commission; providing a criminal penalty; amending s. 849.01, F.S.; specifying a violation of the prohibition against keeping a gambling house must be committed knowingly; increasing the criminal penalty for a violation; amending s. 849.15, F.S.; providing definitions; increasing the criminal penalty for specified violations involving a slot machine or device; creating s. 849.155, F.S.; prohibiting a person from trafficking in slot machines or devices; providing a criminal penalty; requiring a court to order an offender to pay a specified fine if he or she is convicted of trafficking in a specified number of slot machines or devices; requiring any fines imposed and collected to be deposited into the Pari-mutuel Wagering Trust Fund to be used for specified purposes; creating s. 849.157, F.S.; prohibiting a person from making false statements or disseminating false information regarding the legality of a slot machine or device to facilitate the sale or delivery of such device; providing criminal penalties; repealing s. 849.23, F.S.; relating to penalties for

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

specified violations; creating s. 849.47, F.S.; prohibiting a person from, for profit or hire, transporting or procuring the transportation of a specified number of other persons for the purpose of facilitating illegal gambling; providing criminal penalties; defining the term "illegal gambling"; creating s. 849.48, F.S.; prohibiting a person from making or disseminating specified advertisements for the purpose of promoting or facilitating illegal gambling; prohibiting a person from setting up any type or plate for specified advertisements when he or she knows or reasonably should know such material will be used for the purpose of promoting or facilitating illegal gambling; providing a criminal penalty; providing an exception; defining the term "illegal gambling"; creating s. 849.49, F.S.; specifying that the regulation of gambling is expressly preempted to the state; providing an exception; amending s. 903.046, F.S.; requiring a court to consider the amount of currency seized that is connected to specified violations relating to illegal gambling when determining bail; amending s. 921.0022, F.S.; ranking offenses created by the act on the offense severity ranking chart of the Criminal Punishment Code; re-ranking specified offenses on the offense severity

ranking chart of the Criminal Punishment Code; providing an effective date.

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

Section 1. Section 843.08, Florida Statutes, is amended to read:

843.08 False personation.—A person who falsely assumes or pretends to be a firefighter, a sheriff, an officer of the Florida Highway Patrol, an officer of the Fish and Wildlife Conservation Commission, an officer of the Department of Environmental Protection, an officer of the Department of Financial Services, any personnel or representative of the Division of Investigative and Forensic Services, any personnel or representative of the Florida Gaming Control Commission, an officer of the Department of Corrections, a correctional probation officer, a deputy sheriff, a state attorney or an assistant state attorney, a statewide prosecutor or an assistant statewide prosecutor, a state attorney investigator, a coroner, a police officer, a lottery special agent or lottery investigator, a beverage enforcement agent, a school guardian as described in s. 30.15(1)(k), a security officer licensed under chapter 493, any member of the Florida Commission on Offender Review or any administrative aide or supervisor employed by the commission, any personnel or representative of the Department of

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

Law Enforcement, or a federal law enforcement officer as defined in s. 901.1505, and takes upon himself or herself to act as such, or to require any other person to aid or assist him or her in a matter pertaining to the duty of any such officer, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. However, a person who falsely personates any such officer during the course of the commission of a felony commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the commission of the felony results in the death or personal injury of another human being, the person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In determining whether a defendant has violated this section, the court or jury may consider any relevant evidence, including, but not limited to, whether the defendant used lights in violation of s. 316.2397 or s. 843.081.

Section 2. Section 849.01, Florida Statutes, is amended to read:

849.01 Keeping gambling houses, etc.—Whoever by herself or himself, her or his servant, clerk or agent, or in any other manner knowingly has, keeps, exercises or maintains a gaming table or room, or gaming implements or apparatus, or house, booth, tent, shelter or other place for the purpose of gaming or gambling or in any place of which she or he may directly or indirectly have charge, control or management, either

exclusively or with others, procures, suffers or permits any person to play for money or other valuable thing at any game whatever, whether heretofore prohibited or not, commits a felony of the third ~~misdemeanor of the second~~ degree, punishable as provided in s. 775.082, ~~or~~ s. 775.083, or 775.084.

Section 3. Section 849.15, Florida Statutes, is amended to read:

849.15 Manufacture, sale, possession, etc., of slot machines or devices prohibited.—

(1) As used in this section the term:

(a) "Conviction" means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

(b) "Manager" means a person who, at any business, establishment, premises, or other location at which a slot machine or device is offered for play, has:

1. Authorization to operate or hold open the business, establishment, premises, or other location without any other employee present;

2. Authorization to supervise another employee or employees; or

3. Any ownership interest in the business, establishment, premises, or other location.

(2) It is unlawful:

(a) To manufacture, own, store, keep, possess, sell, rent, lease, let on shares, lend or give away, transport, or expose for sale or lease, or to offer to sell, rent, lease, let on shares, lend or give away, or permit the operation of, or for any person to permit to be placed, maintained, or used or kept in any room, space, or building owned, leased or occupied by the person or under the person's management or control, any slot machine or device or any part thereof; or

(b) To make or to permit to be made with any person any agreement with reference to any slot machine or device, pursuant to which the user thereof, as a result of any element of chance or other outcome unpredictable to him or her, may become entitled to receive any money, credit, allowance, or thing of value or additional chance or right to use such machine or device, or to receive any check, slug, token or memorandum entitling the holder to receive any money, credit, allowance or thing of value.

(3)(a) Except as provided in paragraphs (b) and (c), a person who violates subsection (2) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s 775.084, if he or she violates subsection (2) and:

1. At the time of the violation the person is acting as a

manager.

2. Has one prior conviction for a violation of this section.

(c) A person commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if he or she violates subsection (2) and:

1.a. At the time of the violation the person is acting as a manager; and

b. The violation involves five or more slot machines or devices.

2. Has two or more prior convictions for a violation of this section.

(4) ~~(2)~~ Pursuant to section 2 of that chapter of the Congress of the United States entitled "An act to prohibit transportation of gaming devices in interstate and foreign commerce," approved January 2, 1951, being ch. 1194, 64 Stat. 1134, and also designated as 15 U.S.C. ss. 1171-1177, the State of Florida, acting by and through the duly elected and qualified members of its Legislature, does hereby in this section, and in accordance with and in compliance with the provisions of section 2 of such chapter of Congress, declare and proclaim that any county of the State of Florida within which slot machine gaming is authorized pursuant to chapter 551 is exempt from the provisions of section 2 of that chapter of the Congress of the United States entitled "An act to prohibit transportation of

gaming devices in interstate and foreign commerce," designated as 15 U.S.C. ss. 1171-1177, approved January 2, 1951. All shipments of gaming devices, including slot machines, into any county of this state within which slot machine gaming is authorized pursuant to chapter 551 and the registering, recording, and labeling of which have been duly performed by the manufacturer or distributor thereof in accordance with sections 3 and 4 of that chapter of the Congress of the United States entitled "An act to prohibit transportation of gaming devices in interstate and foreign commerce," approved January 2, 1951, being ch. 1194, 64 Stat. 1134, and also designated as 15 U.S.C. ss. 1171-1177, shall be deemed legal shipments thereof into this state provided the destination of such shipments is an eligible facility as defined in s. 551.102 or the facility of a slot machine manufacturer or slot machine distributor as provided in s. 551.109(2)(a).

Section 4. Section 849.155, Florida Statutes, is created to read:

849.155 Trafficking in slot machines or devices or any parts thereof.—Any person who knowingly sells, purchases, manufactures, transports, delivers, or brings into this state more than 15 slot machines or devices or any part thereof, commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity of slot machines or devices or any part thereof involved:

(1) Is more than 15 slot machines or devices or any part thereof, but less than 25 slot machines or devices or any part thereof, such person must be ordered to pay a fine of $100,000.

(2) Is 25 slot machines or devices or any part thereof or more, but less than 50 slot machines or devices or any part thereof, such person must be ordered to pay a fine of $250,000.

(3) Is 50 slot machines or devices or any part thereof or more, such person must be ordered to pay a fine of $500,000.

All fines imposed and collected pursuant to this section must be deposited into the Pari-mutuel Wagering Trust Fund and may be used for the enforcement of chapters 546, 550, 551, and this chapter by the Florida Gaming Control Commission.

Section 5. Section 849.157, Florida Statutes, is created to read:

849.157 Making a false or misleading statement regarding the legality of slot machines or devices to facilitate sale.—

(1) Except as provided in subsection (2), a person who knowingly and willfully makes a materially false or misleading statement or who knowingly and willfully disseminates false or misleading information regarding the legality of a slot machine or device for the purpose of facilitating the sale or delivery of a slot machine or device for any money or other valuable consideration commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) A person who violates subsection (1) when such a violation involves the sale or delivery, or attempted sale or delivery, of five or more slot machines or devices commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 6. Section 849.23, Florida Statutes, is repealed.

Section 7. Section 849.47, Florida Statutes, is created to read:

849.47 Transporting or procuring the transportation of persons to facilitate illegal gambling.—

(1) Except as provided in subsection (2), a person who knowingly and willfully for profit or hire transports, or procures the transportation of, five or more other persons into or within this state when he or she knows or reasonably should know such transportation is for the purpose of facilitating illegal gambling commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2)(a) A person who transports, or procures the transportation of, a minor or a person 65 years of age or older in violation of subsection (1) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person who transports, or procures the transportation of, 12 or more persons in violation of subsection (1) commits a felony of the third degree, punishable as provided

in s. 775.082, s. 775.083, or s. 775.084.

(3) As used in this section, the term "illegal gambling" means any criminal violation of chapter 546, 550, 551, or 849 that occurs at any business, establishment, premises, or other location which operates for profit.

Section 8. Section 849.48, Florida Statutes, is created to read:

849.48 Gambling or gaming advertisements; prohibited.—

(1)(a) Except as otherwise specifically authorized by law, a person may not knowingly and intentionally make, publish, disseminate, circulate or place before the public, or cause, directly or indirectly, to be made, published, disseminated or circulated or placed before the public in this state, in any manner, any advertisement, circular, bill, poster, pamphlet, list, schedule, announcement, or notice for the purpose of promoting or facilitating illegal gambling.

(b) Except as otherwise specifically authorized by law, a person may not set up any type or plate for any type of advertisement, circular, bill, poster, pamphlet, list, schedule, announcement, or notice when he or she knows or reasonably should know that such material will be used for the purpose of promoting or facilitating illegal gambling.

(2) A person who violates subsection (1) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Nothing in this section prohibits the printing or producing of any advertisement, circular, bill, poster, pamphlet, list, schedule, announcement, or notice to be used for the purpose of promoting or facilitating gambling conducted in any other state or nation, outside of this state, where such gambling is not prohibited.

(4) As used in this section, the term "illegal gambling" means any criminal violation of chapter 546, 550, 551, or 849 that occurs at any business, establishment, premises, or other location which operates for profit.

Section 9. Section 849.49, Florida Statutes, is created to read:

849.49 Preemption.— No county, municipality, or other political subdivision of the state shall enact or enforce any ordinance or local rule relating to gaming, gambling, lotteries, or any activities described in s. 546.10 or ch. 849, except as otherwise expressly provided by the state constitution or general law.

Section 10. Paragraph (i) of subsection (2) of section 903.046, Florida Statutes, is amended, and current paragraphs (i) through (m) are redesignated as new paragraphs (j) through (n), to read:

903.046 Purpose of and criteria for bail determination.—

(2) When determining whether to release a defendant on bail or other conditions, and what that bail or those conditions

may be, the court shall consider:

(i) The amount of currency seized that is connected to or involved in a violation of chapter 546, 550, 551, or 849.

Section 11. Paragraphs (a), (c), (e), and (g) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(a) LEVEL 1

Florida Statute	Felony Degree	Description
24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.
104.0616(2)	3rd	Unlawfully distributing, ordering, requesting, collecting, delivering, or possessing vote-by-mail ballots.
212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration,

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		and collection.
212.15(2)(b)	3rd	Failure to remit sales taxes, amount $1,000 or more but less than $20,000.
316.1935(1)	3rd	Fleeing or attempting to elude law enforcement officer.
319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.
320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.
322.212 (1)(a)-(c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver license; possession of simulated identification.

322.212(4)	3rd	Supply or aid in supplying unauthorized driver license or identification card.
322.212(5)(a)	3rd	False application for driver license or identification card.
414.39(3)(a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than $200.
443.071(1)	3rd	False statement or representation to obtain or increase reemployment assistance benefits.
509.151(1)	3rd	Defraud an innkeeper, food or lodging value $1,000 or more.
517.302(1)	3rd	Violation of the Florida Securities and Investor Protection Act.

713.69	3rd	Tenant removes property upon which lien has accrued, value $1,000 or more.
812.014(3)(c)	3rd	Petit theft (3rd conviction); theft of any property not specified in subsection (2).
815.04(4)(a)	3rd	Offense against intellectual property (i.e., computer programs, data).
817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.
817.569(2)	3rd	Use of public record or public records information or providing false information to facilitate commission of a felony.
826.01	3rd	Bigamy.
828.122(3)	3rd	Fighting or baiting animals.

831.04(1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.
831.31(1)(a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
832.041(1)	3rd	Stopping payment with intent to defraud $150 or more.
832.05(2)(b) & (4)(c)	3rd	Knowing, making, issuing worthless checks $150 or more or obtaining property in return for worthless check $150 or more.
838.15(2)	3rd	Commercial bribe receiving.
838.16	3rd	Commercial bribery.
843.18	3rd	Fleeing by boat to elude a law enforcement officer.

847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
~~849.09(1)(a)-(d)~~	~~3rd~~	~~Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of lottery.~~
849.23	3rd	Gambling-related machines; "common offender" as to property rights.
~~849.25(2)~~	~~3rd~~	~~Engaging in bookmaking.~~
860.08	3rd	Interfere with a railroad signal.
860.13(1)(a)	3rd	Operate aircraft while under the influence.
893.13(2)(a)2.	3rd	Purchase of cannabis.

893.13(6)(a)	3rd	Possession of cannabis (more than 20 grams).
934.03(1)(a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication.

(c) LEVEL 3

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.

319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
327.35(2)(b)	3rd	Felony BUI.
328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
328.07(4)	3rd	Manufacture, exchange, or

		possess vessel with counterfeit or wrong ID number.
376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)6.	3rd	Possessing any marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species described in the Marine Turtle Protection Act.
379.2431	3rd	Soliciting to commit or

(1)(e)7.		conspiring to commit a violation of the Marine Turtle Protection Act.
400.9935(4)(a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
400.9935(4)(e)	3rd	Filing a false license application or other required information or failing to report information.
440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.

624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than $20,000.
626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
697.08	3rd	Equity skimming.
790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
794.053	3rd	Lewd or lascivious written solicitation of a person 16 or 17 years of age by a person 24 years of age or older.
806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
806.10(2)	3rd	Interferes with or assaults

		firefighter in performance of duty.
810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
812.014(2)(c)2.	3rd	Grand theft; $5,000 or more but less than $10,000.
812.0145(2)(c)	3rd	Theft from person 65 years of age or older; $300 or more but less than $10,000.
812.015(8)(b)	3rd	Retail theft with intent to sell; conspires with others.
812.081(2)	3rd	Theft of a trade secret.
815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud

		Act), property valued at less than $20,000.
817.233	3rd	Burning to defraud insurer.
817.234 (8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
817.234(11)(a)	3rd	Insurance fraud; property value less than $20,000.
817.236	3rd	Filing a false motor vehicle insurance application.
817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
817.413(2)	3rd	Sale of used goods of $1,000 or more as new.
817.49(2)(b)1.	3rd	Willful making of a false report of a crime causing great

		bodily harm, permanent disfigurement, or permanent disability.
831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument with intent to defraud.
831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
836.13(2)	3rd	Person who promotes an altered sexual depiction of an identifiable person without consent.
838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
849.01	3rd	Keeping a gambling house.
849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc.,

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

		or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of lottery.
849.09(1)(e), (f), (g), (i), or (k)	3rd	Conducting an unlawful lottery; second or subsequent offense.
849.09(1)(h) or (j)	3rd	Conducting an unlawful lottery; second or subsequent offense.
849.15(3)(b)1. & 2.	3rd	Manufacture, sale, or possession of slot machine; by manager or with prior conviction.
849.157(1)	3rd	False or misleading statement to facilitate sale of slot machines or devices.
849.25(2)	3rd	Engaging in bookmaking.
849.47(2)(a) & (b)	3rd	Transporting persons to facilitate illegal gambling;

			minor or person 65 years of age or older or 12 or more persons.
860.15(3)	3rd	Overcharging for repairs and parts.
870.01(2)	3rd	Riot.
870.01(4)	3rd	Inciting a riot.
893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs).
893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs within 1,000 feet of university.

893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs within 1,000 feet of public housing facility.
893.13(4)(c)	3rd	Use or hire of minor; deliver to minor other controlled substances.
893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.

893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.

893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
918.13(1)	3rd	Tampering with or fabricating physical evidence.
944.47 (1)(a)1. & 2.	3rd	Introduce contraband to correctional facility.
944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
985.721	3rd	Escapes from a juvenile facility (secure detention or

		residential commitment facility).

(e) LEVEL 5

Florida Statute	Felony Degree	Description
316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.

379.365(2)(c)1.	3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.
379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
379.407(5)(b)3.	3rd	Possession of 100 or more

		undersized spiny lobsters.
381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
440.381(2)	3rd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected $20,000 or more but less than $100,000.
626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.

790.01(3)	3rd	Unlawful carrying of a concealed firearm.
790.162	2nd	Threat to throw or discharge destructive device.
790.163(1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.
790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.

800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
812.0145(2)(b)	2nd	Theft from person 65 years of age or older; $10,000 or more but less than $50,000.
812.015 (8)(a) & (c)-(e)	3rd	Retail theft; property stolen is valued at $750 or more and one or more specified acts.
812.015(8)(f)	3rd	Retail theft; multiple thefts within specified period.
812.019(1)	2nd	Stolen property; dealing in or trafficking in.
812.081(3)	2nd	Trafficking in trade secrets.

812.131(2)(b)	3rd	Robbery by sudden snatching.
812.16(2)	3rd	Owning, operating, or conducting a chop shop.
817.034(4)(a)2.	2nd	Communications fraud, value $20,000 to $50,000.
817.234(11)(b)	2nd	Insurance fraud; property value $20,000 or more but less than $100,000.
817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud,

			$5,000 or more or use of personal identification information of 10 or more persons.
455			
	817.611(2)(a)	2nd	Traffic in or possess 5 to 14 counterfeit credit cards or related documents.
456			
	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.
457			
	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
458			
	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes child pornography.
459			
	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion

			picture, etc., which includes child pornography.
828.12(2)		3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
836.14(4)		2nd	Person who willfully promotes for financial gain a sexually explicit image of an identifiable person without consent.
839.13(2)(b)		2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
843.01(1)		3rd	Resist officer with violence to person; resist arrest with violence.
847.0135(5)(b)		2nd	Lewd or lascivious exhibition

		using computer; offender 18 years or older.
847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
849.15(3)(c)1. & 2.	2nd	Manufacture, sale, or possession of a slot machine; by a manager of five or more machines or two or more prior convictions.
849.157(2)	2nd	False or misleading statement to facilitate sale of slot machines or devices; five or more machines.
849.25(3)	2nd	Bookmaking; second or subsequent offense.
874.05(1)(b)	2nd	Encouraging or recruiting

			another to join a criminal gang; second or subsequent offense.
468			
	874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
469			
	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. drugs).
470			
	893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or

			community center.
893.13(1)(d)1.		1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. drugs) within 1,000 feet of university.
893.13(1)(e)2.		2nd	Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.
893.13(1)(f)1.		1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)5. drugs) within 1,000 feet of

		public housing facility.
893.13(4)(b)	2nd	Use or hire of minor; deliver to minor other controlled substance.
893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.

(g) LEVEL 7

Florida Statute	Felony Degree	Description
316.027(2)(c)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety

			while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
482			
	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
483			
	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
484			
	409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; $10,000 or less.
485			
	409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than $10,000, but less than $50,000.
486			
	456.065(2)	3rd	Practicing a health care profession without a license.
487			
	456.065(2)	2nd	Practicing a health care

			profession without a license which results in serious bodily injury.
488			
	458.327(1)	3rd	Practicing medicine without a license.
489			
	459.013(1)	3rd	Practicing osteopathic medicine without a license.
490			
	460.411(1)	3rd	Practicing chiropractic medicine without a license.
491			
	461.012(1)	3rd	Practicing podiatric medicine without a license.
492			
	462.17	3rd	Practicing naturopathy without a license.
493			
	463.015(1)	3rd	Practicing optometry without a license.
494			
	464.016(1)	3rd	Practicing nursing without a license.
495			

465.015(2)	3rd	Practicing pharmacy without a license.
466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
467.201	3rd	Practicing midwifery without a license.
468.366	3rd	Delivering respiratory care services without a license.
483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
483.901(7)	3rd	Practicing medical physics without a license.
484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
484.053	3rd	Dispensing hearing aids without a license.

494.0018(2)	1st	Conviction of any violation of chapter 494 in which the total money and property unlawfully obtained exceeded $50,000 and there were five or more victims.
560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding $300 but less than $20,000 by a money services business.
560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding $300 but less than $20,000.
655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding $300 but less than $20,000 by financial institution.
775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew

			driver license or identification card; other registration violations.
508			
	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
509			
	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
510			
	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
511			
	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
512			
	782.071	2nd	Killing of a human being or unborn child by the operation

			of a motor vehicle in a reckless manner (vehicular homicide).
513			
	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
514			
	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
515			
	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
516			
	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
517			
	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
518			
	784.048(7)	3rd	Aggravated stalking; violation of court order.
519			

784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
784.081(1)	1st	Aggravated battery on specified official or employee.
784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
784.083(1)	1st	Aggravated battery on code inspector.
787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.
787.06(3)(e)2.	1st	Human trafficking using

			coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state.
527			
	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
528			
	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
529			
	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
530			
	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
531			
	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
532			

790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
796.05(1)	1st	Live on earnings of a prostitute; 2nd offense.
796.05(1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.
800.04(5)(c)1.	2nd	Lewd or lascivious molestation;

			victim younger than 12 years of age; offender younger than 18 years of age.
538			
	800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years of age; offender 18 years of age or older.
539			
	800.04(5)(e)	1st	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years; offender 18 years or older; prior conviction for specified sex offense.
540			
	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
541			
	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
542			
	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault

			or battery.
543			
	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
544			
	810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
545			
	812.014(2)(a)1.	1st	Property stolen, valued at $100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
546			
	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than $50,000, grand theft in 2nd degree.
547			
	812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
548			

812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
812.014(2)(f)	2nd	Grand theft; second degree; firearm with previous conviction of s. 812.014(2)(c)5.
812.0145(2)(a)	1st	Theft from person 65 years of age or older; $50,000 or more.
812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
812.131(2)(a)	2nd	Robbery by sudden snatching.
812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
817.034(4)(a)1.	1st	Communications fraud, value greater than $50,000.

817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
817.234(11)(c)	1st	Insurance fraud; property value $100,000 or more.
817.2341 (2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
817.418(2)(a)	3rd	Offering for sale or advertising personal protective equipment with intent to defraud.
817.504(1)(a)	3rd	Offering or advertising a

		vaccine with intent to defraud.
817.535(2)(a)	3rd	Filing false lien or other unauthorized document.
817.611(2)(b)	2nd	Traffic in or possess 15 to 49 counterfeit credit cards or related documents.
825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
825.103(3)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at $10,000 or more, but less than $50,000.
827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21

		years of age or older.
837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
838.015	2nd	Bribery.
838.016	2nd	Unlawful compensation or reward for official behavior.
838.021(3)(a)	2nd	Unlawful harm to a public servant.
838.22	2nd	Bid tampering.
843.0855(2)	3rd	Impersonation of a public officer or employee.
843.0855(3)	3rd	Unlawful simulation of legal process.
843.0855(4)	3rd	Intimidation of a public officer or employee.

847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
849.155	1st	Trafficking in slot machines or devices or any part thereof.
872.06	2nd	Abuse of a dead human body.
874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s.

			893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
581			
	893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5., within 1,000 feet of property used for religious services or a specified business site.
582			
	893.13(4)(a)	1st	Use or hire of minor; deliver to minor other controlled substance.
583			
	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.

893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
893.135 (1)(c)2.a.	1st	Trafficking in hydrocodone, 28 grams or more, less than 50 grams.
893.135 (1)(c)2.b.	1st	Trafficking in hydrocodone, 50 grams or more, less than 100 grams.
893.135 (1)(c)3.a.	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.
893.135 (1)(c)3.b.	1st	Trafficking in oxycodone, 14 grams or more, less than 25 grams.

893.135 (1)(c)4.b.(I)	1st	Trafficking in fentanyl, 4 grams or more, less than 14 grams.
893.135 (1)(d)1.a.	1st	Trafficking in phencyclidine, 28 grams or more, less than 200 grams.
893.135(1)(e)1.	1st	Trafficking in methaqualone, 200 grams or more, less than 5 kilograms.
893.135(1)(f)1.	1st	Trafficking in amphetamine, 14 grams or more, less than 28 grams.
893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.

893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
893.135 (1)(m)2.a.	1st	Trafficking in synthetic cannabinoids, 280 grams or more, less than 500 grams.
893.135 (1)(m)2.b.	1st	Trafficking in synthetic cannabinoids, 500 grams or more, less than 1,000 grams.
893.135 (1)(n)2.a.	1st	Trafficking in n-benzyl phenethylamines, 14 grams or more, less than 100 grams.
893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
896.101(5)(a)	3rd	Money laundering, financial

		transactions exceeding $300 but less than $20,000.
896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding $300 but less than $20,000.
943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
943.0435(13)	3rd	Failure to report or providing false information about a

		sexual offender; harbor or conceal a sexual offender.
943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address

			verification; providing false registration information.
985.4815(10)		3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
985.4815(12)		3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
985.4815(13)		3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.

Section 12. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 189 Gaming Control
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

The Florida Gaming Control Commission (Commission), is responsible for exercising all regulatory and executive powers of the state with respect to gambling authorized by the State Constitution or law, excluding the state lottery. The Commission's Division of Gaming Enforcement (Division) is a criminal justice agency tasked with the enforcement of Florida's gambling laws to combat illegal gambling activities, and is the first law enforcement agency with illegal gambling as its primary responsibility. The Division director and all investigators are certified law enforcement officers, have the power to investigate, apprehend, and make arrests for any alleged violation of the state's gambling laws, or any law of this state, and are authorized to seize, store, and test contraband in accordance with the Florida Contraband Forfeiture Act.

Recently, illegal gambling operations using unregulated slot machines have been increasing. The devices are similar to regulated gambling devices, but can be manipulated by the operators to control the outcome and ratio of winnings in a fraudulent manner. The operations (adult arcades or internet cafes), target vulnerable populations, and are often tied to criminal activity, including money laundering, drug trafficking, and violent crime. The Division has participated in numerous enforcement actions along with local law enforcement, including raids, resulting in arrests and closures; however, the activity persists. According to the Commission, Florida law contains many low-level penalties for criminal violations related to illegal gambling, which does not deter the criminal activity and leads to adult arcades operating slot machines illegally across the state.

The bill revises certain criminal penalties in Florida law related to illegal gambling, as follows:

- Prohibits falsely impersonating personnel or representatives of the Commission.
- Increases the penalty for keeping an illegal gambling house from a second degree misdemeanor to a third degree felony.
- Increases the penalty for the manufacture, sale, and possession of illegal slot machines from a second degree misdemeanor to a first degree misdemeanor, and to a felony for managers with prior convictions.
- Makes it a first degree felony for trafficking more than 15 illegal slot machines or any parts thereof, and imposes certain monetary fines.
- Makes it a third degree felony to make a false or misleading statement to facilitate the sale of illegal slot machines, and a second degree felony when such violation involves 5 or more machines.
- Makes it a first degree misdemeanor to transport five or more persons into or within the state to facilitate illegal gambling, and a third degree felony when violations include a minor or person 65 years old or older, or twelve or more persons.
- Makes it a first degree misdemeanor to make certain gambling or gaming advertisements.
- Prohibits counties, municipalities, or other political subdivisions from regulating gaming, gambling, lotteries, or other activities described in s. 546.10, F.S., or ch. 849, F.S.
- Requires courts to consider the amount of currency seized in connection with certain gambling violations when determining bail conditions.
- Conforms the offense severity ranking chart to the changes made by the bill.

The fiscal impact to the state and local government is indeterminate. The bill may prevent or reduce illegal gambling, which will protect vulnerable populations, and reduce secondary criminal activity.

The effective date of the bill is July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Gambling in Florida

Gambling is generally prohibited in Florida, unless specifically authorized. Gambling is defined in Florida law as playing or engaging in any game at cards, keno, roulette, faro or other game of chance, at any place, by any device whatever, for money or other thing of value.[1] The standard jury instructions for criminal cases in Florida provide that in order to prove the crime of gambling, the state must prove the following three elements beyond a reasonable doubt:[2]

- Playing or engaging in a game of chance.
- Risking money or property on the outcome of the game.
- Expecting to gain or lose money or property as a result of the game.

However, Florida does not allow gambling on games of skill of all types. Gambling on games of skill is highly regulated, and wagers on such games that are not specifically authorized are considered illegal.

Section 7, Art. X, of the Florida Constitution prohibits lotteries, other than pari-mutuel pools, from being conducted in Florida.

Slot machines that are not operated by a licensed pari-mutuel facility or in accordance with a tribal compact or specific law are illegal in Florida.

Chapter 849, F.S., includes prohibitions against slot machines, keeping a gambling house, engaging in bookmaking, and running a lottery. However, a constitutional amendment approved by voters in 1986 authorized state-operated lotteries, and a constitutional amendment in 2004 authorized slot machines in Miami-Dade and Broward Counties.

The following gaming activities are also authorized by law and regulated by the state:

- Pari-mutuel[3] wagering;[4]
- Gaming on tribal reservations in accordance with the federal Indian Gaming Regulatory Act and the 2021 Gaming Compact with the Seminole Tribe of Florida;
- Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County;[5] and
- Cardrooms[6] at certain pari-mutuel facilities.

Under the Florida Contraband Forfeiture Act,[7] gambling proceeds, paraphernalia, and property may be seized as contraband. For example, a vehicle used for transporting an illegal slot machine is subject to seizure.[8]

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[1] S. 849.08, F.S.

[2] The Florida Bar, Criminal Jury Instructions Chapter 22, 22.1 Gambling, https://www.floridabar.org/rules/florida-standard-jury-instructions/criminal-jury-instructions-home/criminal-jury-instructions/sji-criminal-chapter-22/ (last visited Jan. 2, 2024).

[3] "Pari-mutuel" is defined in Florida law as "a system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes. *See* s. 550.002(22), F.S.

[4] *See* ch. 550, F.S., relating to the regulation of pari-mutuel activities.

[5] *See* FLA. CONST., art. X, s. 23, and ch. 551, F.S.

[6] S. 849.086(2)(c), F.S., defines "cardroom" to mean "a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charged a fee for participation by the operator of such facility."

[7] Ss. 932.701-932.706, F.S., comprise the Florida Contraband Forfeiture Act.

[8] S. 849.36, F.S.

Chapter 849, F.S., also authorizes, under specific and limited conditions, the conduct of penny-ante games,[9] bingo,[10] charitable drawings,[11] game promotions (sweepstakes),[12] bowling tournaments,[13] and skill-based amusement games and machines at specified locations.[14]

Florida Gaming Control Commission

The Florida Gaming Control Commission (Commission) is a five-member regulatory body that is responsible for exercising all regulatory and executive powers of the state with respect to gambling, including pari-mutuel wagering, cardrooms, slot machine facilities, oversight of gaming compacts, and other forms of gambling authorized by the State Constitution or law, excluding the state lottery.[15] The Commission is also the State Compliance Agency responsible for monitoring compliance with the provisions of the Gaming Compact between the Seminole Tribe of Florida and the State of Florida.[16]

The Division of Gaming Enforcement (Division) is a criminal justice agency[17] tasked with the enforcement of Florida's gambling laws to combat illegal gambling activities.[18] While every law enforcement officer in the state of Florida has the authority to make arrests for violations of Florida's gambling laws, the Division is the first law enforcement agency with illegal gambling as its primary responsibility.[19]

The Division director and all investigators are certified and designated law enforcement officers, and have the power to detect, apprehend, and arrest for any alleged violation of the state's gambling laws, or any law of this state.[20] Such law enforcement officers may enter upon any premises at which gaming activities are taking place in the state for the performance of their lawful duties and may take with them any necessary equipment, and such entry does not constitute a trespass.[21]

Such officers have the authority, without warrant, to search and inspect any premises where the violation is alleged to have occurred or is occurring. Investigators employed by the Commission are required to have access to, and the right to inspect, premises licensed by the Commission, to collect taxes and remit them to the officer entitled to them, and to examine the books and records of all persons licensed by the Commission.[22]

The Division and its investigators are specifically authorized to seize, store, and test any contraband[23] in accordance with the Florida Contraband Forfeiture Act.[24]

According to the Commission, the Division:[25]

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[9] S. 849.085, F.S.
[10] S. 849.0931, F.S.
[11] S. 849.0935, F.S.
[12] S. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.
[13] S. 849.141, F.S.
[14] S. 546.10, F.S.
[15] *See* ss. 16.71-16.716, F.S.
[16] S. 285.710, F.S.
[17] S. 16.711(1), F.S.
[18] Florida Gaming Control Commission, *Annual Report Fiscal Year 2022-2023*, pg. 6, https://flgaming.gov/pmw/annual-reports/docs/2022-2023%20FGCC%20Annual%20Report.pdf (last visited Jan. 2, 2024).
[19] Florida Gaming Control Commission, *Gaming Enforcement*, https://flgaming.gov/enforcement/ (last visited Jan. 3, 2024).
[20] S. 16.711(3), F.S.
[21] *Id.*
[22] *Id.*
[23] The term "contraband" has the same meaning as the term "contraband article" in s. 932.701(2)(a)2, F.S., which is defined as "any equipment, gambling device, apparatus, material of gaming, proceeds, substituted proceeds, real or personal property, Internet domain name, gambling paraphernalia, lottery tickets, money, currency, or other means of exchange which was obtained, received, used, attempted to be used, or intended to be used in violation of the gambling laws of the state, including any violation of chapter 24, part II of chapter 285, chapter 546, chapter 550, chapter 551, or chapter 849."
[24] S. 16.711(4), F.S.
[25] *Id.*

- Participates in direct enforcement activities involving proactive investigations initiated by reports of illegal gambling, confidential sources, and investigative leads. Upon obtaining sufficient evidence, agents execute search warrants, resulting in arrests and the seizure of illegal gambling devices and contraband.
- Serves as a valuable resource for state and local law enforcement partners, providing expert guidance on the intricacies of Florida's gambling laws and regulations. Agents share their knowledge and experience, assisting other law enforcement agencies in identifying illegal gambling activities, gathering evidence, and building strong cases for prosecution. This collaborative approach ensures that illegal gambling operations are effectively investigated and disrupted.

Illegal Gambling Machines

According to the American Gaming Association, "there are a growing number of companies that design, manufacture, sell, or operate machines that mimic regulated gambling devices but operate without complying with state and federal laws. These games are extremely similar to regulated gambling devices, using drums or reels with insignia or other symbols that players "spin" to win prizes, including money. The manufacturers of such machines argue that their games are "skill-based" or operate in other "gray areas" of the law, thereby exempting them from regulation. However, these machines function similarly to traditional slot machines, and in fact, many consumers do not know the difference between regulated gambling devices and these "skill-based" or "gray" machines."[26]

These machines have been found to put consumers at risk by targeting the most vulnerable populations. In addition, they are often tied to criminal activity, including money laundering, drug trafficking, violent crime, and more.[27]

Regulated gambling device manufacturers that seek to manufacture, sell, or ship a gambling device in interstate commerce are required by the federal Johnson Act to register annually with the U.S. Department of Justice.[28] The Johnson Act makes it unlawful to transport a gambling device in interstate or foreign commerce, unless the device is shipped to a state or tribal jurisdiction that has otherwise made such shipment or operation of these games lawful.

Gambling devices are defined in the Johnson Act as any slot machine or other machine or device that is designed primarily for use in gambling, where as a result of application of an element of chance and any money or property, a person may be entitled to win money or property.[29]

Failure to comply with the Johnson Act carries penalties of fines up to $5,000 and up to two years of imprisonment, along with forfeiture of the unregistered gambling devices.[30]

Allied Veterans of the World

In March 2013, a three-year, multi-state, multi-agency investigation into the operations of illegal gambling at so-called Internet cafes affiliated with Allied Veterans of the World (Allied Veterans) concluded with the arrest of 57 people, and seizure of about 300 bank accounts and around $64.7 million. Charges included racketeering and money laundering.[31]

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[26] American Gaming Association, *Re: Comments Requested on Registration Under the Gambling Devices Act of 1962, 86 Fed. Reg. 53, 682, OMB No. 1123-0010*, https://www.americangaming.org/wp-content/uploads/2022/03/AGA-Comment-Gambling-Devices-Act-Nov.-29-202198.pdf (last visited Jan. 23, 2024).

[27] *See* American Gaming Association, *SKILLED AT DECEPTION: How Unregulated Gaming Machines Endanger Consumers and Dilute Investments in Local Economies*, https://www.americangaming.org/wp-content/uploads/2021/04/Unregulated-Gaming-Machines-White-Paper-Final.pdf (last visited Jan. 3, 2024).

[28] Gambling Devices Act of 1962, 15 U.S.C. §§ 1171–78 (the "Johnson Act").

[29] 15 U.S.C. § 1171(a).

[30] 15 U.S.C. §§ 1176, 1177

[31] Mary Ellen Klas, *Bill Banning Internet Cafes Becomes Law in Florida*, Governing, The States and Localities (April 11, 2013), https://www.governing.com/archive/mct-bill-banning-internet-cafes-becomes-law-in-

The Florida Attorney General's Office of Statewide Prosecution, alleged that the establishments purported to provide customers with access to the Internet. Customers purchased prepaid cards that they could use for Internet time, and while on the computer could participate in contests that were similar to playing a slot machine. Winnings were posted to the prepaid cards, which could be turned in for cash.[32]

Allied Veterans operated centers out of about 50 strip malls throughout Florida. Prosecutors said the centers were mini-casinos, and most people who bought Internet time didn't use it because they came to gamble. Defense attorneys said the centers offered sweepstakes, not gambling.[33] Under Florida law, sweepstakes may be conducted in connection with and incidental to the sale of consumer products or services, and in which the elements of chance and prize are present, only after filing, and providing certain information regarding winnings, with the Department of Agriculture and Consumer Services.[34] This allows businesses such as McDonald's to offer games of chance without being in violation of illegal gambling.

In spite of the large number of people arrested, only one person was sentenced to prison after being found guilty of racketeering, helping to run a lottery and possession of an illegal slot machine or device. The conviction was subsequently overturned by the Fifth District Court of Appeal, and the Florida Supreme Court declined to overturn the appellate court's decision and reinstate the conviction.[35]

As a result of the arrests, in 2013, the legislature clarified that Internet café style gambling machines were illegal in the state. The legislation clarified existing sections of law regarding slot machines, charitable drawings, game promotions, and amusement machines and created a rebuttable presumption that machines used to simulate casino-style games in schemes involving consideration and prizes are prohibited slot machines.[36]

In 2015, the legislature determined that the regulation of the operation of skill-based amusement games and machines would ensure compliance with Florida's limitations on gambling and prevent the expansion of casino-style gambling. The legislature clarified regulations related to the operation and use of amusement games or machines to ensure that regulations would not be interpreted as creating an exception to the state's general prohibitions against gambling.[37]

Recent Activity

According to reports, illegal gambling operations targeting vulnerable aging populations in Florida are increasing. The activity has especially grown since the pandemic with an "explosion of illegal gambling lounges opening up with unregulated slot machines."[38]

According to the Commission, "some of them register as amusement arcades through the Department of Revenue, which means they're acting like a Dave and Buster's or a Chuck E. Cheese, but in reality, they're offering illegal gambling devices such as slot machines. If the game has any element of chance built into it, under Florida statute, it's considered an illegal gambling device. They have the ability to dial

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florida.html#:~:text=The%20measure%2C%20HB%20155%2C%20was,workers%20in%20now%2Dshuttered%20operations (last visited Jan. 3, 2024).

[32] The National Registry of Exonerations, *Kelly Mathis*, https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5122 (last visited Jan. 3, 2024).

[33] Larry Hannan, *Allied Veterans of the World: A massive scandal -- or just overreach?*, The Florida Times Union, https://www.jacksonville.com/story/news/crime/2015/02/22/allied-veterans-scandal-didnt-live-its-billing/15651951007/ (last visited Jan. 3, 2024).

[34] S. 849.094, F.S.

[35] Eileen Kelley, *State Attorney General's Office drops Allied Veterans charges against embattled Jacksonville lawyer, The Florida Times Union*, https://www.jacksonville.com/story/news/crime/2015/02/22/allied-veterans-scandal-didnt-live-its-billing/15651951007/ (last visited Jan. 3, 2024).

[36] Florida House of Representatives Select Committee on Gaming, Final Bill Analysis of 2013 CS/HB 155, p. 1 (Apr. 19, 2013).

[37] S. 546.10, F.S.

[38] Jordan Brown, *Florida seniors warned to be cautious of shady slot machines*, FOX 13 Tampa Bay (May 23, 2023), https://www.fox13news.com/news/illegal-gambling-operations-in-florida-re-targeting-aging-populations (last visited Jan. 4, 2024).

up the winnings to entice play. Once they get a packed house, they dial down the winnings to almost zero. Then at that point, they're just stealing and using predatory practices and taking money from Florida's senior population."[39]

On May 9, 2023, special agents from the Commission and local law enforcement executed search warrants simultaneously in Fort Pierce, Delray Beach, St. Petersburg and Tampa. They targeted illegal gambling operations at adult arcades and seized more than $1 million in assets, cash, slot-style gaming machines, computers and ATMs. The raid resulted in seven arrests and the seizure of 360 slot machines. After the May raid, St. Lucie County sheriff's deputies went to every known adult arcade location in St. Lucie County to hand-deliver a Jan. 27 warning letter initially mailed to each arcade.[40]

Many arcades in St. Lucie County and some in Indian River County closed out of fear. However, some arcades never closed, and most eventually reopened. It appears only a handful shut down permanently. State officials said they would continue to monitor those open adult arcades and continue to work with local law enforcement.[41]

In 2023, the FGCC investigated several illegal slot machine businesses operating in the state, and found that:[42]

- The scope of the problem is much larger than initially anticipated.
- There are significant adverse harms associated with the activity.
- Success will require collaborative and coordinated efforts.
- Obstacles will continue to evolve but can be overcome.

During the 2022-2023 fiscal year, the Division received 1,266 total location based complaints of illegal gambling. From those complaints, 493 letters were sent to the local law enforcement departments informing them of possible illegal gambling activities at these locations. From those complaints, 506 letters were sent directly to businesses informing them of their possible participation in illegal gambling activities and providing copies of the gambling laws and associated criminal punishments.[43]

During the 2022-2023 fiscal year, the Division conducted joint investigation operations with the Chipley Police Department, Hillsborough Sheriff's Office, Holmes County Sheriff's Office, Manatee County Sheriff's Office, Palm Beach Sheriff's Office, St. Lucie County Sheriff's Office, and St. Petersburg Police Department resulting in 52 arrests and the seizure of:[44]

- 858 illegal slot machines.
- $1,151,000 in cash.
- Approximately $2,000,000 in real estate.
- 40 grams of fentanyl.
- 10 grams of methamphetamine.

Slot Machines

In Florida, a slot machine is defined as a machine or device that:[45]

- Is activated by inserting something of value (money, coin, account number, code, or other object or information);
- Is caused to operate or operated by a user **by application of skill, element of chance, or other outcome that is unpredictable to the user**; and

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[39] *Id.*
[40] TCPalm, *Florida investigators shut down arcades with illegal slot machines. Here's what we know*, https://www.tcpalm.com/story/news/crime/st-lucie-county/2023/09/14/what-we-know-investigators-raid-adult-arcades-with-illegal-slots-treasure-coast/70853727007/ (last visited Jan. 12, 2024).
[41] *Id.*
[42] Florida Gaming Control Commission, Presentation to the House Regulatory Reform & Economic Development Subcommittee, (Oct. 17, 2023), at pg. 12.
[43] Florida Gaming Control Commission, *Gaming Enforcement Investigations and Actions, Annual Report 2022-2023*, at pg. 7, https://flgaming.gov/pmw/annual-reports/docs/2022-2023%20FGCC%20Annual%20Report.pdf (last vi
[44] *Id.*
[45] S. 849.16(1), F.S.

- The user receives or is entitled to receive something of value or additional chances or rights to use the device or machine.

There is a rebuttable presumption that a device, system, or network is a prohibited slot machine or device if it is used to display images of games of chance and is part of a scheme involving any payment or donation of money or its equivalent and awarding anything of value.[46]

Slot machines are only authorized in licensed pari-mutuel facilities located in Miami-Dade and Broward counties and on tribal property.[47] Off of licensed pari-mutuel facilities, it is a violation to "manufacture, own, store, keep, possess, sell, rent, lease, let on shares, lend or give away, transport, or expose for sale or lease, or to offer to sell, rent, lease, let on shares, lend or give away, or permit the operation of any slot machine or device or any part thereof."[48]

Violations of the provisions[49] prohibiting the manufacture, sale, possession, etc., of slot machines or devices, are a second degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083. A second violation is a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083. Any person violating these provisions after having been twice convicted is deemed a "common offender," and guilty of a third degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.[50]

Unlicensed slot machines are illegal in Florida and are considered "contraband." Florida law provides, as contraband, "the right of property to an illegal slot machine and all the money or other things of value within the slot machine, does not exist and shall be forfeited to the county in which the seizure took place."[51]

Florida law also provides that all sums of money and other value used, displayed in, or connected with illegal gambling or an illegal gambling device contrary to the laws of this state shall be forfeited.[52]

Pursuant to the federal Johnson Act, Florida law allows shipment of gaming devices including slot machines into this state provided the destination of the shipment is an eligible slot machine facility, or the facility of a slot machine manufacturer or slot machine distributor.[53]

False Personation

Current law prohibits falsely assuming or pretending to be a state, local, or federal law enforcement officer, or requiring assistance in a matter pertaining to the duty of such officer (false personation).[54] The list of officers and individuals who may not be falsely personated include:

- Firefighters;
- Sheriffs or sheriffs deputies;
- Florida Highway Patrol officers;
- Fish and Wildlife Conservation Commission officers;
- Department of Environmental Protection officers;
- Department of Financial Services officers;
- Division of Investigative and Forensic Services personnel or representatives;
- Department of Corrections officers;
- State attorney or an assistant state attorney;
- Statewide prosecutor or an assistant statewide prosecutor;

[46] S. 849.16(3), F.S.
[47] S. 551.101, F.S.
[48] S. 849.15(1)(a), F.S.
[49] Ss. 849.15, F.S. – 849.22, F.S.
[50] S. 849.23, F.S.
[51] S. 849.19, F.S.
[52] S. 849.12, F.S.
[53] S. 849.15(2), F.S.
[54] S. 843.08, F.S.

- State attorney investigator;
- Coroner;
- Police officer;
- Lottery special agent or lottery investigator;
- Beverage enforcement agent;
- School guardian;
- Security officer;
- Member of the Florida Commission on Offender Review or any administrative aide or supervisor employed by the commission; and
- Any personnel or representative of the Department of Law Enforcement, or a federal law enforcement officer as defined in s. 901.15.05, F.S.[55]

False personation violations are a third degree felony, punishable by up to five years in prison and a $5,000 fine,[56] unless committed during the course of a felony.[57] A person who poses as an officer in order to facilitate a felony crime would also face a second degree felony, punishable by up to 15 years in prison and a $10,000 fine.[58]

The Commission is currently not listed as a law enforcement agency for the criminal offense of false personation of a law enforcement officer.

Keeping a Gambling House

Current law makes it is a second degree misdemeanor to keep a gambling house.[59] Specifically, a person is guilty of this offense if he or she:

- Habitually keeps, exercises, or maintains, for the purpose of gaming or gambling:[60]
  - A gaming table or room;
  - Gaming implements;
  - Gaming apparatus; or
  - A house, booth, tent, shelter, or other place.

A second degree misdemeanor is punishable by up to 60 days in jail and a fine up to $500.[61]

Criminal Punishment Code

The Criminal Punishment Code (Code) applies to all felony offenses, except capital felonies, committed on or after October 1, 1998.[62] Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10), either by being specifically listed in the offense severity ranking chart[63] or by default.[64] Judges must use the Code worksheet to compute a sentence score for each felony offender.[65]

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[55] S. 901.1505., F.S., defines the term "federal law enforcement officer" as "a person who is employed by the Federal Government as a full-time law enforcement officer as defined by the applicable provisions of the United States Code, who is empowered to effect an arrest for violations of the United States Code, who is authorized to carry firearms in the performance of her or his duties, and who has received law enforcement training equivalent to that prescribed in s. 943.13."

[56] *See* ss. 775.082 and 775.083, F.S.

[57] S. 843.08, F.S.

[58] *Id*.

[59] S. 849.01, F.S.

[60] S. 849.01, F.S.; *Ferguson v. State*, 377 So. 2d 709, 711 (Fla. 1979) (requiring an element of "habitualness" for a conviction under s. 849.01, F.S.).

[61] *See* ss. 775.082 and 775.083, F.S.

[62] S. 921.002, F.S.

[63] S. 921.0022, F.S.

[64] S. 921.0023, F.S., addresses ranking unlisted felony offenses. For example, an unlisted felony of the third degree is ranked within offense level 1.

[65] S. 921.0024, F.S.

Sentence points are assigned and accrue based on the level ranking assigned to the primary offense, additional offenses, and prior offenses.[66] Sentence points increase as the offense severity level increases from Level 1 (least severe) to Level 10 (most severe). Sentence points are added for victim injury, and increased based on the type of injury and severity.[67] Sentence points may also be added or multiplied for other factors including possession of a firearm or the commission of certain offenses, such as drug trafficking.[68] If an offense is unlisted on the offense severity ranking chart, the Code provides a ranking based on felony level.[69] For example, an unranked third degree felony is a level one offense.[70]

If total sentence points equal or are less than 44 points, the lowest permissible sentence is any nonstate prison sanction, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.[71] Absent mitigation,[72] the permissible range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.[73]

The offense severity ranking chart ranks the following third degree felony lottery violations as a level 1:[74]

- Set up, promote, or conduct any lottery for money or for anything of value;[75]
- Dispose of any money or other property of any kind whatsoever by means of any lottery;[76]
- Conduct any lottery drawing for the distribution of a prize or prizes by lot or chance, or advertise any such lottery scheme or device in any newspaper or by circulars, posters, pamphlets, radio, telegraph, telephone, or otherwise; [77] or
- Aid or assist in the setting up, promoting, or conducting of any lottery or lottery drawing, whether by writing, printing, or in any other manner whatsoever, or be interested in or connected in any way with any lottery or lottery drawing. [78]
- Engaging in bookmaking.[79]

Bail Determinations

The purpose of a bail determination in criminal proceedings is to ensure the appearance of the criminal defendant at subsequent proceedings and to protect the community against unreasonable danger from the criminal defendant.[80]

When determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, the court is required to consider certain factors, including:[81]

- The nature and circumstances of the offense charged.
- The weight of the evidence against the defendant.
- The defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition.

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[66] *Id*.
[67] *Id*.
[68] *Id*.
[69] S. 921.0023, F.S.
[70] *Id*.
[71] S. 921.0022(2), F.S.
[72] The court may "mitigate" or "depart downward" from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.
[73] S. 921.0022(2), F.S.
[74] S. 921.022(3)(a), F.S.
[75] S. 849.09(1)(a)-(d), F.S.
[76] *Id*.
[77] *Id*.
[78] *Id*.
[79] S. 849.25(2), F.S.
[80] S. 903.046(1), F.S.
[81] S. 903.046(2), F.S.

- The defendant's past and present conduct.
- The nature and probability of danger which the defendant's release poses to the community.
- The source of funds used to post bail or procure an appearance bond.
- Whether the defendant is already on release pending resolution of another criminal proceeding or on probation, parole, or other release pending completion of a sentence.

The bail determination provisions currently do not require courts to consider specific factors related to currency seized that is involved in state gambling law violations.

Effect of Proposed Changes

False Personation

The bill includes personnel or representatives of the Commission to the statute that prohibits falsely impersonating a law enforcement officer.

Keeping a Gambling House

The bill increases the penalty for keeping an illegal gambling house from a second degree misdemeanor to a third degree felony.

Slot Machines

Regarding penalties for the manufacture, sale, and possession of illegal slot machines, the bill:

- Increases general violations from a second degree misdemeanor to a first degree misdemeanor, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.
- Increases violations by a manager from a first degree misdemeanor to a third degree felony, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s 775.084, F.S., if:
    - At the time of the violation the person is acting as a manager.
    - The person in violation has one prior conviction for such violation.
- Increases violations by a manager from a third degree felony to a second degree felony, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s 775.084, F.S., if:
    - At the time of the violation the person is acting as a manager; and
        - The violation involves five or more slot machines or devices.
        - Has two or more prior convictions for such violation.
- Defines "conviction" to mean "a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.
- Defines "manager" to mean "a person who, at any business, establishment, premises, or other location at which a slot machine or device is offered for play, has:
    - Authorization to operate or hold open the business, establishment, premises, or other location without any other employee present;
    - Authorization to supervise another employee or employees; or
    - Any ownership interest in the business, establishment, premises, or other location."

Regarding trafficking in slot machines or devices, the bill makes it a:

- First degree felony, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S., to knowingly sell, purchase, manufacture, transport, deliver, or bring into this state more than 15 slot machines or devices or any part thereof; and
    - Includes an additional fine of $100,000, if the quantity of slot machines or devices or any part thereof involved is more than 15 slot machines or devices or any part thereof, but less than 25 slot machines or devices or any part thereof.
    - Includes an additional fine of $250,000, if the quantity of slot machines or devices or any part thereof involved is 25 slot machines or devices or any part thereof or more, but less than 50 slot machines or devices or any part thereof.
    - Includes an additional fine of $500,000, if the quantity of slot machines or devices or any part thereof involved is 50 slot machines or devices or any part thereof or more.

- Requires all fines imposed and collected pursuant to these provisions to be deposited into the Pari-mutuel Wagering Trust Fund and authorizes such funds to be used for the enforcement of chapters 546, F.S., 550, F.S., 551, F.S., and 849, F.S., by the Commission.

Regarding false or misleading statements to facilitate the sale of illegal slot machines, the bill makes it a:

- Third degree felony, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S., to knowingly and willfully:
  - Make a materially false or misleading statement regarding the legality of a slot machine or device for the purpose of facilitating the sale or delivery of a slot machine or device for any money or other valuable consideration; or
  - Disseminate false or misleading information regarding the legality of a slot machine or device for the purpose of facilitating the sale or delivery of a slot machine or device for any money or other valuable consideration.
- Second degree felony, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S., when such a violation involves the sale or delivery, or attempted sale or delivery, of five or more slot machines or devices.

Transporting Persons to Facilitate Illegal Gambling

The bill makes it a:

- First degree misdemeanor, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S., to knowingly and willfully for profit or hire transport, or procure the transportation of, five or more other persons into or within this state when he or she knows or reasonably should know such transportation is for the purpose of facilitating illegal gambling.
- Third degree felony, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S., for such violations to also include the transport, or procurement of transportation of:
  - A minor or a person 65 years of age or older.
  - Twelve or more persons.

For purposes of these provisions, the bill defines the term "illegal gambling" as any criminal violation of chapter 546, F.S., 550, F.S., 551, F.S., or 849, F.S., that occurs at any business, establishment, premises, or other location which operates for profit.

Gambling or Gaming Advertisements

The bill prohibits, except as otherwise specifically authorized by law:

- Knowingly and intentionally making, publishing, disseminating, circulating or placing before the public, or cause, directly or indirectly, to be made, published, disseminated or circulated or placed before the public in this state, in any manner, any advertisement, circular, bill, poster, pamphlet, list, schedule, announcement, or notice for the purpose of promoting or facilitating illegal gambling.
- Setting up any type or plate for any type of advertisement, circular, bill, poster, pamphlet, list, schedule, announcement, or notice when he or she knows or reasonably should know that such material will be used for the purpose of promoting or facilitating illegal gambling.

The bill:

- Makes violations a first degree misdemeanor, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.
- Specifies that nothing in these provisions prohibit the printing or producing of any advertisement, circular, bill, poster, pamphlet, list, schedule, announcement, or notice to be used for the purpose of promoting or facilitating gambling conducted in any other state or nation, outside of this state, where such gambling is not prohibited.
- Defines the term "illegal gambling" as any criminal violation of chapter 546, F.S., 550, F.S., 551, F.S., or 849, F.S., that occurs at any business, establishment, premises, or other location which operates for profit.

Preemption

The bill prohibits a county, municipality, or other political subdivision of the state from enacting or enforcing any ordinance or local rule relating to gaming, gambling, lotteries, or any activities described in s. 546.10, F.S., or ch. 849, F.S., except as otherwise expressly provided by the state constitution or general law.

Bail Determinations

The bill requires courts to consider the amount of currency seized that is connected to or involved in a violation of chapter 546, F.S., 550, F.S., 551, F.S., or 849, F.S., when determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be.

Criminal Punishment Code

The bill:

- Conforms the offense severity ranking chart to the changes made by the bill.
- Reclassifies the offense of engaging in bookmaking as a level 3 offense.
- Ranks the offense of keeping a gambling house as a level 3 offense.
- Ranks the lottery offenses relating to setting up, promoting, assisting, conducting or advertising a drawing for prizes, or disposing of property or money by means of lottery as a level 3 offense.
- Ranks second or subsequent violations of each of the following offenses related to conducting an unlawful lottery as a level 3 offense:
    - Attempting to operate, conduct, or advertise any lottery scheme or device.
    - Possession of a lottery wheel, implement, or device whatsoever for conducting any lottery or scheme for the disposal by lot or chance of anything of value.
    - Selling, offering for sale, or transmitting, in person or by mail or in any other manner, a lottery ticket, coupon, or share, of any lottery ticket.
    - Possession of a lottery ticket, or any evidence of any share or right in any lottery ticket, or in any lottery scheme or device, whether such ticket or evidence of share or right represents an interest in a live lottery not yet played or whether it represents, or has represented, an interest in a lottery that has already been played.
    - Aiding or assisting in the sale, disposal, or procurement of any lottery ticket, coupon, or share, or any right to any drawing in a lottery.
    - Possession of a lottery advertisement, circular, poster, or pamphlet, or any list or schedule of any lottery prizes, gifts, or drawings.
    - Possession of so-called “run down sheets,” tally sheets, or other papers, records, instruments, or paraphernalia designed for use, either directly or indirectly, in, or in connection with, the violation of the laws of this state prohibiting lotteries and gambling.
- Ranks each of the following offenses related to slot machines as a level 3 offense:
    - Manufacture, sale, or possession of slot machine; by manager or with prior conviction.
    - False or misleading statement to facilitate sale of slot machines or devices.
    - Transporting persons to facilitate illegal gambling; minor or person 65 years of age or older or 12 or more persons.
- Ranks each of the following offenses related to slot machines as a level 5 offense:
    - Manufacture, sale, or possession of a slot machine; by a manager of five or more machines or two or more prior convictions.
    - False or misleading statement to facilitate sale of slot machines or devices; five or more machines.
    - Bookmaking; second or subsequent offense.
- Ranks trafficking in slot machines or devices or any part thereof a level 7 offense.

B. SECTION DIRECTORY:

Section 1: Amends s. 843.08, F.S., relating to false personation.

Section 2: Amends s. 849.01, F.S., relating to keeping gambling houses.

Section 3: Amends s. 849.15, F.S., relating to manufacture, sale, possession, etc., of slot machines or devices prohibited.

Section 4: Creates s. 849.155, F.S., relating to trafficking in slot machines or devices or any parts thereof.

Section 5: Creates s. 849.157, F.S., relating to making a false or misleading statement regarding the legality of slot machines or devices to facilitate sale.

Section 6: Repeals s. 849.23, relating to Penalty for violations of ss. 849.15-849.22, F.S.

Section 7: Creates s. 849.47, F.S., relating to transporting or procuring the transportation of persons to facilitate illegal gambling.

Section 8: Creates s. 849.48, F.S., relating to gambling or gaming advertisements; prohibited.

Section 9: Creates s. 849.49, F.S., relating to preemption.

Section 10: Amends s. 903.046, F.S., relating to purpose of and criteria for bail determination.

Section 11: Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 12: Provides an effective date of July 1, 2024.

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:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may prevent or reduce illegal gambling, which will protect vulnerable populations, and reduce secondary criminal activity, including money laundering, drug trafficking, violent crime, and more.

D. FISCAL COMMENTS:

The fiscal impact to the state and local government is indeterminate. The bill increases and creates new criminal penalties for violations relating to illegal gambling. This may create a positive fiscal impact to the state and local governmental entities that receive proceeds from the related fines. This may also

create a negative fiscal impact to those entities relating to administration of enforcement. The Criminal Justice Impact Conference has not yet analyzed this bill.

Regarding trafficking in slot machines or devices, the bill:

- Requires all fines imposed and collected pursuant to these provisions to be deposited into the Pari-mutuel Wagering Trust Fund; and
- Authorizes such funds to be used for the enforcement of chapters 546, F.S., 550, F.S., 551, F.S., and 849, F.S., by the Commission.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES