Regulatory Reform Subcommittee

Tuesday, March 2, 2021
1:00 PM – 3:00 PM
Sumner Hall (404 HOB)

Meeting Packet

Sprowls
er

Bob Rommel
Chair

The Florida House of Representatives

Commerce Committee
Regulatory Reform Subcommittee

Chris Sprowls
Speaker

Bob Rommel
Chair

AGENDA

Tuesday, March 2, 2021
Sumner Hall (404 HOB)
1:00 PM – 3:00 PM

I. Call to Order & Roll Call

II. Welcoming Remarks

III. Consideration of the following bills(s):

HB 401 by *Rep. Fetterhoff*
Florida Building Code

HB 535 by *Rep. Busatta Cabrera*
Electronic Dissemination of Commercial Recordings and Audiovisual Works

HB 585 by *Rep. DiCeglie*
Payment for Construction Services

HB 663 by *Rep. Salzman*
Cottage Food Operations

HB 667 by *Rep. Mooney*
Building Inspections

HB 735 by *Rep. Harding*
Preemption of Local Occupational Licensing

HB 737 by *Rep. DiCeglie*
Craft Distilleries

HB 821 by *Rep. Mariano*
Licensure Requirements for Land Surveyors and Mappers

303 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4870 Fax: (850) 410-0096

HB 911 by *Rep. Buchanan*
Medical Treatment of Animals

IV. Consideration of the following proposed committee substitute(s):

PCS for HB 1059 -- Building Permits

V. Adjournment

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Regulatory Reform Subcommittee

Start Date and Time:	Tuesday, March 02, 2021 01:00 pm
End Date and Time:	Tuesday, March 02, 2021 03:00 pm
Location:	Sumner Hall (404 HOB)
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 401 Florida Building Code by Fetterhoff
HB 535 Electronic Dissemination of Commercial Recordings and Audiovisual Works by Busatta Cabrera
HB 585 Payment for Construction Services by DiCeglie
HB 663 Cottage Food Operations by Salzman
HB 667 Building Inspections by Mooney
HB 735 Preemption of Local Occupational Licensing by Harding
HB 737 Craft Distilleries by DiCeglie
HB 821 Licensure Requirements for Land Surveyors and Mappers by Mariano
HB 911 Medical Treatment of Animals by Buchanan

Consideration of the following proposed committee substitute(s):

PCS for HB 1059 -- Building Permits

This meeting will be live-streamed on https://thefloridachannel.org/. Persons who wish to attend must register at www.myfloridahouse.gov, at least three hours before the meeting, and pick up a pass at the Legislative Welcome Center on the 4th Floor of the Capitol beginning one hour before the start of the meeting. Audience seating will be socially distanced and will be available on a first-come, first-served basis. Registration closes three hours before the meeting starts.

NOTICE FINALIZED on 02/26/2021 3:28PM by Rigas.Amanda

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 401 Florida Building Code
SPONSOR(S): Fetterhoff
TIED BILLS: **IDEN./SIM. BILLS:** SB 1146

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

SUMMARY ANALYSIS

The Florida Building Commission (Commission), located within the Department of Business and Professional Regulation, implements and adopts the Florida Building Code. The Building Code is the statewide building code for all construction in the state. Every local government must enforce the Building Code and issue building permits. The Commission adopts a new edition of the Building Code every three years.

The Commission and local governments may adopt amendments to the Building Code provided they follow the requirements in current law. Local amendments to the Building Code expire when the newest edition of the Building Code takes effect. Current law also requires the Commission to develop and implement an approval of products for statewide use.

The Department of Health (DOH) is responsible for the oversight and regulation of water quality and safety of public swimming pools in Florida. DOH does not require a facility with a public pool to have lifeguards unless the pool has a water slide plunge pool or the pool is a water activity pool with climbable structures. However, anyone working as a lifeguard at a public swimming pool must be certified in lifeguarding, first aid, and cardiopulmonary resuscitation. DOH does require a group care facility with a pool, including assisted living facilities, to provide direct supervision by an adult employee when in use or when the area is occupied by minors and other residents that cannot swim. The adult employee providing supervision must have completed a community water safety course.

The bill:

- Prohibits DOH from requiring assisted living facilities to comply with rules relating to swimming pool lifeguards.
- Allows a substantially affected person to petition the Commission for a non-binding advisory opinion on whether a local government regulation is an improper amendment to the Building Code, and establishes a process for such.
- Allows the Commission to issue an "errata to the code" to correct demonstrated errors in provisions contained within the Building Code.
- Requires the Commission to adopt rules for approving product evaluation entities in addition to the ones already listed and approved in current law.
- Prohibits a local government from requiring a contract between a builder and an owner as a condition to apply for or obtain a building permit.

The bill is not expected to have an impact on state and local governments.

The bill provides for an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Assisted Living Facilities – Current Situation

An assisted living facility is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.[1] A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.[2] Activities of daily living include ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.[3]

As of February 25, 2021, there are 3,137 licensed assisted living facilities. Assisted living facilities range from having a capacity for 6 beds to 350 beds.[4]

Assisted living facilities are licensed and regulated by the Agency for Health Care Administration (AHCA) under part I of ch. 429, F.S., and part II of ch. 408, F.S., rule 59A-36, F.A.C. In addition to a standard license, an assisted living facility may have one or more specialty licenses that allow the assisted living facility to provide additional care. These specialty licenses include limited nursing services,[5] limited mental health services, and extended congregate care services.[6]

Current law requires rules governing assisted living facilities promote a safe and sanitary environment that is residential and non-institutional in design or nature.[7] Current law also requires rules set requirements for and maintenance of facilities relating to plumbing, heating, cooling, lighting, ventilation, living space and other housing conditions that are not in conflict with ch. 553, F.S., governing building construction standards. Current law also requires AHCA to develop key quality-of-care standards for assisted living facilities with input from the State Long-Term Care Ombudsman Council and representatives of provider groups for incorporation into its rules.[8] Rules must also address moratoriums, classification of deficiencies, the levying of penalties and the use of income from fees and fines.[9]

Public Pools

The Department of Health (DOH) is responsible for the oversight and regulation of water quality and safety of public swimming pools in Florida under ch. 514, F.S. In order to operate or continue to operate a public swimming pool, a valid operating permit from DOH must be obtained. If DOH determines that the public swimming pool is, or may reasonably be expected to be, operated in compliance with state laws and rules, DOH will issue a permit. However, if it is determined that the pool is not in compliance

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[1] S. 429.02(5), F.S. An assisted living facility does not include an adult family-care home or a non-transient public lodging establishment.
[2] S. 429.02(16), F.S.
[3] S. 429.02(1), F.S.
[4] AGENCY FOR HEALTH CARE ADMINISTRATION, *Facility/Provider Search Results – Assisted Living Facilities,* http://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx (last visited Feb. 17, 2021).
[5] S. 429.07(3)(c), F.S. Limited nursing services include acts that may be performed by a person licensed as a nurse but are not complex enough to require 24-hour nursing supervision and may include such services as the application and care of routine dressings, and care of casts, braces, and splints (s. 429.02(13), F.S.).
[6] S. 429.07(3)(b), F.S. Extended congregate care facilities provide services to an individual that would otherwise be ineligible for continued care in an assisted living facility. The primary purpose is to allow a resident the option of remaining in a familiar setting from which they would otherwise be disqualified for continued residency as they become more impaired.
[7] S. 429.41(1), F.S.
[8] S. 429.41(5), F.S. AHCA reviews the key quality-of-care standards for compliance during an abbreviated biennial licensure inspection (s. 429.41(5), F.S.).
[9] S. 429.41(1)(f), F.S.

with state laws and rules, the application for a permit will be denied. DOH is authorized to establish a schedule of fees for plan approval and permitting.[10] Operating permits must be renewed annually and may be transferred from one name or owner to another.[11]

A public swimming pool means a watertight structure of concrete, masonry, or other approved materials which is located either indoors or outdoors, used for bathing or swimming by humans, and filled with a filtered and disinfected water supply, together with buildings, appurtenances, and equipment used in connection therewith.[12]

A public swimming pool includes "a conventional pool, spa-type pool, wading pool, special purpose pool, or water recreation attraction, to which admission may be gained with or without payment of a fee and includes, but is not limited to, pools operated by or serving camps, churches, cities, counties, day care centers, **group home facilities for eight or more clients**, health spas, institutions, parks, state agencies, schools, subdivisions, or the cooperative living-type projects of five or more living units, such as apartments, boardinghouses, hotels, mobile home parks, motels, recreational vehicle parks, and townhouses."[13]

All public pools must be equipped with the following safety features:[14]

- Safety drain outlet cover(s)/grate(s) and allowable secondary anti-entrapment devices;[15]
- A shepherd's hook securely attached to a one piece pole not less than 16 feet in length. Pools over 50 feet in length shall have a shepherd's hook on each of the longer sides of the pool;
- At least one 18 inch diameter lifesaving ring with sufficient rope attached to reach all parts of the pool from the pool deck. Pools over 50 feet in length shall have a lifesaving ring on each of the longer sides of the pool;
- Safety equipment shall be mounted in a conspicuous place and be readily available for use; and
- Lighting if the pool is used during nighttime.

Spa pools under 200 square feet of surface area, and interactive water features or wading pools with two feet or less of water depth are exempt from the requirement to have shepherd's hook and lifesaving ring requirement.[16]

Lifeguards

A "lifeguard" is a person responsible for the safety of the users of a public swimming pool. Lifeguards are not required at a public pool unless the pool has a water slide plunge pool or the pool is a water activity pool with climbable structures.[17]

However, anyone working as a lifeguard at a public swimming pool must be certified in lifeguarding, first aid, and cardiopulmonary resuscitation by the American Red Cross, the Y.M.C.A., or other nationally recognized aquatic training programs.[18]

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[10] S. 514.033, F.S.
[11] Ss. 514.031(2) and (3), F.S.
[12] S. 514.011(2), F.S.
[13] *Id.*
[14] Rule 64E-9.008(3) and (7), F.A.C.
[15] Federal law requires public pools and spas to have a drain cover and a secondary anti-entrapment device in order to avoid suction entrapment. 15 U.S.C. § 106.
[16] *Id.*
[17] S. 514.071, F.S.; Rule 64E-9.008(2), F.A.C.
[18] *Id.*

Pools in Assisted Living Facilities

Current law gives DOH the authority to adopt rules necessary to protect the health and safety of residents, staff, and patrons of group care facilities.[19] DOH's rules require a group care facility, with a pool, to provide direct supervision by an adult employee when in use or when the area is occupied by minors and other residents that cannot swim. The adult employee providing supervision must have completed a community water safety course by the American Red Cross, Y.M.C.A., or other approved aquatic training program.[20]

Group care facilities, include public or private schools, **assisted living facilities**, adult family-care homes, adult day care centers, short-term residential treatment centers, residential treatment facilities, home for special services, transitional living facilities, crisis stabilization units, hospices, prescribed pediatric extended care centers, intermediate care facilities for persons with developmental disabilities, or boarding schools.[21]

On July 6, 2018, DOH opened up its rules relating to group care facilities, including the rule relating to pools in group care facilities, in order to update the rules by incorporating technical changes for consistency with changes in industry standards, reduce surplus language, and increase clarity. On March 11, 2020, the DOH held a workshop to receive comments on the possible rule updates.[22] The proposed rule requires assisted living facilities with pools, spas, or open water hazards to implement and maintain a written policy pertaining to the use of water safety barriers, water safety devices and equipment, and cardiopulmonary resuscitation. The policy must be available for review by DOH.[23]

The proposed rule provides that if an assisted living facility has a pool, spa, or open water hazard that is not considered a public swimming pool, the facility must have direct supervision by an adult employee when in use or when the area is occupied by minors and other residents or visitors that cannot swim. The individual responsible for supervision during water activities or near water hazards must be knowledgeable of:[24]

- The written policy;
- The correct use of water safety devices and equipment;
- The correct use of any water safety barriers: and
- Cardiopulmonary resuscitation procedures.

The proposed rule also provides that an assisted living facility with a pool or spa that is not considered a public swimming pool, must have a residential swimming pool barrier that meets the standards of the Florida Building Code, and be equipped with water safety devices including a shepherd's hook not less than 16 feet in length and an 18-inch diameter lifesaving ring.[25]

Opponents to the proposed changes argue that expanding the applicability of direct supervision of pools in group care facilities would cause assisted living facilities to incur significant costs caused by a need for increased staffing or purchasing and installing devices along with continued monitoring.

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[19] *Id.*
[20] Rule 64E-12.011(3), F.A.C.
[21] S. 381.006(16), F.S.
[22] DOH, *Group Care Facilities*, http://www.floridahealth.gov/environmental-health/group-care-facilities/index.html (last visited Feb. 25, 2021). Department of State, History of Rule 64E-12.011 since Jan. 6, 2006, Florida Administrative Code & Florida Administrative Register https://www.flrules.org/gateway/RuleNo.asp?title=COMMUNITY%20BASED%20RESIDENTIAL%20FACILITIES&ID=64E-12.011 (last visited Feb. 25, 2021).
[23] Email from Andrew Love, Legislative Planning Director, Department of Health, FW: Violations at pool inspections Re: Pool Bills-Exemption for HOAs HB 463/SB 902 (Feb. 26, 2021).
[24] *Id.*
[25] *Id.*

According to the comment, this could require assisted living facilities to close existing facilities and refrain from building new swimming pools.[26]

Assisted Living Facilities – Effect of the Bill

The bill prohibits DOH from requiring assisted living facilities with pools to comply with DOH rules relating to swimming pool lifeguards.

The Florida Building Code and Florida Building Commission – Current Situation

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.[27]

In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. The Governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Building Code), and that first edition replaced all local codes on March 1, 2002.[28] The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.[29]

Part IV of ch. 553, 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. [30]

The main purpose of the Building Code is to regulate new construction or proposed modifications to existing structures in order to give the occupants the highest level of safety and the least amount of defects.[31]

The Florida Building Commission

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.[32]

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[26] Letter from Jason M. Hand, Vice President of Public Policy & Legal Affairs, Florida Senior Living Association, Florida Senior Living Association's Written Comments in Response to Florida Department of Health's December 9, 2019 Notice of Development of Rulemaking for Rules 64E-12.001 through 64E-12.013 F.A.C. (#22688608), Jan. 17, 2020).

[27] 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 Feb. 15, 2021).

[28] *Id.*; DBPR, *Building Code Information System*, https://floridabuilding.org/c/default.aspx# (last visited on Feb. 15, 2021).

[29] Florida Building Commission Homepage, https://floridabuilding.org/c/default.aspx (last visited Feb.. 26, 2021).

[30] *See* S. 553.72(1), F.S.

[31] Florida Building Commission, *Advanced Florida Building Code Principals*, http://www.floridabuilding.org/Upload/Courses_trp/421-2-MATERIAL-Adv%20FL%20Bldg%20Code%20-%20Course%20PDF%20version%207.0.pdf (last visited Feb. 26, 2021).

[32] Ss. 553.73, & 553.74, F.S.

The Commission reviews several International Codes published by the International Code Council, the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every three years.[33]

The Commission has 11 Technical Advisory Committees (TAC) ranging from the building structural TAC to the swimming pool TAC.[34] TACs are made up of commission members and other parties who advise the commission on declaratory statements, proposed amendments, and any other areas of interest of the commission.[35]

Local Enforcement of the Florida Building Code

The Legislature has provided local governments with the power to inspect all buildings, structures, and facilities within their jurisdiction to protect the public's health, safety, and welfare.[36]

Every local government must enforce the Building Code and issue building permits.[37] It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government enforcing agency or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.[38]

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.[39] A building official is a local government employee or a person contracted by a local government who supervises Building Code activities, including plan review, enforcement, and inspection to ensure work complies with the Building Code.[40]

Amendments to the Building Code

The Commission and local governments may adopt technical and administrative amendments to the Building Code. A technical amendment to the Building Code is an alteration to the prescriptive requirements or reference standards for construction. An administrative amendment is an addition or alteration of the code enforcement requirements of the Building Code.[41] All amendments adopted by the Commission require a 75% supermajority vote of approval.[42]

The Commission may approve technical amendments to the Building Code once each year for statewide or regional application upon a finding that the amendment:[43]

- Is needed in order to accommodate the specific needs of the state;
- Has a reasonable and substantial connection with the health, safety, and welfare of the general public;
- Strengthens or improves the Florida Building Code, or in the case of innovation or new technology, will provide equivalent or better products or methods or systems of construction;
- Does not discriminate against materials, products, methods, or systems of construction of demonstrated capabilities; and
- Does not degrade the effectiveness of the Florida Building Code.

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[33] *Id.*
[34] DBPR, *Florida Building Code Online*, https://www.floridabuilding.org/c/c_commission.aspx (last visited Feb. 26, 2021).
[35] S. 553.73(3), F.S.; Rule 61G20-2.001, F.A.C.
[36] S. 553.72, F.S.
[37] Ss. 125.01(1)(bb), 125.56(1), & 553.80(1), F.S.
[38] *See* Ss. 125.56(4)(a) & 553.79(1), F.S.
[39] S. 202 of the Building Code (Building), Sixth Edition.
[40] S. 468.603(2), F.S.
[41] S. 553.73, F.S.; Rule 61G20-2.002, F.A.C.
[42] Rule 61G20-2.002(13), F.A.C.
[43] S. 553.73(9), F.S.

In order to adopt a technical amendment to the Code the commission must meet the following requirements:[44]

- The proposed amendment has been published on the commission's website for a minimum of 45 days and all the associated documentation has been made available to any interested party before any consideration by a TAC;
- The proposed amendment includes a fiscal impact statement that documents the costs and benefits of the proposed amendment.
- In order for a TAC to make a favorable recommendation to the commission, the proposal must receive a three-fourths vote of the members present at the TAC meeting and at least half of the regular members must be present in order to conduct a meeting;
- After TAC consideration and a recommendation for approval of any proposed amendment, the proposal must be published on the commission's website for at least 45 days before any consideration by the commission; and
- A proposal may be modified by the commission based on public testimony and evidence from a public hearing held in accordance with ch. 120.

Adopted amendments to the foundation codes must be clearly marked in printed versions of the Florida Building Code so that the fact that the provisions are Florida-specific amendments to the foundation codes is readily apparent.[45]

However, for certain amendments the commission may adopt amendments at any time and only has to follow the rule adopting procedures in ch. 120. The commission may adopt amendments using the rule adoption procedure to address the following:[46]

- Conflicts within the updated code;
- Conflicts between the updated code and the Florida Fire Prevention Code;
- Unintended results from the integration of previously adopted Florida-specific amendments with the model code;
- Equivalency of standards;
- Changes to or inconsistencies with federal or state law;
- Adoption of an updated edition of the NEC if the commission finds that delay of implementing the updated edition causes undue hardship to stakeholders or otherwise threatens the public health, safety, and welfare; or
- Enhancement of the construction requirements relating to wind resistance or the prevention of water intrusion.

Local Amendments to the Building Code

Local governments may adopt amendments to the Building Code that are more stringent than the Building Code that are limited to the local government's jurisdiction. Amendments by local governments expire upon the adoption of the newest edition of the Building Code, and, thus, the local government would need to go through the amendment process every three years in order to maintain a local amendment to the Building Code.[47]

Current law allows local governments to adopt technical amendments to the Building Code every six months if:[48]

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[44] Ss. 553.73(3) and (9), F.S.:
[45] s. 553.73(7), F.S.
[46] S. 553.73(8), F.S.; Rule 61G20-2.002(2), F.A.C.
[47] S. 553.73(4), F.S.
[48] *Id.*

- The local government's governing body holds a public hearing to discuss the amendment, which has been advertised in a newspaper of general circulation at least 10 days before the meeting;
- Following the hearing, the governing body determines that an amendment is needed to address a local need that is not addressed by the Building Code;
- The amendment is no more stringent than necessary to address the local need;
- The local amendment is not discriminatory against materials, products, or construction techniques of demonstrated capabilities;
- The local amendment does not introduce a new subject that is not addressed by the Building Code;
- The local amendment includes a fiscal impact statement, which documents the costs and benefits of the amendment including the impact to local government, property and building owners, industry, and the cost of compliance; and
- The local government sends the amendment to the Commission.

A technical amendment adopted by a local government takes effect 30 days after the Commission receives the amendment and publishes the amendment on its website.[49]

The Commission may review local amendments and issue nonbinding recommendations to local governments about whether the local government complied with the requirements to adopt an amendment. If the Commission decides to review a local amendment it must send the amendment to the applicable TAC for review.[50]

The TAC must make a recommendation to the Commission about whether the local amendment complies with the requirements of current law. The Commission must provide the nonbinding recommendation to the local government within 30 days of adopting the recommendation.[51]
Each county and municipality that adopts technical amendments to the Building Code must establish a countywide compliance review board by interlocal agreement. The compliance review board reviews any amendment adopted by a local government in its county that is challenged by a substantially affected party in order to determine if the amendment has been adopted in accordance with the requirements of current law.[52]

A local government or the substantially affected party may appeal the compliance review board's decision to the Commission within 14 days of the board's decision. The Commission must refer the appeal to the Division of Administrative Hearings for a hearing by an administrative law judge. The administrative law judge must hold a hearing within 30 days of being assigned the appeal, and must enter a recommended order within 30 days of the conclusion of the hearing.[53]

The Commission must enter a final order within 30 days after the administrative law judge issues a recommended order. In proceedings before a compliance review board or the Commission, the local government has the burden to prove an amendment has been adopted in accordance with the requirements of current law.[54]

Interpretations of the Building Code

[49] 553.73(4), F.S.; Rule-61G20-2.003, F.A.C.
[50] *Id.*
[51] *Id.*
[52] S. 553.73(4), F.S.
[53] *Id.*
[54] *Id.*

The Commission may issue declaratory statements regarding interpretations of the Florida Building Code, review local building officials' interpretation of the Building Code, and give binding interpretations of the Building Code.[55]

A substantially affected person, state agency, or a local government may petition the Commission in writing for a declaratory statement relating to interpretations of the Building Code, or the enforcement or administration of the Building Code by local governments. The Commission must issue a declaratory statement or deny a petition within 90 days of receiving the petition. Declaratory statements are binding upon all jurisdictions and are subject to judicial review by a district court of appeal.[56]

A substantially affected person may also petition the Commission to review a local building official's interpretation of the Building Code. A substantially affected person includes an owner or builder subject to a decision of the local building official or an association of owners or builders having members who are subject to a decision of the local building official.[57]

A substantially affected person may petition the Commission to review a local building official's interpretation of the Building Code if:[58]

- The substantially affected person has appealed the building official's interpretation to the local board of appeals, if such board exists;
- The substantially affected person files a written petition to the Commission on a form adopted by the Commission which contains:
    - The name and address of the local government and the local building official;
    - The name, address, and phone number of the substantially affected person, and explanation of how they are substantially affected by the building official's interpretation;
    - A statement of the provisions of the Building Code that are being interpreted, the building official's interpretation of those sections, and the substantially affected person's interpretation of those sections; and
    - The local building official's response.
- The substantially affected person has given the petition to the local building official and at least five days for the building official to respond.

Upon receiving a written petition to review a local building official's interpretation of the Building Code, the Commission must provide copies to a panel, and publish the petition and the local building official's response on the Commission's website and allow for comments to be posted by interested parties. The panel must have seven members made up of five building officials, an architect, and an engineer. The Commission must coordinate with the Building Officials Association of Florida[59] to designate the panel.[60]

The panel must conduct proceedings necessary to issue a determination, and consider the written petition, the local building official's response, and any comments posted on the Commission's website. The panel must issue a determination within 21 days of the petition being filed with the Commission.

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[55] S. 553.775, F.S.
[56] Ss. 553.775(3), 120.565, &120.68, F.S.
[57] S. 553.775(3), F.S.
[58] *Id.*
[59] The Building Officials Association of Florida is the largest community of building officials, building inspectors, plans examiners, and building code compliance professionals in the state. Its goal is to ensure the health, safety, and welfare of the public through safe building practices by equipping building professions through education, advocacy, leadership, and code development. Building Officials Association of Florida, *About BOAF*, https://boaf.net/page/About (last visited Jan. 8, 2020).
[60] *Id.*

The determination is binding upon all parties and all jurisdictions in Florida.[61] The determination must be published on the Commission's website and the Florida Administrative Register.[62]

A party may appeal the panel's determination by filing an appeal with the Commission within 30 days of the panel's determination. The Commission must conduct a hearing in accordance with the Administrative Procedure Act. The burden of proof in the hearing is on the party appealing the panel's determination. The Commission's ruling is subject to judicial review by a district court of appeal.[63]

The Florida Building Code and Florida Building Commission – Effect of the Bill

Errata to the Code

The bill provides that the Commission may also issue an "errata to the code" to correct demonstrated errors in provisions contained with the Building Code. An "errata to the code" means a list of errors on current and previous editions of the Building Code.

The determination of such errors and the issuance of an "errata to the code" must be approved by a 75% supermajority vote of the Commission.

Petition For Advisory Opinion Relating to Technical Amendments to the Building Code

The bill also provides that a substantially affected person may petition the Commission for a non-binding advisory opinion for any local government regulation, law, ordinance, policy, amendment, or land use or zoning provision (regulation) that the person believes is a technical amendment to the Building Code and was not adopted in accordance with the process for adopting local amendments to the Building Code.

A "local government" means a county, municipality, special district, or political subdivision of the state.

A "substantially affected person" includes an owner or builder subject to the local government's regulation or an association of owners or builders who have members who are subject to the regulation.

The Commission must issue a non-binding advisory opinion stating whether a local government regulation is a technical amendment to the Building Code **if**:

- A substantially affected person files a petition with the Commission, in accordance with the Commission's directions for filing the petition, and on a form adopted by the Commission which contains at a minimum:
  - The name of the local government that enacted the regulation;
  - The name and address of the local government's general counsel;
  - The name, address, and phone number of the substantially affected person;
  - An explanation of how the person is substantially affected by the local government's regulation; and
  - A statement of why the regulation is a technical amendment to the Building Code, and which provisions of the Building Code are amended by the regulation, if any.
- The substantially affected person has given the petition to the local government's general counsel or administrator by certified mail, return receipt requested. The local government may respond within 14 days by certified mail, return receipt requested, and send a copy of its response to the Commission.

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[61] *Id.*

[62] *Id.*; The Florida Administrative Register is a daily publication which gives the public current information about the status of proposed rules, notice of agency public meetings, workshops and hearings, and anything else required by law. Florida Administrative Code & Florida Administrative Register, *FL Rules FAQ*, https://www.flrules.org/Help/newHelp.asp#FAW (last visited Jan. 15, 2020).

[63] Ss. 553.775(3), & 120.68, F.S.

Upon receiving a petition to review a local government's regulation, the Commission must publish the petition and the local government's response on the Commission's website and allow for comments to be posted by interested parties. The Commission may provide the petition, the local government's response, and any comments posted by interested parties to a TAC for review and a recommendation.

The Commission must consider the petition, the local government's response, any comments posted on the Commission's website, and any recommendation provided by a TAC. The Commission must issue a non-binding advisory opinion stating whether the local government's regulation is a technical amendment to the Building Code within 30 days of receiving the petition. The Commission must also publish the non-binding advisory opinion on its website and the Florida Administrative Register.

Product Evaluation and Approval – Current Situation

Current law requires the Commission to develop and implement an approval of products for statewide use. The Commission has created a product approval system for products and systems that makeup the building envelope and structural frame of a building.[64] The Commission approves the products in the following categories for statewide use:[65]

- Panel Walls;
- Exterior Doors;
- Roofing Products;
- Skylights;
- Windows;
- Shutters;
- Structural Components; and
- Impact Protective Systems.

To obtain state approval, a manufacturer must demonstrate a product complies with the applicable standards and provisions of the Building Code by submitting one of the following reports:

- A certification mark or listing of an approved certification agency;
- A test report from an approved testing laboratory;
- A product evaluation report developed, signed and sealed by a Florida licensed engineer or architect; or
- A product evaluation report from one of the following evaluation entities:
    - The National Evaluation Service;
    - The International Association of Plumbing and Mechanical Officials Evaluation Service;
    - The International Code Council Evaluation Services;
    - Underwriters Laboratories, LLC;
    - The International Conference of Building Officials;
    - SBCCI Public Safety Testing and Evaluation Services, Inc.;
    - Intertek Testing Services NA, Inc.; or
    - The Miami-Dade County Building Code Compliance Office Product Control Division.[66]

Currently, the Commission has authority to approve an entity as an approved testing laboratory or a certification agency if it meets the Commission's rules.[67] However, the Commission does not have authority to approve an entity as an evaluation entity. In order to be approved as an evaluation entity, the entity must be added to the list of approved evaluation entities in current law by the Legislature.

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[64] S. 553.842(1), F.S.; R. 61G20-3.001, F.A.C.
[65] Rule 61G20-3.001, F.A.C.
[66] S. 553.842, F.S.; DBPR, Product Evaluation Entity List, https://www.floridabuilding.org/pr/pr_org_lst.aspx (last visited Nov. 11, 2019).
[67] Rule 61G20-3.008, F.A.C.

Product Evaluation and Approval – Effect of the Bill

The bill requires the Commission to adopt rules for approving evaluation entities in addition to the ones already approved and listed in current law.

Required Information in Building Permit Application – Current Situation

To obtain a permit, an applicant must complete an application for the proposed work on a form furnished by the government entity. The form must include the following information:[68]

- The name and address of the owner of the property;
- The name and address of the contractor;
- A description sufficient to identify the property to be improved, including the property's address and legal description; and
- The name and address of the bonding company, if any;
- The name and address of the architect/engineer, if any;
- The name and address of the mortgage company, if any; and
- The number or identifying symbol assigned to the building permit by the issuing authority.

In addition to the information that must be in the application, a government entity may require any additional information be included in the application.[69]

According to testimony offered during the Regular meeting of the Florida House of Representatives Regulatory Reform Subcommittee, many local governments use the cost of construction as a factor[70] for determining the amount of a fee for a building permit.[71] Some local governments are requiring contractors to include their contracts with private owners in order to obtain building permits so that the local government can determine the contract's construction cost and construction value.[72] Although these contracts may contain private proprietary information, when local governments request them they may become public documents.[73]

Required Information in Building Permit Application – Effect of the Bill

The bill prohibits a local government from requiring a contract between a builder and an owner as a condition to apply for or obtain a building permit.

B. SECTION DIRECTORY:

Section 1. Amending s. 514.0115, F.S., prohibiting DOH from requiring assisted living facilities to comply with rules relating swimming pool lifeguard standards.

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[68] Ss. 713.135(5) and (6), F.S.

[69] *Id.*

[70] The International Code Council has created two equations to help jurisdictions determine their permit fee schedules. Two factors of the factors in the equations are the valuation of the construction cost of the project, and the value of all the construction in the jurisdiction in the previous year. *See* International Code Council, *Building Valuation Data – February 2020*, https://www.iccsafe.org/wp-content/uploads/BVD-BSJ-FEB20.pdf (last visited Feb. 21, 2021).

[71] City of Miami, *City of Miami Building Permit Fee Schedule*, https://www.miamigov.com/Services/Building-Permitting/City-of-Miami-Building-Permit-Fee-Schedule (last visited Feb. 21, 2021); St. Lucie County, *Building Permit Fees*, https://www.stlucieco.gov/Home/ShowDocument?id=1330 (last visited Feb. 21, 2021); City of Seminole, *City of Seminole Permit Fee Schedule*, https://www.myseminole.com/Building/Docs/Permit_Fees.pdf (last visited Feb. 21, 2021).

[72] *See* The Florida Channel, *1/27/ 2021 House Regulatory Reform Subcommittee*, https://thefloridachannel.org/videos/1-27-21-house-regulatory-reform-subcommittee/ (last visited Feb. 19, 2021).

[73] Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record made or received in connection with official business of any public body, including counties, municipalities, and districts. Current law does not contain an exemption from Florida's public records laws for proprietary business information included in a building permit application. *See generally*, ch. 119. F.S.

Section 2. Amending s. 553.73, F.S., allowing the Florida Building Commission to issue advisory opinions and an "errata to the code" in certain situations.

Section 3. Amending s. 553.77, F.S., conforming a cross-reference.

Section 4. Amending s. 553.79, F.S., prohibiting local governments from requiring contracts in certain applications for building permits.

Section 5. Amending s. 553.842, F.S., requiring the Commission to adopt criteria for approving certain entities.

Section 6. Amending s. 125.01, F.S., conforming a cross-reference.

Section 7. Amending s. 125.56, F.S., conforming a cross-reference.

Section 8. Providing an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The Commission may see an increased workload related to establishing a process for accepting petitions from affected persons and issuing non-binding advisory opinions. However, the workload should be able to be absorbed within existing resources.[74]

   The provision allowing the Commission to adopt an "errata to the code" is not anticipated to have a significant impact on the Commission's processes.[75]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Prohibiting local governments from requiring contracts between owners and builders as a condition to apply or obtain a building permit may have a positive impact, by preventing certain proprietary information from becoming public.

D. FISCAL COMMENTS:

[74] Department of Business and Professional Regulation, Agency Analysis of 2020 HB 459, p. 5 (Nov. 6, 2019).
[75] Email from Conner Mann, Legislative Affairs Coordinator, Department of Business and Professional Regulation, HB 401 Provision, (Feb. 8, 2021).

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:

This bill may implicate the constitutional single subject rule. Section 6 of Art. III of the Florida Constitution imposes a single subject restriction on laws enacted by the Legislature: "Every law shall embrace but one subject and matter properly connected therewith...." The Florida Supreme Court has described the purpose of the single subject rule as twofold. First, it attempts to avoid surprise and fraud by ensuring that both the public and the legislators involved receive fair and reasonable notice of the contents of a proposed act. Secondly, the limitation prevents hodgepodge, logrolling legislation. With regard to the test to be applied by the court in determining whether a particular provision violates the single subject rule, the fact that the scope of a legislative enactment is broad and comprehensive is not fatal so long as the matters included in the enactment have a natural or logical connection.[76]

The title of the bill is "An act relating to the Florida Building Code." However, section one of the bill relates to the Department of Health's lifeguard standards for pools serving assisted living facilities, which may not properly connect to the Florida Building Code.

B. RULE-MAKING AUTHORITY:

The bill requires the Commission to adopt the form for the petition to request a non-binding advisory opinion, and the directions for filing the form, adopt criteria for approving evaluation entities, and adopting an "errata to the code." It appears that sufficient rulemaking authority exists in sections 553.76(1) and (4), and 553.842(1), F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides that the Commission must adopt criteria for approving product evaluation entities, and may adopt an "errata to the code." However, it does not specify how the Commission must adopt the criteria for approving product evaluation entities, and the "errata to the code." The sponsor may want to clarify that the Commission must adopt such criteria and the "errata to the code" pursuant to the rule adoption procedures in chapter 120.

According to DOH, assisted living facilities are not required to have lifeguards. They are required to have direct supervision by an adult who has completed a water safety course. Prohibiting DOH from requiring assisted living facilities to comply with rules relating to swimming pool lifeguard standards may not change the requirement to have direct supervision by an adult who has completed water safety course.[77]

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[76] *Franklin v. State*, 887 So. 2d 1063 (Fla. 2004).

[77] Email from Andrew Love *supra* note 22.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Florida Building Code; amending s. 514.0115, F.S.; providing that assisted living facilities are exempt from certain compliance standards; amending s. 553.73, F.S.; authorizing a substantially affected person to file a petition with the Florida Building Commission to review certain local government regulations, laws, ordinances, policies, amendments, or land use or zoning provisions; defining the term "local government"; providing requirements for the petition and commission; requiring the commission to issue a nonbinding advisory opinion within a specified timeframe; authorizing the commission to issue errata to the code; providing a definition for the term "errata to the code"; making technical changes; amending s. 553.77, F.S.; conforming a cross-reference; amending s. 553.79, F.S.; prohibiting a local government from requiring certain contracts for the issuance of a building permit; amending s. 553.842, F.S.; requiring evaluation entities that meet certain criteria to comply with certain standards; amending ss. 125.01 and 125.56, F.S.; conforming cross-references to changes made by the act; making technical changes; providing an effective date.

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

Section 1. Subsections (3) through (8) of section 514.0115, Florida Statutes, are renumbered as subsections (4) through (9), respectively, and a new subsection (3) is added to that section, to read:

514.0115 Exemptions from supervision or regulation; variances.—

(3) The department may not require compliance with rules relating to swimming pool lifeguard standards for pools serving assisted living facilities.

Section 2. Subsections (4) and (8) of section 553.73, Florida Statutes, are amended to read:

553.73 Florida Building Code.—

(4)(a) All entities authorized to enforce the Florida Building Code under ~~pursuant to~~ s. 553.80 shall comply with applicable standards for issuance of mandatory certificates of occupancy, minimum types of inspections, and procedures for plans review and inspections as established by the commission by rule. Local governments may adopt amendments to the administrative provisions of the Florida Building Code, subject to the limitations in ~~of~~ this subsection ~~paragraph~~. Local amendments must ~~shall~~ be more stringent than the minimum standards described in this section ~~herein~~ and must ~~shall~~ be

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

transmitted to the commission within 30 days after enactment. The local government shall make such amendments available to the general public in a usable format. The State Fire Marshal is responsible for establishing the standards and procedures required in this subsection ~~paragraph~~ for governmental entities with respect to applying the Florida Fire Prevention Code and the Life Safety Code.

(b) Local governments may, subject to the limitations in ~~of~~ this section and not more than once every 6 months, adopt amendments to the technical provisions of the Florida Building Code that ~~which~~ apply solely within the jurisdiction of such government and that ~~which~~ provide for more stringent requirements than those specified in the Florida Building Code~~, not more than once every 6 months~~. A local government may adopt technical amendments that address local needs if:

1. The local governing body determines, following a public hearing which has been advertised in a newspaper of general circulation at least 10 days before the hearing, that there is a need to strengthen the requirements of the Florida Building Code. The determination must be based upon a review of local conditions by the local governing body, which review demonstrates by evidence or data that the geographical jurisdiction governed by the local governing body exhibits a local need to strengthen the Florida Building Code beyond the needs or regional variation addressed by the Florida Building

Code, that the local need is addressed by the proposed local amendment, and that the amendment is no more stringent than necessary to address the local need.

2. Such additional requirements are not discriminatory against materials, products, or construction techniques of demonstrated capabilities.

3. Such additional requirements may not introduce a new subject not addressed in the Florida Building Code.

(c) ~~4.~~ The enforcing agency shall make readily available, in a usable format, all amendments adopted under ~~pursuant to~~ this section.

(d) ~~5.~~ Any amendment to the Florida Building Code shall be transmitted within 30 days after adoption by the ~~adopting~~ local government to the commission. The commission shall maintain copies of all such amendments in a format that is usable and obtainable by the public. Local technical amendments are ~~shall~~ not ~~become~~ effective until 30 days after the amendment has been received and published by the commission.

(e) ~~6.~~ An ~~Any~~ amendment to the Florida Building Code adopted by a local government under ~~pursuant to~~ this subsection is ~~paragraph shall be~~ effective only until the adoption ~~by the commission~~ of the new edition of the Florida Building Code by the commission every third year. At such time, the commission shall review such amendment for consistency with the criteria in paragraph (9)(a) and adopt such amendment as part of the Florida

Building Code or rescind the amendment. The commission shall immediately notify the respective local government of the rescission of any amendment. After receiving such notice, the respective local government may readopt the rescinded amendment under ~~pursuant to~~ the provisions of this subsection ~~paragraph~~.

(f)~~7.~~ Each county and municipality desiring to make local technical amendments to the Florida Building Code shall ~~by interlocal agreement~~ establish by interlocal agreement a countywide compliance review board to review any amendment to the Florida Building Code that is~~,~~ adopted by a local government within the county under ~~pursuant to~~ this subsection and ~~paragraph,~~ that is challenged by a ~~any~~ substantially affected party for purposes of determining the amendment's compliance with this subsection ~~paragraph~~. If challenged, the local technical amendments are ~~shall~~ not ~~become~~ effective until the time for filing an appeal under paragraph (g) ~~pursuant to subparagraph 8.~~ has expired or, if there is an appeal, until the commission issues its final order determining if the adopted amendment is in compliance with this subsection.

(g)~~8.~~ If the compliance review board determines such amendment is not in compliance with this subsection ~~paragraph~~, the compliance review board shall notify such local government of the noncompliance and that the amendment is invalid and unenforceable until the local government corrects the amendment to bring it into compliance. The local government may appeal the

decision of the compliance review board to the commission. If the compliance review board determines that such amendment is ~~to be~~ in compliance with this subsection ~~paragraph~~, any substantially affected party may appeal such determination to the commission. Any such appeal must ~~shall~~ be filed with the commission within 14 days after ~~of~~ the board's written determination. The commission shall promptly refer the appeal to the Division of Administrative Hearings by electronic means through the division's website for the assignment of an administrative law judge. The administrative law judge shall conduct the required hearing within 30 days after being assigned to the appeal, and shall enter a recommended order within 30 days after ~~of~~ the conclusion of such hearing. The commission shall enter a final order within 30 days after an order is rendered ~~thereafter~~. ~~The provisions of~~ Chapter 120 and the uniform rules of procedure shall apply to such proceedings. The local government adopting the amendment that is subject to challenge has the burden of proving that the amendment complies with this subsection ~~paragraph~~ in proceedings before the compliance review board and the commission, as applicable. Actions of the commission are subject to judicial review under ~~pursuant to~~ s. 120.68. The compliance review board shall determine whether its decisions apply to a respective local jurisdiction or apply countywide.

(h) ~~9.~~ An amendment adopted under this subsection ~~paragraph~~

must ~~shall~~ include a fiscal impact statement that ~~which~~ documents the costs and benefits of the proposed amendment. Criteria for the fiscal impact statement shall include the impact to local government relative to enforcement and~~,~~ the impact to property and building owners and~~, as well as to~~ industry~~,~~ relative to the cost of compliance. The fiscal impact statement may not be used as a basis for challenging the amendment for compliance.

(i)~~10.~~ In addition to paragraphs (f) and (g) ~~subparagraphs 7. and 9.~~, the commission may review any amendments adopted under ~~pursuant to~~ this subsection and make nonbinding recommendations related to compliance of such amendments with this subsection.

(j)~~(c)~~ Any amendment adopted by a local enforcing agency under ~~pursuant to~~ this subsection may ~~shall~~ not apply to state or school district owned buildings, manufactured buildings or factory-built school buildings approved by the commission, or prototype buildings approved under ~~pursuant to~~ s. 553.77(3). The respective responsible entities shall consider the physical performance parameters substantiating such amendments when designing, specifying, and constructing such exempt buildings.

(k)~~(d)~~ A technical amendment to the Florida Building Code related to water conservation practices or design criteria adopted by a local government under ~~pursuant to~~ this subsection is not ~~rendered~~ void when the code is updated if the technical

amendment is necessary to protect or provide for more efficient use of water resources as provided in s. 373.621. However, any such technical amendment carried forward into the next edition of the code under ~~pursuant to~~ this paragraph is subject to review or modification as provided in this part.

(l) If a local government adopts a regulation, law, ordinance, policy, amendment, or land use or zoning provision without using the process established in this subsection, and a substantially affected person considers such regulation, law, ordinance, policy, amendment, or land use or zoning provision to be a technical amendment to the Florida Building Code, then the substantially affected person may submit a petition to the commission for a nonbinding advisory opinion. If a substantially affected person submits a request in accordance with this paragraph, the commission shall issue a nonbinding advisory opinion stating whether or not the commission interprets the regulation, law, ordinance, policy, amendment, or land use or zoning provision as a technical amendment to the Florida Building Code. As used in this paragraph, the term "local government" means a county, municipality, special district, or political subdivision of the state.

1. Requests to review a local government regulation, law, ordinance, policy, amendment, or land use or zoning provision may be initiated by any substantially affected person. A substantially affected person includes an owner or builder

subject to the regulation, law, ordinance, policy, amendment, or land use or zoning provision, or an association of owners or builders having members who are subject to the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

2. In order to initiate a review, a substantially affected person must file a petition with the commission. The commission shall adopt a form for the petition and directions for filing, which shall be published on the Building Code Information System. The form shall, at a minimum, require the following:

a. The name of the local government that enacted the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

b. The name and address of the local government's general counsel or administrator.

c. The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any; and an explanation of how the petitioner's substantial interests are being affected by the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

d. A statement explaining why the regulation, law, ordinance, policy, amendment, or land use or zoning provision is a technical amendment to the Florida Building Code, and which provisions of the Florida Building Code, if any, are being amended by the regulation, law, ordinance, policy, amendment, or

land use or zoning provision.

3. The petitioner shall serve the petition on the local government's general counsel or administrator by certified mail, return receipt requested, and send a copy of the petition to the commission, in accordance with the commission's published directions. The local government shall respond to the petition in accordance with the form by certified mail, return receipt requested, and send a copy of its response to the commission, within 14 days after receipt of the petition, including Saturdays, Sundays, and legal holidays.

4. Upon receipt of a petition that meets the requirements of this paragraph, the commission shall publish the petition, including any response submitted by the local government, on the Building Code Information System in a manner that allows interested persons to address the issues by posting comments.

5. Before issuing an advisory opinion, the commission shall consider the petition, the response, and any comments posted on the Building Code Information System. The commission may also provide the petition, the response, and any comments posted on the Building Code Information System to a technical advisory committee, and may consider any recommendation provided by the technical advisory committee. The commission shall issue an advisory opinion stating whether the regulation, law, ordinance, policy, amendment, or land use or zoning provision is a technical amendment to the Florida Building Code within 30

days after the filing of the petition, including Saturdays, Sundays, and legal holidays. The commission shall publish its advisory opinion on the Building Code Information System and in the Florida Administrative Register. The commission's advisory opinion is nonbinding and is not a declaratory statement under s. 120.565.

(8) Notwithstanding subsection (3) or subsection (7), the commission may address issues identified in this subsection by amending the code under ~~pursuant to~~ the rule adoption procedures in chapter 120. Updates to the Florida Building Code, including provisions contained in referenced standards and criteria which relate to wind resistance or the prevention of water intrusion, may not be amended under ~~pursuant to~~ this subsection to diminish those standards; however, the commission may amend the Florida Building Code to enhance such standards. Following the approval of any amendments to the Florida Building Code by the commission and publication of the amendments on the commission's website, authorities having jurisdiction to enforce the Florida Building Code may enforce the amendments.

(a) The commission may approve amendments that are needed to address:

1.~~(a)~~ Conflicts within the updated code;

2.~~(b)~~ Conflicts between the updated code and the Florida Fire Prevention Code adopted under ~~pursuant to~~ chapter 633;

3.~~(c)~~ Unintended results from the integration of

previously adopted amendments with the model code;

4.~~(d)~~ Equivalency of standards;

5.~~(e)~~ Changes to or inconsistencies with federal or state law; or

6.~~(f)~~ Adoption of an updated edition of the National Electrical Code if the commission finds that delay of implementing the updated edition causes undue hardship to stakeholders or otherwise threatens the public health, safety, and welfare.

(b) The commission may issue errata to the code to correct demonstrated errors in provisions contained within the Florida Building Code. The determination of such errors and the issuance of errata to the code must be approved by a 75 percent supermajority vote of the commission. For purposes of this paragraph, "errata to the code" means a list of errors on current and previous editions of the Florida Building Code.

Section 3. Subsection (7) of section 553.77, Florida Statutes, is amended to read:

553.77 Specific powers of the commission.—

(7) Building officials shall recognize and enforce variance orders issued by the Department of Health under s. 514.0115(9) ~~pursuant to s. 514.0115(8)~~, including any conditions attached to the granting of the variance.

Section 4. Paragraph (d) is added to subsection (1) of section 553.79, Florida Statutes, to read:

553.79 Permits; applications; issuance; inspections.—

(1)

(d) A local government may not require a contract between a builder and an owner for the issuance of a building permit or as a requirement for the submission of a building permit application.

Section 5. Paragraph (a) of subsection (8) of section 553.842, Florida Statutes, is amended to read:

553.842 Product evaluation and approval.—

(8) The commission may adopt rules to approve the following types of entities that produce information on which product approvals are based. All of the following entities, including engineers and architects, must comply with a nationally recognized standard demonstrating independence or no conflict of interest:

(a) Evaluation entities approved under ~~pursuant to~~ this paragraph or that meet the criteria for approval adopted by the commission by rule. The commission shall specifically approve the National Evaluation Service, the International Association of Plumbing and Mechanical Officials Evaluation Service, the International Code Council Evaluation Services, Underwriters Laboratories, LLC, Intertek Testing Services NA, Inc., and the Miami-Dade County Building Code Compliance Office Product Control Division. Architects and engineers licensed in this state are also approved to conduct product evaluations as

provided in subsection (5).

Section 6. Paragraph (bb) of subsection (1) of section 125.01, Florida Statutes, is amended to read:

125.01 Powers and duties.—

(1) The legislative and governing body of a county shall have the power to carry on county government. To the extent not inconsistent with general or special law, this power includes, but is not restricted to, the power to:

(bb) Enforce the Florida Building Code~~,~~ as provided in s. 553.80~~,~~ and adopt and enforce local technical amendments to the Florida Building Code as provided in s. 553.73(4)~~, pursuant to s. 553.73(4)(b) and (c)~~.

Section 7. Subsection (1) of section 125.56, Florida Statutes, is amended to read:

125.56 Enforcement and amendment of the Florida Building Code and the Florida Fire Prevention Code; inspection fees; inspectors; etc.—

(1) The board of county commissioners of each of the several counties of the state may enforce the Florida Building Code and the Florida Fire Prevention Code~~,~~ as provided in ss. 553.80, 633.206, and 633.208~~,~~ and, at its discretion, adopt local technical amendments to the Florida Building Code as provided in s. 553.73(4)~~, pursuant to s. 553.73(4)(b) and (c)~~ and local technical amendments to the Florida Fire Prevention Code as provided in~~, pursuant to~~ s. 633.202~~,~~ to provide for the

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

safe construction, erection, alteration, repair, securing, and demolition of any building within its territory outside the corporate limits of any municipality. Upon a determination to consider amending the Florida Building Code or the Florida Fire Prevention Code by a majority of the members of the board of county commissioners of such county, the board shall call a public hearing and comply with the public notice requirements of s. 125.66(2). The board shall hear all interested parties at the public hearing and may then amend the building code or the fire code consistent with the terms and purposes of this act. Upon adoption, an amendment to the code shall be in full force and effect throughout the unincorporated area of such county until otherwise notified by the Florida Building Commission under ~~pursuant to~~ s. 553.73 or the State Fire Marshal under ~~pursuant to~~ s. 633.202. This subsection does not ~~Nothing herein contained shall be construed to~~ prevent the board of county commissioners from repealing such amendment to the building code or the fire code at any regular meeting of such board.

Section 8. This act shall take effect July 1, 2021.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 535 Electronic Dissemination of Commercial Recordings and Audiovisual Works
SPONSOR(S): Busatta Cabrera
TIED BILLS: **IDEN./SIM. BILLS:** SB 1542

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

SUMMARY ANALYSIS

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

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

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

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

The bill amends the definition of "electronic dissemination" to include "display" and "performance" in order to require a person who owns or operates a streaming service dealing in commercial recordings and audiovisual works to post their identifying information on the website.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

True Origin of Digital Goods Act

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

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

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

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

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

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

The act exempts:

- providers of interactive computer services, communication services, commercial mobile services, information services that provide transmission, storage, or caching of electronic communications or other related telecommunications service, and commercial mobile radio services;[6] and

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

- commercial recordings and audiovisual works that are video games, depictions of video game play, and streaming of video game activity.[7]

Streaming Services

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

Effect of the Bill

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

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

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

B. SECTION DIRECTORY:

Section 1: Amends s. 501.155, F.S.; requiring certain notice requirements on websites that offer certain recordings and work for display or performance.
Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may allow more owners, assignees, authorized agents, or licensees of a commercial recording or audio visual work to initiate actions based on improper notice.

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[7] S. 501.155(3)(a), F.S.
[8] PC Mag Digital Group, *Streaming Service*, https://www.pcmag.com/encyclopedia/term/streaming-service (last visited Feb. 25, 2021).

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

For a court to exercise jurisdiction over a respondent, it must have subject matter jurisdiction and personal jurisdiction.[9] A non-resident respondent may have sufficient contacts with Florida if he or she commits acts expressly enumerated in Florida's long-arm statute.[10] Alternately, the non-resident respondent may be subject to a Florida court's personal jurisdiction because he or she has minimum contacts with the state that are otherwise unrelated to matter that brings him or her into court.[11]

Whether a non-resident internet company that electronically disseminates commercial recordings or audiovisual works into Florida has sufficient minimum contacts with the state is a fact-specific question that would likely need to be addressed on a case-by-case basis by a court.

Content-neutral regulations are legitimate if they advance important governmental interests that are not related to suppression of free speech, and do not substantially burden more speech than necessary to further those interests.[12] However, a law may be determined to be overbroad if a "substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep."[13]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[9] *Caiazzo v. American Royal Arts Corp.*, 73 So. 3d 245, 250 (Fla. 4th DCA 2011).
[10] *Id*; § 48.193, F.S.
[11] *Caiazzo v. American Royal Arts Corp.*, 73 So. 3d 245, 250 (Fla. 4th DCA 2011).
[12] *Turner Broadcasting System, Inc. v. F.C.C.*, 520 U.S. 180,189 (U.S. 1997).
[13] *U.S. v. Stevens*, 559 U.S. 460 (2010), *quoting*, *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449, n. 6, (2008).

A bill to be entitled

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

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

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

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

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

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

Section 2. This act shall take effect July 1, 2021.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 585 Payment for Construction Services
SPONSOR(S): DiCeglie
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 378

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

SUMMARY ANALYSIS

Current law requires prompt payments to parties for construction services, and requires interest to accrue to amounts owed for construction services if the state, a local government, or private party fails to timely make payments for such services. The calculation of interest is set by statute or determined by the contract. Interest also accrues to amounts owed if a contractor receives payment for labor, services, or materials, and the contractor fails to make timely payments for such labor, services, or materials.

If a person receives payment for labor, services, or materials for construction work on private real property, and the person knowingly and intentionally fails to make undisputed payments for labor, services, or materials, in accordance with the contract, the person commits misapplication of construction funds. Misapplication of construction funds is a felony, the degree of which is determined by the amount of unpaid funds.

Construction contractors are certified by or registered with the Construction Industry Licensing Board (CILB) housed within the Department of Business and Professional Regulation. Certified contractors can practice statewide and are licensed and regulated by the CILB. Registered contractors are licensed and regulated by a local jurisdiction and may practice within that locality.

The bill:

- Increases the interest rate from **1 percent** per month to **2 percent** per month for untimely payments for construction services by the state or local governments;
- Increases the interest rate for untimely payments for private construction services from the interest rate payable on judgments to the interest rate payable on judgments **plus 1 percent**;
- Provides that a party who receives payment from the state, any local government, or public authority for a public works construction project that knowingly and intentionally fails to pay the undisputed contract obligations to another party commits misapplication of construction funds;
- Clarifies that the CILB may discipline a contractor for committing misapplication of construction funds; and
- Requires the CILB to suspend a contractor's licenses for a minimum of one year if the CILB determines the contractor committed misapplication of construction funds.

The bill applies to contracts executed on or after July 1, 2021.

The bill may have an indeterminate negative fiscal impact on state and local governments. *See* Fiscal Comments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Prompt Payment Act for Local Governments – Current Situation

Part VII of ch. 218, F.S., is known as the "Local Government Prompt Payment Act." The purpose of the act is to provide for prompt payments by local governments, apply interest on late payments made by local governments, and establish a dispute resolution process for contested payments.[1]

The Act defines "local government entity," as a county or municipal government, school board, school district, authority, special taxing district, other political subdivision, or any office, board, bureau, commission, department, branch, division, or institution thereof.[2]

Current law provides that when a local government entity enters into a contract for construction services[3] with a contractor,[4] the local government entity must identify the agent,[5] employee, facility, or office who is to receive the contractor's payment request or invoices.[6]

Every local government entity must establish procedures so that every payment request or invoice received by the local government entity is marked as received on the date on which it is delivered to an agent or employee of the local government entity, or a facility or office of the local governmental entity.[7]

When a contractor submits a payment request or invoice, the local government entity must make the payment within:[8]

- 25 business days after the date on which the payment request or invoice is stamped, if an agent must approve the invoice before it is submitted to the entity for payment;
- 20 business days after the date the payment request or invoice is stamped, if an agent is not required to approve the invoice.

If payment is not received by the due date, the contractor can send an overdue notice to the local government entity. After four business days of delivering the overdue notice, if the invoice is not rejected, the invoice will be considered undisputed, except for any amounts that are fraudulent or misleading.[9]

If the payment request or invoice does not meet the contract requirements, the local government entity must provide the contractor with a written rejection specifying the deficiency and action needed to rectify, within 20 business days of receipt of the payment request or invoice.[10]

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[1] *Id.*
[2] S. 218.72(5), F.S.
[3] "Construction services" is defined as all labor, services, and materials provided in connection with the construction, alteration, repair, demolition, reconstruction, or other improvements to real property. S. 218.72(2), F.S.
[4] "Contractor" means the person who contracts directly with a local governmental entity to provide construction services." S. 218.72(3), F.S.:
[5] "Agent" means the project architect, project engineer, or other agency or person acting on behalf of the local governmental entity. S. 218.72, F.S.
[6] S. 218.735(1), F.S.
[7] S. 218.74(1), F.S.
[8] S. 218.72(1), F.S.
[9] S. 218.735(1), F.S.
[10] S. 218.735(2), F.S.

If a contractor submits a corrected payment request or invoice, the local government entity must pay or dispute the request within:[11]

- Ten business days after the date the corrected payment request or invoice is stamped as received; or
- the first business day after the local government entity's next regularly scheduled meeting, if the local governmental entity is required by ordinance, charter, or other law to approve or reject the corrected payment request or invoice.

If a local government entity cannot resolve a dispute with the contractor then the dispute must be resolved by the dispute resolution established in the contract or a dispute resolution procedure established by the local government entity.[12]

When payment is received by a contractor from a local government entity for labor, services, or materials furnished by subcontractors or suppliers, the payment is due to those subcontractors and suppliers within 10 days of the contractor receiving the payment from the local government entity.[13]

If a subcontractor utilizes sub-subcontractors or suppliers, payment to those parties is due within 7 days of the subcontractor receiving payment.[14]

Contractors and subcontractors may dispute a party's invoice as long as the contractor or subcontractor notifies the party in writing of the amount in dispute and the actions required to resolve the dispute. However, any undisputed amounts are required to be paid within the required time-periods.[15]

In an action to recover amounts due for construction services purchased by a local government entity, a court must award court costs and reasonable attorney's fees to the prevailing party.[16]

Any payment for construction services that is not made within the required time-period accrues interest at a rate of **1 percent per month**, or the rate specified by contract, whichever is greater. A local government entity may not prohibit late interest charges in a contract with a vendor or provider of construction services.[17]

Prompt Payment Act for Local Governments – Effect of the Bill

The bill increases the interest rate for untimely payments for construction services to **2 percent per month**, or the rate specified by contract, whichever is greater.

Prompt Payment Act for State Construction Projects – Current Situation

Sections 255.0705 - 255.078, F.S., are known as the Florida Prompt Payment Act. The act governs the timely payment for construction services[18] by a public entity, except construction services for the Department of Transportation.[19] Public entity means the state, or any office, board, bureau, commission, department, branch, division, or institution thereof.[20]

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[11] S. 218.735(3), F.S.
[12] S. 218.735(4), F.S.
[13] S. 218.735(6), F.S.
[14] *Id.*
[15] *Id.*
[16] S. 218.76(3), F.S.
[17] Ss. 218.735(9), and 218.75, F.S.
[18] "Construction Services" means all labor, services, and materials provided in connection with the construction, alteration, repair, demolition, reconstruction, or any other improvements to real property. The term "construction services" does not include contracts or work performed for the Department of Transportation. S. 255.072(2), F.S.
[19] S. 255.072(2), F.S.
[20] S. 255.072(5), F.S.

Every public entity must establish procedures so that every payment request or invoice from a contractor,[21] which received by the public entity, is marked as received on the date on which it is delivered to an agent,[22]employee, facility, or office of the local governmental entity.[23]

Upon receipt of a contractor's invoice or payment, a public entity must maintain:[24]

- the date of the receipt of the invoice or payment;
- the date of receipt of the provided goods and services; and
- the date of inspection and approval the goods and services.

Approval and inspection of goods or services shall take no longer than 5 working days unless the bid specifications, purchase order, or contract specifies otherwise. The latter of these days is the "prompt pay start date."[25]

The public entity must submit the contractor's invoice or payment request, the entity's receipt of the goods and services, and its inspection and approval of the goods or services to the Chief Financial Officer (CFO). The CFO is a member of the Cabinet and serves as the chief fiscal officer of the state, and agency head of the Department of Financial Services (DFS).[26] The public entity must submit this information within 20 days of the prompt pay start date.[27]

Upon receipt of the contractor's invoice or payment, DFS must approve or deny the payment application within 10 days, unless exceptional circumstances require a longer period. If the 10-day period contains fewer than 6 business day, DFS may approve or deny the payment within 6 business day.[28] If payment is not issued within 40 days of the prompt payment start date, interest beings to accrue.[29]

A public entity may dispute any payment. However, the public entity must pay any undisputed amounts. Disputes must be resolved in accordance with rules developed and adopted by the Chief Justice for the judicial branch, and rules adopted by the Department of Financial Services or in a formal administrative proceeding before an administrative law judge of the Division of Administrative Hearings for state agencies.[30]

When payment is received by a contractor from a public entity for labor, services, or materials furnished by subcontractors or suppliers, the payment is due to those subcontractors and suppliers within 10 days of the contractor receiving the payment from the local government entity.[31] If a subcontractor utilizes sub-subcontractors or suppliers, payment to those parties is due within 7 days of the subcontractor receiving payment.[32]

Contractors and subcontractors may dispute a party's invoice as long as the contractor or subcontractor notifies the party in writing of the amount in dispute and the actions required to resolve the dispute. The

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[21] "Contractor" means any person who contracts directly with a public entity to provide construction services. S. 255.072(3), F.S.
[22] "Agent" means project architect, project engineer, or any other agency or person acting on behalf of a public entity. S. 255.072(1), F.S.
[23] S. 255.074(1), F.S.
[24] Ss. 215.422(1) and (3), F.S.; Chief Financial Officer, Payment Processing October 2013, https://www.myfloridacfo.com/Division/aa/documents/2013-PaymentProcessOverviewFinal.pdf (last visited Feb. 27, 2021).
[25] *Id.*
[26] Art. IV, s. 4, Fla. Const.; Ch. 17, F.S.
[27] S. 215.422(1), F.S.
[28] Ss. 215.422(1) and (2), F.S.
[29] S. 215.422(3), F.S.
[30] Ss. 215.422(3), and 255.073(2), F.S.
[31] S. 255.073(3), F.S.
[32] *Id.*

actions required to rectify the dispute must be included in the rejection. However, any undisputed amounts are required to be paid within the outlined time limits.[33]

In an action to recover amounts due for construction services purchased by a public entity, a court must award court costs and reasonable attorney's fees, if the court finds that the nonprevailing party withheld any portion of the payment that is the subject of the action without any reasonable basis in law or fact to dispute the prevailing party's claim to those amounts.[34]

Any payment for construction services that is not made within the required time-period accrues interest at a rate of **1 percent per month**.[35] A public entity may not prohibit late interest charges in a contract with a vendor or provider of construction services.[36]

Prompt Payment Act for State Construction Projects – Effect of the Bill

The bill increases the interest rate for untimely payments for construction services to **2 percent per month**.

Prompt Payment Law for Private Construction Projects – Current Situation

Section 715.12, F.S., is the Construction Contract Prompt Payment Law. It defines an "obligor" as an owner, contractor, subcontractor, or sub-subcontractor who has an obligation to make payments under a written construction contract. The act defines "obligee" as a contractor, subcontractor, sub-subcontractor, or materialman who is entitled to receive payments under a written construction contract.[37]

An obligee is entitled to payment for his or her construction services, labor, or materials when all the following events have occurred:[38]

- The obligee is entitled to payment at the time and under the terms specified in the contract between the obligor and the obligee;
- The obligee has furnished the obligor with a written request for payment;
- The obligor, except an owner, has been paid for the obligee's labor, services, or materials described in the obligee's request for payment by the person immediately above the obligor in the chain of contracts; and
- The obligee has furnished the obligor with all affidavits or waivers required for the owner to make proper payments under the construction lien law.[39]

Beginning 14 days after a payment is due, any payment, except payments withheld pursuant to a good faith dispute or retained in accordance with the contract, bears interest at the rate of interest payable on judgments or the rate specified in the contract, whichever is greater.[40]

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[33] S. 255.073(3), F.S.
[34] S. 255.076, F.S.
[35] S. 255.073(4), F.S.
[36] S. 255.075, F.S.
[37] Ss. 715.12(1) and (3), F.S.
[38] S. 715.12(4), F.S.
[39] The construction lien law requires various notices, demands, and requests to be provided in writing to the homeowner, contractor, subcontractor, lender, and building officials. Florida law requires that some notices, demands, and requests be in the statutory form provided in statute, while others do not have to be in the statutory form. The following notices are required by the act: Notice of Commencement, Notice to Owner, Claim of Lien, Notice of Termination, Waiver or Release of Lien, Notice of Contest of Lien, Contractor's Final Payment Affidavit, and Demands of Written Statement of Account. *See* Ch. 713, part I, F.S.
[40] Ss. 715.12(5) and (6)(a), F.S.

An obligee may not waive the right to receive interest before a payment is due under a contract subject to this section. However, an obligee may waive the interest due on any late payment on or after the date the payment is due.[41]

The CFO sets the rate of interest on judgments. The CFO adjusts the rate quarterly beginning January 1 and on April 1, July 1, and October 1. The CFO sets the rate by averaging the discount rate of the Federal Reserve Bank of New York for the preceding 12 months, then adding 400 basis points to the averaged federal discount rate.[42] The current interest rate is 4.81% per annum or .0131781% per day.[43]

Prompt Payment Law for Private Construction Projects – Effect of the Bill

The bill increases the interest rate for untimely payments for private construction services to the interest rate payable on judgments **plus 1 percent**, or the rate specified by contract, whichever is greater.

Misapplication of Construction Funds – Current Situation

Current law requires any person who receives payment for performing construction work to pay any amounts for labor, services, or materials provided for the construction work in accordance with the contract for such labor, services, or materials, unless there is a bona fide dispute regarding the amount due or the terms of the contract allow for retention of such funds.[44]

Any person who receives a payment for construction work to private or public real property must pay, in accordance with the contract terms, the undisputed contract obligations for labor, services, or materials provided for such construction work. If a person fails to do so within 30 days, any person providing labor, services, or materials for improvements to real property may file a civil complaint. Remedies for such a complaint include:[45]

- An accounting of the use of any such payment from the person who received such payment;
- A temporary injunction against the person who received the payment, subject to certain bond requirements;
- Prejudgment attachment against the person who received the payment; and
- Such other legal or equitable remedies as may be appropriate.

Misapplication of construction funds is a crime committed by a person who receives payment for performing **construction work on private property** and **knowingly and intentionally** fails to pay any amounts owed for labor, services, or materials, in accordance with the contract terms, unless there is a bona fide dispute regarding the amount due. Misapplication of construction funds is punishable as:[46]

- a first degree felony if the amount of misapplied payments has an aggregate value of $100,000 or more;
- a second degree felony if the amount of misapplied payments has an aggregate value of $1,000 or more;
- a third degree felony if the amount of misapplied payments has an aggregate value of less than $1,000.

[41] S. 715.125(6)(d), F.S.
[42] S. 55.03(1), F.S.
[43] Chief Financial Officer, *Current Judgment Interest Rates*, https://www.myfloridacfo.com/division/aa/localgovernments/current.htm (last visited Feb. 27, 2021).
[44] Ss. 255.071(1), and 713.346(1), F.S.
[45] Ss. 255.071(4), and 713.346(4), F.S.
[46] S. 713.345(1), F.S.

There is permissive inference that a person knowingly and intentionally misapplied construction funds when:[47]

- a valid lien has been recorded against the property of an owner for labor, services, or materials;
- the person who ordered the labor, services, or materials has received sufficient funds to pay for such labor, services, or materials; and
- the person has failed, for a period of at least 45 days from receipt of the funds, to remit sufficient funds to pay for such labor, services, or materials, except for funds withheld pursuant to a bona fide dispute regarding the amount due or the terms of the contract allow for retention of such funds.

If a state attorney or statewide prosecutor files an indictment or information charging a licensed contractor with misapplication of construction funds, the state attorney or statewide prosecutor must provide a copy of the indictment or information to the Department of Business and Professional Regulation (DBPR).[48]

The DBPR must promptly open an investigation into the matter and, if probable cause is found, must furnish a copy of any investigative report to the state attorney or statewide prosecutor who provided the indictment or information and to the owner of the property, which is the subject of the investigation.[49]

Contractors

The Legislature has determined that it is "necessary in the interest of the public health, safety, and welfare" to regulate the construction, electrical, and alarm system industry.[50]

Construction contractors are either certified by or registered with the Construction Industry Licensing Board (CILB). The CILB is housed in DBPR and consists of 18 members who are appointed by the Governor and confirmed by the Senate. The CILB is responsible for licensing, regulating, and disciplining certified construction contractors. Electrical contractors and alarm system contractors are certified by or registered with the Electrical Contractors' Licensing Board (ECLB). The ECLB is also housed in DBPR consists of 11 members who are appointed by the Governor and confirmed by the Senate. The ECLB is responsible for licensing, regulating, and disciplining certified electrical and alarm system contractors.[51]

"Certified contractors" are individuals who pass the state competency examination and obtain a certificate of competency issued by DBPR. Certified contractors are permitted to practice in any jurisdiction in the state.[52]

"Registered contractors" are individuals that have taken and passed a local competency examination and can practice contracting only in the local jurisdiction for which the license is issued.[53] Local jurisdictions may approve or deny applications for licensure as a registered contractor, review disciplinary cases, and conduct informal hearings relating to discipline of registered contractors licensed in their jurisdiction. Registered contractors must register with DBPR after obtaining a local license from the jurisdiction and comply with local and state statutory obligations.[54]

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[47] *Id.*
[48] *Id.*
[49] *Id.* DBPR has authority, for the professions under its jurisdiction, to investigate any legally sufficient complaint that is in writing. When DBPR completes its investigation, it must prepare and submit an investigative report to the probable cause panel for the appropriate board. If probable cause is found, DBPR must file an administrative complaint against the licensee. *See* 455.225, F.S.
[50] s. 489.101, F.S.
[51] *See generally* Ch. 489, F.S.
[52] Ss. 489.105, and 489.505, F.S.
[53] Ss. 489.103, and 489.505, F.S.
[54] Ss. 489.117, 489.131, 489.513, and 489.537, F.S.

The CILB and the ECLB may take action[55] against a certified contractor if they find the contractor is guilty of violating the contractor's practice act. Violations include:[56]

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

The CILB and ECLB must adopt disciplinary guidelines for each disciplinary action, which may be imposed by the CILB or ECLB. The disciplinary guidelines must specify a meaningful range of designated penalties based upon the severity and repetition of specific offenses, it being the legislative intent that minor violations be distinguished from those which endanger the public health, safety, or welfare.[57]

The list of violations in the practice acts for construction contractors, and electrical and alarm contractors does not specifically include committing misapplication of construction funds. However, according to DBPR, misapplication of construction funds may fall under the following violations:[58]

- Committing financial mismanagement that causes financial harm to a customer;
- Failing to perform any statutory or legal obligation placed upon a licensee; or
- Falsely indicating that payment has been made for all subcontracted work, labor, and materials which results in a financial loss to the owner, purchaser, or contractor.

If a contractor is convicted of misapplication of construction funds, the CILB or ECLB would most likely be able to take action against them for being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of contracting or the ability to practice contracting.[59]

Misapplication of Construction Funds – Effect of the Bill

The bill provides that a party who receives payment from **the state, or any county, city, or political subdivision, or other public authority** for a public works construction project and knowingly and intentionally fails to pay the undisputed contract obligations to another party for labor, services, or materials, commits misapplication of construction funds.

The bill clarifies that the CILB may discipline a contractor for committing misapplication of construction funds. The bill also provides that if the CILB finds that a contractor is guilty of misapplication of construction funds, the CILB **must suspend** all of the person's licenses under ch. 489, F.S., for a

[55] The CILB and the ECLB may place a contractor on probation, reprimand him or her, revoke or suspend the contractor's certificate or registration, or deny the issuance of a renewal certificate or registration. The CILB and the ECLB may also require financial restitution to a consumer for financial harm directly related to a violation, require continuing education, or assess costs associated with investigation and prosecution. Ss. 489.129(1), 489.533(1), F.S.
[56] Ss. 455.227(1)(k), 489.129(1)(o), and 489.533(1), F.S.
[57] S. 455.2273(1), F.S.
[58] Email from Vicky Summerhill, Department of Business and Professional Regulation, FW: HB 585 Construction Services, (Feb. 22, 2021).
[59] *Id.*

minimum of one year from the date of conviction. However, this does not prohibit the CILB from imposing additional penalties.

The bill adds to the civil remedy provision that a person, firm, or corporation who knowingly and intentionally fails to make the required payments for construction work on private property commits misapplication of construction funds.

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

The bill provides that it applies to contracts executed on after July 1, 2021.

B. SECTION DIRECTORY:

Section 1: Amends s. 218.735, F.S., relating to timely payment for construction services for local government entities.

Section 2: Amends s. 255.071, F.S., relating to payment of subcontractors, sub-subcontractors, materialmen, and suppliers on construction projects for public projects.

Section 3: Amends s. 255.073, F.S., relating to timely payment for purchases of construction services for the state.

Section 4. Amends s. 489.129, F.S., relating to discipline for licensed contractors.

Section 5. Amends s. 713.345, F.S., relating to misapplication of construction funds.

Section 6. Amends s. 713.346, F.S., relating to payment on construction contracts for private property.

Section 7. Amends s. 715.12, F.S., relating to timely payments for construction services for private parties.

Section 8. Reenacting s. 218.76, F.S., relating to improper payment requests or invoices for construction services for local government entities.

Section 9. Reenacting s. 255.075, F.S., relating to mandatory interest for construction services for the state.

Section 10. Providing that the bill applies to contracts executed on or after July 1, 2021.

Section 11. Providing an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may decrease the amount of untimely payments to contractors, subcontractors, sub-subcontractors, and material suppliers.

D. FISCAL COMMENTS:

The increased amount paid by the state and local governments for untimely payments for construction services is indeterminate. However, any amount may be minimal since the state and local governments must already pay interest for untimely payments for construction services.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill increases the amount of interest local governments have to pay for untimely payments for construction services. This may result in additional expenditures to comply with the statute. However, an exemption may apply because the fiscal impact is likely to be insignificant since local governments already have to pay interest for untimely payments for construction services.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

If the CILB determines a construction contractor committed misapplication of construction funds, the bill requires the CILB to suspend all the contractor's licenses under ch. 489 F.S., However, ch. 489, F.S., is made up of three different parts. Part I is construction contracting. Part II is electrical and alarm system contracting, and Part III is septic tank contracting. The CILB does not have authority over electrical and alarm system contractors or septic tank contractors. The sponsor may want to clarify this provision in the bill to indicate that the CILB must suspend all the contractor's licenses under part I of ch. 489, F.S.

The bill provides that the CILB may discipline a construction contractor for committing misapplication of construction funds. However, the bill does not provide that the ECLB may discipline an electrical contractor or alarm system contractor for committing misapplication of construction funds. The sponsor may want to clarify whether the ECLB may discipline an electrical contractor or alarm system contractor for misapplication of construction funds.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to payment for construction services; amending s. 218.735, F.S.; increasing the interest rate for certain payments for purchases of construction services; amending s. 255.071, F.S.; specifying that a person, firm, or corporation who fails to make certain payments relating to public projects commits a misapplication of constructions funds and is subject to criminal penalties; amending s. 255.073, F.S.; increasing the interest rate for overdue payments for the purchase of construction services; amending s. 489.129, F.S.; expanding the list of actions for which a licensee may be disciplined by the Construction Industry Licensing Board; requiring the board to suspend certain licenses for a minimum period of time under certain circumstances; providing construction; amending s. 713.345, F.S.; specifying that a contractor, subcontractor, sub-subcontractor, or other person licensed under ch. 489, F.S., is subject to certain discipline if convicted of misapplication of construction funds; amending s. 713.346, F.S.; specifying that a person, firm, or corporation who fails to make certain payments relating to construction contracts commits a misapplication of

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

constructions funds and is subject to criminal penalties; amending s. 715.12, F.S.; increasing the interest rate for certain payments due under the Construction Contract Prompt Payment Law; conforming a provision to changes made by the act; reenacting s. 218.76(2)(b), F.S., relating to improper payment requests or invoices, to incorporate the amendment made by this act to s. 218.735, F.S., in a reference thereto; reenacting s. 255.075, F.S., relating to mandatory interest, to incorporate the amendment made by this act to s. 255.073, F.S., in a reference thereto; providing applicability; providing an effective date.

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

Section 1. Subsection (9) of section 218.735, Florida Statutes, is amended to read:

218.735 Timely payment for purchases of construction services.—

(9) All payments due under this section and not made within the time periods specified by this section shall bear interest at the rate of 2 ~~1~~ percent per month, or the rate specified by contract, whichever is greater.

Section 2. Subsection (1) of section 255.071, Florida

Statutes, is amended to read:

255.071 Payment of subcontractors, sub-subcontractors, materialmen, and suppliers on construction contracts for public projects.—

(1) Any person, firm, or corporation who receives a payment from the state or any county, city, or political subdivision of the state, or other public authority, for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work shall pay, in accordance with the contract terms, the undisputed contract obligations for labor, services, or materials provided on account of such improvements. A person, firm, or corporation who knowingly and intentionally fails to make the payment required under this subsection commits a misapplication of construction funds, punishable as provided in s. 713.345.

Section 3. Subsection (4) of section 255.073, Florida Statutes, is amended to read:

255.073 Timely payment for purchases of construction services.—

(4) All payments due for the purchase of construction services and not made within the applicable time limits shall bear interest at the rate of 2 ~~specified in s. 215.422. After July 1, 2006, such payments shall bear interest at the rate of 1 percent per month, to the extent that the Chief Financial~~

~~Officer's replacement project for the state's accounting and cash management systems is operational for the particular affected public entity. After January 1, 2007, all such payments due from public entity shall bear interest at the rate of 1~~ percent per month.

Section 4. Paragraph (r) is added to subsection (1) of section 489.129, Florida Statutes, to read:

489.129 Disciplinary proceedings.—

(1) The board may take any of the following actions against any certificateholder or registrant: place on probation or reprimand the licensee, revoke, suspend, or deny the issuance or renewal of the certificate or registration, require financial restitution to a consumer for financial harm directly related to a violation of a provision of this part, impose an administrative fine not to exceed $10,000 per violation, require continuing education, or assess costs associated with investigation and prosecution, if the contractor, financially responsible officer, or business organization for which the contractor is a primary qualifying agent, a financially responsible officer, or a secondary qualifying agent responsible under s. 489.1195 is found guilty of any of the following acts:

(r) Committing misapplication of construction funds in violation of s. 713.345. If a contractor, subcontractor, sub-subcontractor, or other person licensed by the board under this chapter is convicted of misapplication of construction funds,

the board must suspend all licenses issued to such licensee under this chapter for a minimum of 1 year from the date of conviction. The suspension required under this paragraph is not exclusive, and the board may impose any additional penalties set forth in this subsection.

For the purposes of this subsection, construction is considered to be commenced when the contract is executed and the contractor has accepted funds from the customer or lender. A contractor does not commit a violation of this subsection when the contractor relies on a building code interpretation rendered by a building official or person authorized by s. 553.80 to enforce the building code, absent a finding of fraud or deceit in the practice of contracting, or gross negligence, repeated negligence, or negligence resulting in a significant danger to life or property on the part of the building official, in a proceeding under chapter 120.

Section 5. Paragraph (e) is added to subsection (1) of section 713.345, Florida Statutes, to read:

713.345 Moneys received for real property improvements; penalty for misapplication.—

(1)

(e) If a contractor, subcontractor, sub-subcontractor, or other person who is licensed under chapter 489 is convicted of misapplication of construction funds under this section, the

licensee is subject to discipline under s. 489.129(1)(r).

Section 6. Subsection (1) of section 713.346, Florida Statutes, is amended to read:

713.346 Payment on construction contracts.—

(1) Any person who receives a payment for constructing or altering permanent improvements to real property shall pay, in accordance with the contract terms, the undisputed contract obligations for labor, services, or materials provided on account of such improvements. A person, firm, or corporation who knowingly and intentionally fails to make the payment required under this subsection commits a misapplication of construction funds, punishable as provided in s. 713.345.

Section 7. Paragraph (a) of subsection (5) and paragraph (a) of subsection (6) of section 715.12, Florida Statutes, are amended, and subsections (4) and (7) of that section are republished, to read:

715.12 Construction Contract Prompt Payment Law.—

(4) An obligor must pay an obligee with whom the obligor has a contract when all of the following events have occurred:

(a) The obligee is entitled to a payment at the time and under the terms specified in the contract between the obligor and the obligee, and the obligee has furnished the obligor with a written request for payment; and

(b) The obligor, except an owner, has been paid for the obligee's labor, services, or materials described in the

obligee's request for payment by the person immediately above the obligor in the chain of contracts; and

(c) The obligee has furnished the obligor with all affidavits or waivers required for the owner to make proper payments under s. 713.06.

(5)(a) Any payment due under the provisions of subsection (4), excluding any amounts withheld pursuant to subsection (7), shall bear interest at the rate specified in s. 55.03 plus 1 percent, computed beginning on the 14th day after payment is due pursuant to subsection (4).

(6)(a) The right to receive interest on a payment under this section is not an exclusive remedy. This section does not modify the remedies available to any person under the terms of a contract or under any other statute. This section does not modify the rights of any person to recover prejudgment interest awarded to the prevailing party in any civil action or arbitration case. During the period that interest accrues under this section, the interest rate shall be the rate specified in s. 55.03 plus 1 percent or the rate specified in the contract, whichever is greater. A person shall not be entitled to receive both the contract interest and the statutory interest specified in this section.

(7)(a) An owner and a contractor may agree to a provision that allows the owner to withhold a portion of each progress payment until substantial completion of the entire project. The

owner shall pay the contractor the balance of the contract price, including the amounts withheld from the progress payments, within 14 days after any of the following events occur.

1. Pursuant to the terms of the contract, an architect or engineer certifies that the project is substantially complete and, within the time provided in the contract between the owner and the contractor, the owner submits a written punchlist to the contractor and the contractor substantially completes all of the items on the punchlist.

2. The issuance of a certificate of occupancy for the project, and within the time provided in the contract between the owner and the contractor, the owner submits a written punchlist to the contractor and the contractor substantially completes all of the items on the punchlist.

3. The owner or a tenant of the owner takes possession of the construction project and, within the time provided in the contract between the owner and the contractor, the owner submits a written punchlist to the contractor and the contractor substantially completes all of the items on the punchlist.

Any funds retained by the owner beyond the time period specified in this subsection shall accrue interest at the rate specified in subsection (5), computed from the date the payment is due to the date the payment is received by the contractor. If the

contract between the owner and the contractor does not provide a time period for the owner to submit a written punchlist to the contractor, the time period shall be 15 days from the issuance of the certificate of substantial completion, the issuance of the certificate of occupancy, or the date the owner or the owner's tenant takes possession of the project, whichever first occurs. If no written punchlist is given to the contractor within the time provided in this subsection, interest begins to accrue 14 days after the issuance of the certificate of substantial completion, the issuance of the certificate of occupancy, or the date the owner or the owner's tenant takes possession of the project, whichever first occurs. For construction projects that are to be built in phases, this subsection applies to each phase of the total project. The contract between the owner and the contractor may specify a shorter time period for disbursing all or any portion of the final payment and the retainage.

(b) Except as provided in paragraph (a), an obligor and obligee may agree to a provision that allows the obligor to withhold a portion of each progress payment until completion of the entire project. The amounts withheld shall bear interest 14 days after payment of such amounts are due under the terms of the contract between the obligor and obligee and the other requirements of subsection (4) have been satisfied.

(c) An obligee may, from time to time, withdraw all or any

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

portion of the amount retained from progress payments upon depositing with the obligor:

1. United States Treasury bonds, United States Treasury notes, United States Treasury certificates of indebtedness, or United States Treasury bills;

2. Bonds or notes of the State of Florida; or

3. Certificates of deposit, within the insured limits, from a state or national bank or state or federal savings and loan association authorized to do business in this state.

Amounts may not be withdrawn in excess of the market value of the securities listed in subparagraphs 1., 2., and 3. at the time of such withdrawal or in excess of the par value of such securities, whichever is less. The obligee shall execute and deliver all documents reasonably required to allow the obligor to document the transfer and the obligee shall pay any recording or registration costs incurred by the obligor in connection with the transfer. The obligor shall pay the obligee any interest or income earned on the securities so deposited within 30 days after the date such interest or income is received by the obligor. If the deposit is in the form of coupon bonds, the obligor shall deliver each coupon to the obligee within 30 days after the date the coupon matures. An obligee may withdraw funds retained from progress payments only to the extent the obligor has withdrawn such funds for the obligee's labor, services, or

materials from the person immediately above the obligor in the chain of contracts.

Section 8. For the purpose of incorporating the amendment made by this act to section 218.735, Florida Statutes, in a reference thereto, paragraph (b) of subsection (2) of section 218.76, Florida Statutes, is reenacted to read:

218.76 Improper payment request or invoice; resolution of disputes.—

(2)

(b) If the local governmental entity does not commence the dispute resolution procedure within the time required, a contractor may give written notice to the local governmental entity of the failure to timely commence its dispute resolution procedure. If the local governmental entity fails to commence the dispute resolution procedure within 4 business days after such notice, any amounts resolved in the contractor's favor shall bear mandatory interest, as set forth in s. 218.735(9), from the date the payment request or invoice containing the disputed amounts was submitted to the local governmental entity. If the dispute resolution procedure is not commenced within 4 business days after the notice, the objection to the payment request or invoice shall be deemed waived. The waiver of an objection pursuant to this paragraph does not relieve a contractor of its contractual obligations.

Section 9. For the purpose of incorporating the amendment

made by this act to section 255.073, Florida Statutes, in a reference thereto, section 255.075, Florida Statutes, is reenacted to read:

255.075 Mandatory interest.—A contract between a public entity and a contractor may not prohibit the collection of late payment interest charges authorized under s. 255.073(4).

Section 10. This act applies to contracts executed on or after July 1, 2021.

Section 11. This act shall take effect July 1, 2021.

REGULATORY REFORM SUBCOMMITTEE

HB 585 by Rep. DiCeglie
Payment for Construction Services

AMENDMENT SUMMARY
March 2, 2021

Amendment 1 by Rep. DiCeglie (strike-all):
The amendment:

- Increases the interest rate from 1 percent per month to **1.5 percent per month**, for untimely payments for construction services by the state or local governments, instead of the original bill's provision increasing the interest rate to **2 percent per month**.
- Clarifies that the bill's provision increasing the interest rate for untimely payments for private construction services from the interest rate payable on judgments to the interest rate payable on judgments plus 1 percent, means 1 percent **per year**.

Amendment No. 1.

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

Committee/Subcommittee hearing bill: Regulatory Reform Subcommittee

Representative DiCeglie offered the following:

Amendment

Remove everything after the enacting clause and insert:

Section 1. Subsection (9) of section 218.735, Florida Statutes, is amended to read:

218.735 Timely payment for purchases of construction services.—

(9) All payments due under this section and not made within the time periods specified by this section shall bear interest at the rate of 1.5 ~~1~~ percent per month, or the rate specified by contract, whichever is greater.

Section 2. Subsection (1) of section 255.071, Florida

Statutes, is amended to read:

255.071 Payment of subcontractors, sub-subcontractors, materialmen, and suppliers on construction contracts for public projects.—

(1) Any person, firm, or corporation who receives a payment from the state or any county, city, or political subdivision of the state, or other public authority, for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work shall pay, in accordance with the contract terms, the undisputed contract obligations for labor, services, or materials provided on account of such improvements. A person, firm, or corporation who knowingly and intentionally fails to make the payment required under this subsection commits a misapplication of construction funds, punishable as provided in s. 713.345.

Section 3. Subsection (4) of section 255.073, Florida Statutes, is amended to read:

255.073 Timely payment for purchases of construction services.—

(4) All payments due for the purchase of construction services and not made within the applicable time limits shall bear interest at the rate of 1.5 ~~specified in s. 215.422. After July 1, 2006, such payments shall bear interest at the rate of 1 percent per month, to the extent that the Chief Financial~~

~~Officer's replacement project for the state's accounting and cash management systems is operational for the particular affected public entity. After January 1, 2007, all such payments due from public entity shall bear interest at the rate of 1~~ percent per month.

Section 4. Paragraph (r) is added to subsection (1) of section 489.129, Florida Statutes, to read:

489.129 Disciplinary proceedings.—

(1) The board may take any of the following actions against any certificateholder or registrant: place on probation or reprimand the licensee, revoke, suspend, or deny the issuance or renewal of the certificate or registration, require financial restitution to a consumer for financial harm directly related to a violation of a provision of this part, impose an administrative fine not to exceed $10,000 per violation, require continuing education, or assess costs associated with investigation and prosecution, if the contractor, financially responsible officer, or business organization for which the contractor is a primary qualifying agent, a financially responsible officer, or a secondary qualifying agent responsible under s. 489.1195 is found guilty of any of the following acts:

(r) Committing misapplication of construction funds in violation of s. 713.345. If a contractor, subcontractor, sub-subcontractor, or other person licensed by the board under this chapter is convicted of misapplication of construction funds,

the board must suspend all licenses issued to such licensee under this part for a minimum of 1 year from the date of conviction. The suspension required under this paragraph is not exclusive, and the board may impose any additional penalties set forth in this subsection.

For the purposes of this subsection, construction is considered to be commenced when the contract is executed and the contractor has accepted funds from the customer or lender. A contractor does not commit a violation of this subsection when the contractor relies on a building code interpretation rendered by a building official or person authorized by s. 553.80 to enforce the building code, absent a finding of fraud or deceit in the practice of contracting, or gross negligence, repeated negligence, or negligence resulting in a significant danger to life or property on the part of the building official, in a proceeding under chapter 120.

Section 5. Paragraph (e) is added to subsection (1) of section 713.345, Florida Statutes, to read:

713.345 Moneys received for real property improvements; penalty for misapplication.—

(1)

(e) If a contractor, subcontractor, sub-subcontractor, or other person who is licensed under chapter 489 is convicted of misapplication of construction funds under this section, the

licensee is subject to discipline under s. 489.129(1)(r).

Section 6. Subsection (1) of section 713.346, Florida Statutes, is amended to read:

713.346 Payment on construction contracts.—

(1) Any person who receives a payment for constructing or altering permanent improvements to real property shall pay, in accordance with the contract terms, the undisputed contract obligations for labor, services, or materials provided on account of such improvements. A person, firm, or corporation who knowingly and intentionally fails to make the payment required under this subsection commits a misapplication of construction funds, punishable as provided in s. 713.345.

Section 7. Paragraph (a) of subsection (5) and paragraph (a) of subsection (6) of section 715.12, Florida Statutes, are amended, and subsections (4) and (7) of that section are republished, to read:

715.12 Construction Contract Prompt Payment Law.—

(4) An obligor must pay an obligee with whom the obligor has a contract when all of the following events have occurred:

(a) The obligee is entitled to a payment at the time and under the terms specified in the contract between the obligor and the obligee, and the obligee has furnished the obligor with a written request for payment; and

(b) The obligor, except an owner, has been paid for the obligee's labor, services, or materials described in the

obligee's request for payment by the person immediately above the obligor in the chain of contracts; and

(c) The obligee has furnished the obligor with all affidavits or waivers required for the owner to make proper payments under s. 713.06.

(5)(a) Any payment due under the provisions of subsection (4), excluding any amounts withheld pursuant to subsection (7), shall bear interest at the rate specified in s. 55.03 plus 1 percent per annum, computed beginning on the 14th day after payment is due pursuant to subsection (4).

(6)(a) The right to receive interest on a payment under this section is not an exclusive remedy. This section does not modify the remedies available to any person under the terms of a contract or under any other statute. This section does not modify the rights of any person to recover prejudgment interest awarded to the prevailing party in any civil action or arbitration case. During the period that interest accrues under this section, the interest rate shall be the rate specified in s. 55.03 plus 1 percent per annum or the rate specified in the contract, whichever is greater. A person shall not be entitled to receive both the contract interest and the statutory interest specified in this section.

(7)(a) An owner and a contractor may agree to a provision that allows the owner to withhold a portion of each progress payment until substantial completion of the entire project. The

owner shall pay the contractor the balance of the contract price, including the amounts withheld from the progress payments, within 14 days after any of the following events occur.

1. Pursuant to the terms of the contract, an architect or engineer certifies that the project is substantially complete and, within the time provided in the contract between the owner and the contractor, the owner submits a written punchlist to the contractor and the contractor substantially completes all of the items on the punchlist.

2. The issuance of a certificate of occupancy for the project, and within the time provided in the contract between the owner and the contractor, the owner submits a written punchlist to the contractor and the contractor substantially completes all of the items on the punchlist.

3. The owner or a tenant of the owner takes possession of the construction project and, within the time provided in the contract between the owner and the contractor, the owner submits a written punchlist to the contractor and the contractor substantially completes all of the items on the punchlist.

Any funds retained by the owner beyond the time period specified in this subsection shall accrue interest at the rate specified in subsection (5), computed from the date the payment is due to the date the payment is received by the contractor. If the

contract between the owner and the contractor does not provide a time period for the owner to submit a written punchlist to the contractor, the time period shall be 15 days from the issuance of the certificate of substantial completion, the issuance of the certificate of occupancy, or the date the owner or the owner's tenant takes possession of the project, whichever first occurs. If no written punchlist is given to the contractor within the time provided in this subsection, interest begins to accrue 14 days after the issuance of the certificate of substantial completion, the issuance of the certificate of occupancy, or the date the owner or the owner's tenant takes possession of the project, whichever first occurs. For construction projects that are to be built in phases, this subsection applies to each phase of the total project. The contract between the owner and the contractor may specify a shorter time period for disbursing all or any portion of the final payment and the retainage.

(b) Except as provided in paragraph (a), an obligor and obligee may agree to a provision that allows the obligor to withhold a portion of each progress payment until completion of the entire project. The amounts withheld shall bear interest 14 days after payment of such amounts are due under the terms of the contract between the obligor and obligee and the other requirements of subsection (4) have been satisfied.

(c) An obligee may, from time to time, withdraw all or any

portion of the amount retained from progress payments upon depositing with the obligor:

1. United States Treasury bonds, United States Treasury notes, United States Treasury certificates of indebtedness, or United States Treasury bills;

2. Bonds or notes of the State of Florida; or

3. Certificates of deposit, within the insured limits, from a state or national bank or state or federal savings and loan association authorized to do business in this state.

Amounts may not be withdrawn in excess of the market value of the securities listed in subparagraphs 1., 2., and 3. at the time of such withdrawal or in excess of the par value of such securities, whichever is less. The obligee shall execute and deliver all documents reasonably required to allow the obligor to document the transfer and the obligee shall pay any recording or registration costs incurred by the obligor in connection with the transfer. The obligor shall pay the obligee any interest or income earned on the securities so deposited within 30 days after the date such interest or income is received by the obligor. If the deposit is in the form of coupon bonds, the obligor shall deliver each coupon to the obligee within 30 days after the date the coupon matures. An obligee may withdraw funds retained from progress payments only to the extent the obligor has withdrawn such funds for the obligee's labor, services, or

materials from the person immediately above the obligor in the chain of contracts.

Section 8. For the purpose of incorporating the amendment made by this act to section 218.735, Florida Statutes, in a reference thereto, paragraph (b) of subsection (2) of section 218.76, Florida Statutes, is reenacted to read:

218.76 Improper payment request or invoice; resolution of disputes.—

(2)

(b) If the local governmental entity does not commence the dispute resolution procedure within the time required, a contractor may give written notice to the local governmental entity of the failure to timely commence its dispute resolution procedure. If the local governmental entity fails to commence the dispute resolution procedure within 4 business days after such notice, any amounts resolved in the contractor's favor shall bear mandatory interest, as set forth in s. 218.735(9), from the date the payment request or invoice containing the disputed amounts was submitted to the local governmental entity. If the dispute resolution procedure is not commenced within 4 business days after the notice, the objection to the payment request or invoice shall be deemed waived. The waiver of an objection pursuant to this paragraph does not relieve a contractor of its contractual obligations.

Section 9. For the purpose of incorporating the amendment

made by this act to section 255.073, Florida Statutes, in a reference thereto, section 255.075, Florida Statutes, is reenacted to read:

255.075 Mandatory interest.—A contract between a public entity and a contractor may not prohibit the collection of late payment interest charges authorized under s. 255.073(4).

Section 10. This act applies to contracts executed on or after July 1, 2021.

Section 11. This act shall take effect July 1, 2021.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 663 Cottage Food Operations
SPONSOR(S): Salzman
TIED BILLS: **IDEN./SIM. BILLS:** SB 1294

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

SUMMARY ANALYSIS

Cottage foods are certain food products which have been determined by the Department of Agriculture and Consumer Services (DACS) to be safe for production at a person's residence. Examples of permissible cottage foods are breads, honey, cakes, and popcorn. Food products containing meats and fresh fruits and vegetables or those that require temperature control are generally prohibited cottage foods.

A cottage food operation may sell cottage foods without conforming to state food and building permitting requirements if the annual gross sales of such products do not exceed $50,000. Certain local, state and federal operating standards must also be followed, including those governing methods of sale, delivery, labeling, and storage.

DACS is authorized to investigate complaints regarding food safety violations.

The "Home Sweet Home Act":

- Allows the sale and delivery of cottage food products by mail order.
- Increases the gross annual sales threshold from $50,000 to $250,000.
- Revises the definition of a "cottage food operation" to clarify that an operator is allowed to have business partners.
- Preempts the regulation of cottage food operations to the state, and prohibits local laws, ordinances, or regulations that prohibit a cottage food operation or regulate the preparation, processing, storage or sale of cottage food products.

The bill may have a positive fiscal impact on the private sector.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Cottage Foods

The Department of Agriculture and Consumer Services (DACS) is responsible for the administration and enforcement of the Florida Food Safety Act.[1] The act is intended to:

- Safeguard the public health and promote the public welfare by protecting the consuming public from injury from intrastate commerce in food.
- Provide legislation conforming with the Federal Food, Drug, and Cosmetic Act, the Agriculture Marketing Act of 1946, and Federal Trade Commission Act, to the extent that it expressly prohibits the false advertisement of food; and
- Promote uniformity of state and federal laws and their administration and enforcement throughout the United States (U.S.) and in the states.[2]

State and local governments have primary authority over food production. Therefore, states, and not the federal government, have the ability to decide whether or not in-home food productions are allowed in that state and what foods qualify for such in-home production.[3] The act allows such operations under certain circumstances.[4]

Current law defines "cottage food products" (cottage foods), as not a potentially hazardous food as defined by DACS rule, and which are sold in accordance with cottage food operating requirements.[5] Like many other states, DACS adopts the U.S. Food & Drug Administration (FDA) food code.[6] The food code/DACS rule defines "Potentially Hazardous Food/Time/Temperature Control for Safety Food" (PHF/TCS) as food that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation.[7]

Although DACS has not adopted a rule on cottage food operations, DACS has published guidance defining foods that are, and those that are not, considered cottage food products. These examples include the following:[8]

Permitted Cottage Foods:

- Loaf breads, rolls, and biscuits;
- Cakes, pastries, and cookies;
- Candies and confections;
- Honey;
- Jams, jellies, and preserves;
- Fruit pies and dried fruits;

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[1] See ch. 500, F.S.
[2] S. 500.02, F.S.
[3] Christina Rice, Emily Broad Leib, *Cottage Food Laws in the United States,* Harvard Law School Food Law and Policy Clinic (FLPC) (August 2018), https://www.chlpi.org/wp-content/uploads/2013/12/FLPC_Cottage-Foods-Report_August-2018.pdf (last visited Feb. 19, 2021).
[4] S. 500.80, F.S.
[5] S. 500.03(1)(k), F.S.
[6] U.S. Food & Drug Administration, *2017 Food Code*, https://www.fda.gov/media/110822/download (last visited Feb. 21, 2021).
[7] R. 5K-4.0010(9), F.A.C.
[8] DACS Division of Food Safety, *Cottage Food Operations*, https://www.fdacs.gov/Business-Services/Food/Food-Establishments/Cottage-Foods (last visited Feb. 19, 2021). The United States Food and Drug Administration (FDA) model food code includes a definition for such foods; DACS formed a definition that is similar. FDA Food Code §1-201.10 (2017).

- Dry herbs, seasonings, and mixtures;
- Homemade pasta;
- Cereals, trail mixes, and granola;
- Coated or uncoated nuts;
- Vinegar and flavored vinegars; and
- Popcorn and popcorn balls.

Prohibited Cottage Foods:

- Fresh or dried meat or meat products including jerky;
- Canned fruits and vegetables, chutneys, vegetable butters and jellies, flavored oils, hummus, garlic dip, salsas, etc.;
- Fish or shellfish products;
- Canned pickled products such as corn relish, pickles, and sauerkraut;
- Raw seed sprouts;
- Bakery goods which require any type of refrigeration, such as cream, custard, or meringue pies and cakes or pastries with cream cheese icings or fillings;
- Milk and dairy products including hard, soft, and cottage cheeses and yogurt;
- Cut fresh fruits and/or vegetables;
- Juices made from fresh fruits or vegetables;
- Ice and/or ice products;
- Barbeque sauces, ketchups, and/or mustards; and
- Focaccia-style breads with vegetables and/or cheeses.

Cottage Food Operating Requirements

In Florida, a "cottage food operation" is defined as a natural person who produces or packages cottage foods at his or her residence and is exempt from food and building permitting requirements[9] if he or she sells such products in accordance with the cottage food operating requirements.[10]

A cottage food operation must comply with the following requirements in order to operate:

- Sales Limit: Annual gross sales of cottage foods may not exceed $50,000;[11]
- Internet Sales: In order to sell, offer for sale, and accept payment for cottage food products over the Internet, such products must be delivered in person directly to the consumer or to a specific event venue.
- Delivery: A cottage food operation is prohibited from offering for sale or delivering cottage food products by mail order.
- Wholesale Sales: A cottage food operation is prohibited from offering cottage food products at wholesale.
- Labeling: Cottage foods must be sold prepackaged with a label affixed containing the following information:
    - Name and address of the cottage food operation;
    - Name of the cottage food;
    - Ingredients of the cottage food, in descending order of predominance by weight;
    - Net weight or net volume of the cottage food;
    - Allergen information as specified by federal labeling requirements;
    - If any nutritional claim is made, appropriate nutritional information as specified by federal labeling requirements; and

[9] *See* s. 500.12, F.S.
[10] S. 500.03(1)(j), F.S.
[11] S. 500.80(1)(b), F.S. This includes all sales of products from any location, regardless of the types of products sold or number of persons involved in any operation. Documentation of sales must be available to DACS for verification.

- A statement printed in at least 10-point font and in a color that provides clear contrast to the background of the label which reads "Made in a cottage food operation that is not subject to Florida's food safety regulations;"[12]

- Storage: Only cottage foods that are stored on the premises of the cottage food operation may be sold;
- State and Federal: A cottage food operation must comply with applicable state or federal tax laws, rules, regulations, or certificates;
- Local Government: A cottage food operation must comply with applicable county and municipal laws and ordinances regulating the preparation, processing, storage, and sale of cottage foods by a cottage food operation or from a person's residence.[13]

Some local governments throughout the state place additional requirements on cottage food operations. For example, many counties and cities require a cottage food operation, like any other business endeavor, to obtain a business tax receipt[14] prior to commencing his or her production.[15]

Enforcement

DACS may enter and inspect the premises of a cottage food operation to determine compliance with the cottage food operations requirements only upon receipt of a complaint, which alleges that a cottage food operation has violated any of the cottage food operating requirements. If a cottage food operation refuses to permit DACS to enter the premises or to conduct the inspection, he or she is subject to disciplinary action.[16]

Recent Trends

Sales Limits

A study conducted by the Harvard Law School Food Law and Policy Clinic provides the following data regarding annual gross sales limits for cottage food operations in other states:

- Sales limits differ among the states, ranging from $10,000 to no limit at all.
- About half of the states place a limitation on the amount of income a cottage food operation can earn in a year.
- In those states, once a cottage food operation exceeds the cap, typical food establishment requirements and permitting rules kick in.
- South Carolina only allows $15,000 in annual gross sales.
- Other states like Texas limit the sale of cottage foods to $50,000 per year.
- More than half of states, including Georgia, Massachusetts, New York, North Carolina, and Tennessee, do not place a sales limit on cottage food operations or have no limit on at least some types of cottage food operations.[17]

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[12] Cottage food products must be labeled in accordance with the requirements as outlined in s. 500.80(3), F.S., and U.S. Code of Federal Regulations Title 21, Part 101.

[13] S. 500.80(1)-(6), F.S.

[14] Chapter 205, F.S., allows counties and cities to impose taxes for the privilege of engaging in or managing any business, occupation, or profession within its jurisdiction. This tax is administered through the issuance of a local business tax receipt. In order to impose this tax, the local government entity must adopt an ordinance, which outlines the amount of the tax, method of computation, and other requirements.

[15] Examples include City of Miramar and St. John's County. City of Miramar, *Business Tax (Occupational Licenses)*, http://www.miramarfl.gov/201/Business-Tax-Occupational-Licenses (last visited Feb. 19, 2021); and County of St. John's Tax Collector, *Business Tax FAQs*, http://www.sjctax.us/BusinessTaxFAQ.aspx (last visited Feb. 19, 2021).

[16] S. 500.08(7)(a)-(b), F.S.

[17] Christina Rice, Emily Broad Leib, *Cottage Food Laws in the United States,* Harvard Law School Food Law and Policy Clinic (FLPC) (August 2018), https://www.chlpi.org/wp-content/uploads/2013/12/FLPC_Cottage-Foods-Report_August-2018.pdf (last visited Feb. 19, 2021).

According to the study, sales limits "limit the scale of operations that are allowed to sell without full food safety precautions in place... sales limits also prevent cottage food operators from scaling up and generating a livable income from their business."[18]

According to an Institute for Justice article on cottage food laws, "the national trend line is moving toward more food freedom. More laws pass every year, expanding the right to sell homemade food."[19]

Florida's gross annual sales limit is $50,000.[20] It was raised from $15,000 to $50,000 in 2017.[21]

Business Partnerships

According to the Internal Revenue Service (IRS) Partnerships webpage, "a partnership is the relationship between two or more people to do trade or business. Each person contributes money, property, labor or skill, and shares in the profits and losses of the business."[22]

Florida partnership law is governed by ch. 620, F.S. The law sets forth requirements for anyone wanting to establish a new partnership in the state of Florida. Under these rules are specific requirements regarding all types of partnerships, including the following:

- Limited partnerships;
- General partnerships;
- Limited Liability partnerships; and
- Foreign limited partnerships.

All partnerships must be registered with the Florida Department of State and follow all requirements found within ch. 620, F.S., which include the creation of the business, the paperwork and fees associated with creation, and the ongoing upkeep and maintenance of such partnerships.[23]

According to an American Express online article on advantages and disadvantages of business partnerships, for those considering a business partnership as a way to grow a company, a partnership can offer the following benefits:

- Bridging the Gap in Expertise and Knowledge: access to a wider range of expertise, additional knowledge and experience, and complementary skills.
- More Cash: infusion of cash into the business, more strategic connections, and enhanced borrowing ability to finance growth.
- Cost Savings: shared financial burden for expenses and capital expenditures needed to run the business, and more substantial savings.
- Better Work/Life Balance: shared labor, lightened workload, allowing time off when needed, knowing that there's a trusted person in charge, and positive impact on personal life.
- Moral Support: ability to brainstorm or debrief on important issues, support when setbacks are encountered, and help coping with everyday frustrations.
- Potential Tax Benefits: does not pay income tax, instead, "passes through" profits or losses to its partners. Each partner reports their share of the partnership's income or loss on their

[18] Rice, Leib, *Supra* note 17, at 14.
[19] Institute for Justice, *Defending Your Right to Sell Homemade Food*, https://ij.org/issues/economic-liberty/homemade-food-seller/ (last visited Feb. 22, 2021).
[20] S. 500.80(1)(a), F.S.
[21] Ch. 2017-32, Laws of Fla.
[22] Internal Revenue Service, *Tax Information for Partnerships*, https://www.irs.gov/businesses/partnerships (last visited Feb. 22, 2021).
[23] Ch. 620, F.S.

personal tax return. This may allow partners to deduct any business losses from their individual tax return.[24]

Some disadvantages include liabilities, loss of autonomy, personal conflicts, future selling issues, and lack of stability. However, in analyzing advantages and disadvantages of a partnership, the advantages may outweigh the disadvantages, and some of the disadvantages of a partnership may be overcome with due diligence.[25]

Current law does not appear to specifically allow cottage food operators to participate in partnerships. The law defines a "cottage food operation" as a natural person who produces or packages cottage food products at his or her residence and sells such products in accordance with s. 500.80, F.S.[26] The definition appears to limit the operation to one person.[27] In addition, DACS guidance on cottage food operations provides that a cottage food operation must be a single-family domestic residence in order to qualify as a cottage food business.[28]

Mail Orders

There are many laws that provide the basic framework for ensuring safety of foods in the U.S., including mail order foods. These laws include, but are not limited to, the Food Drug and Cosmetic Act (FDCA),[29] the Federal Meat Inspection Act (FMIA),[30] and the Poultry Products Inspection Act (PPIA).[31] These laws prohibit the sale or distribution of adulterated foods. Foods can be deemed adulterated for many reasons including if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

The FMIA specifically prohibits adulteration during transportation, where adulteration means any act while being transported in commerce or held for sale after such transportation, which is intended to cause or has the effect of causing such articles to be adulterated or misbranded.[32]

The U.S. Postal Service (USPS) classifies most nonperishable food items as mailable domestically if properly packaged. The USPS defines "Perishable Matter" as anything that can deteriorate in the mail and thereby lose value, create a health hazard, or cause an obnoxious odor, nuisance, or disturbance, under ordinary mailing conditions. USPS allows mailable Perishable Matter to be sent at the mailer's own risk when it is packaged as required and when it can be delivered within appropriate and reasonable time limits to prevent deterioration. USPS provides guidelines for shipping perishable matter, including specific instructions and listings for hazardous materials, restricted matter, perishable matter, international mail, and air transportation requirements.[33]

According to the National Mail Order Association (NMOA), "Mail Order Selling" and "Direct Marketing" are terms that encompass many different methods and mediums of soliciting and/or selling products or

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[24] American Express Trends and Insights, *What Are the Advantages and Disadvantages of a Partnership?*, https://www.americanexpress.com/en-us/business/trends-and-insights/articles/what-are-the-advantages-and-disadvantages-of-a-partnership/ (last visited Feb. 22, 2021).
[25] American Express, *supra* note 23.
[26] S. 500.03(1)(j), F.S.
[27] Email from Carlos Nathan, Deputy Legislative Affairs Director, DACS, RE: Cottage Foods, (Dec. 18, 2021). According to DACS, the "definition itself seems to imply that a 'cottage food operation' is a single, natural person rather than a business entity that multiple people can own."
[28] DACS Division of Food Safety, *Cottage Food Operations*, https://www.fdacs.gov/Business-Services/Food/Food-Establishments/Cottage-Foods (last visited Feb. 19, 2021).
[29] 21 U.S.C. ch. 9.
[30] 21 U.S.C. ch. 12.
[31] 21 U.S.C. ch. 10.
[32] 21 U.S.C. § 610(d).
[33] U.S. Postal Service, *Publication 52, Hazardous, Restricted, and Perishable Mail*, https://pe.usps.com/text/pub52/welcome.htm (last visited Feb. 21, 2021).

services at a distance where the potential customer is not physically present at a store or other location to see the product or to place an order.[34]

Twenty eight states allow cottage food businesses to sell online to buyers within state limits, 18 states allow sales through retail outlets, and several states allow delivery by mail order.[35] In New Hampshire, "homestead food operations" (cottage food operators) can sell to "restaurants or other retail food establishments, over the Internet, by mail order, or to wholesalers, brokers, or other food distributors who will resell the product," if they obtain a Homestead License.[36]

In Florida, sales by cottage food operations must be person-to-person, which means from the producer to the actual consumer. Cottage food products must be delivered and distributed directly to the consumer or the consumer's private event venue by the cottage food operator.[37] A cottage food operation is prohibited from selling, offering for sale, or delivering cottage food products by mail order.[38]

Local Regulations

Cottage food operations in Florida are required to comply with all applicable county and municipal laws and ordinances regulating the preparation, processing, storage, and sale of cottage food products.[39] Local governments throughout the state have created regulations for cottage food operations. Several of these regulate cottage food operations via home occupation ordinances. For example, the City of Orlando prohibits home occupations from "food processing and handling,"[40] which appears to prohibit cottage food operations.

Other local governments restrict the amount of space in the home that can be used for a cottage food business. Suwannee County prohibits the use of more than twenty percent of the first floor area of the residence.[41] The City of Jacksonville prohibits the use of more than 250 square feet or ten percent of the gross floor area of the dwelling unit.[42] According to the Miami-Dade County home occupation webpage, it restricts the use of a cottage food operation to the kitchen area only.[43]

Other local ordinances prohibit the sale of cottage food products from the residence directly to consumers. Miami-Dade County prohibits sales of products or goods on premises.[44] The City of Jacksonville also prohibits retail sales on the premises of a home occupation.[45] These ordinances appear to conflict with state guidance and regulations that indicate cottage food operators are allowed to sell cottage food products from their residence directly to the consumer.[46]

Effect of the Bill

The bill allows for the sale and delivery of cottage food products by mail order.

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[34] The National Mail Order Association, About the NMOA, http://www.nmoa.org/Membership/membinf.htm (last visited Feb. 22, 2021).
[35] Rice, Leib, *supra* note 17, at 26-59.
[36] Rice, Leib, *supra* note 17, at 11.
[37] DACS Division of Food Safety, *Cottage Food Operations*, https://www.fdacs.gov/Business-Services/Food/Food-Establishments/Cottage-Foods (last visited Feb. 19, 2021).
[38] S. 500.80(2), F.S.
[39] S. 500.80(1)-(6), F.S.
[40] Sec. 58.939., City of Orlando City Code.
[41] S. 4.19.31(5.), Suwannee County Land Development Regulations.
[42] City of Jacksonville Municipal Code § 656.401(n)(1)(ix).
[43] Miami-Dade County, *Regulatory & Economic Resources, Home Occupation*, https://www.miamidade.gov/zoning/district-home-office.asp#:~:text=Cottage%20food%20operation%20must%20be,square%20feet%20of%20the%20home (last visited Feb. 21, 2021).
[44] Sec. 33-25.1.(A)7., Miami-Dade County Code of Ordinances.
[45] S. 656.401(n)(1)(iv), City of Jacksonville Municipal Code.
[46] DACS Division of Food Safety, *Cottage Food Operations*, https://www.fdacs.gov/Business-Services/Food/Food-Establishments/Cottage-Foods (last visited Feb. 19, 2021).

The bill increases the maximum annual gross sales threshold from $50,000 to $250,000.

The bill revises the definition of "cottage food operation" to allow a person or an entity to have an ownership interest in a cottage food operation, clarifying that an operator is allowed to have business partners.

The bill preempts the regulation of cottage food operations to the state, and prohibits local laws, ordinances, or regulations that prohibit a cottage food operation or regulate the preparation, processing, storage or sale of cottage food products.

B. SECTION DIRECTORY:

Section 1: Provides a short title the "Home Sweet Home Act."

Section 2: Amends s. 500.03, F.S., revising the definition of "cottage food operation."

Section 3: Amends s. 500.80, F.S., relating to cottage food operations.

Section 4: 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:

   The bill may have an insignificant impact on local governments.

2. Expenditures:

   To the extent that local governments are incurring regulatory costs under current law, the bill should eliminate those costs through the preemption of local regulations.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will allow for the expansion and growth of locally produced food sales, and provide a more predictable and uniform regulatory framework for cottage food operations in Florida. The bill will also allow more people to work from home in their chosen profession.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor 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 rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

A bill to be entitled

An act relating to cottage food operations; providing a short title; amending s. 500.03, F.S.; revising the definition of "cottage food operation"; amending s. 500.80, F.S.; increasing the annual gross sales limitation for exempting cottage food operations from certain food and building permitting requirements; authorizing the sale, offer for sale, and delivery of cottage food products by mail; preempting the regulation of cottage food operations to the state; prohibiting local governments from prohibiting or regulating cottage food operations; providing an effective date.

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

Section 1. This act may be cited as the "Home Sweet Home Act."

Section 2. Paragraph (j) of subsection (1) of section 500.03, Florida Statutes, is amended to read:

500.03 Definitions; construction; applicability.—

(1) For the purpose of this chapter, the term:

(j) "Cottage food operation" means a natural person or an entity that ~~who~~ produces or packages cottage food products at the ~~his or her~~ residence of the natural person or at the

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

residence of a natural person who has an ownership interest in the entity, and sells such products in accordance with s. 500.80.

Section 3. Paragraph (a) of subsection (1) and subsections (2) and (6) of section 500.80, Florida Statutes, are amended to read:

500.80 Cottage food operations.—

(1)(a) A cottage food operation must comply with the applicable requirements of this chapter but is exempt from the permitting requirements of s. 500.12 if the cottage food operation complies with this section and has annual gross sales of cottage food products that do not exceed $250,000 ~~$50,000~~.

(2) A cottage food operation may sell, offer for sale, and accept payment for cottage food products over the Internet or by mail order. Such~~, but such~~ products may ~~must~~ be delivered in person directly to the consumer, ~~or~~ to a specific event venue, or by mail. A cottage food operation may not sell, offer for sale, or deliver cottage food products ~~by mail order or~~ at wholesale.

(6) The regulation of cottage food operations is preempted to the state. A local law, ordinance, or regulation may not prohibit a cottage food operation or regulate ~~must comply with all applicable county and municipal laws and ordinances regulating~~ the preparation, processing, storage, and sale of cottage food products by a cottage food operation or from a

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

person's residence.

Section 4. This act shall take effect July 1, 2021.

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

REGULATORY REFORM SUBCOMMITTEE

HB 663 by Rep. Salzman
Cottage Food Operations

AMENDMENT SUMMARY
March 2, 2021

Amendment 1 by Rep. Salzman (lines 42-49):
The amendment:

- Revises the authority for cottage food operators to deliver products by "mail" to instead specify delivery by "United States Postal Service or commercial mail delivery service."
- Makes a grammatical change.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Regulatory Reform Subcommittee

Representative Salzman offered the following:

Amendment

Remove lines 42-49 and insert:

or by United States Postal Service or commercial mail delivery service. A cottage food operation may not sell, offer for sale, or deliver cottage food products ~~by mail order or~~ at wholesale.

(6) The regulation of cottage food operations is preempted to the state. A local law, ordinance, or regulation may not prohibit a cottage food operation or regulate ~~must comply with all applicable county and municipal laws and ordinances regulating~~ the preparation, processing, storage, or ~~and~~ sale of

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 667 Building Inspections
SPONSOR(S): Mooney
TIED BILLS: **IDEN./SIM. BILLS:** SB 1382

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

SUMMARY ANALYSIS

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

Current law requires local governments to enforce the Building Code and issue building permits. Current law also requires state agencies, state universities, Florida College System institutions, and public school districts to enforce the Building Code in certain situations. It is unlawful for a person or corporation to construct, alter, repair, or demolish a building without obtaining a permit from the enforcing agency. Construction work that requires a building permit also requires inspections to ensure the work complies with the Building Code.

The bill requires local enforcement agencies to allow requests for inspections to be submitted electronically. Accepted methods of electronic submission include, but are not limited to:

- E-mail;
- An electronic fill-in form available on the building department's website or a third-party submission management software; or
- An application that can be downloaded on a mobile device.

The bill provides that a local enforcement agency must refund 10 percent of the permit and inspection fees if:

- The inspector or building official determines the work, which requires the permit, fails an inspection; and
- The inspector or building official fails to provide a reason that is based on compliance with the Florida Building Code, the Florida Fire Prevention Code, or local ordinance, indicating why the work failed the inspection within 3 days.

If any permit and inspection fees must be refunded, the surcharges for funding the Building Commission, the Florida Building Code Administrators and Inspectors Board, and the Florida Homeowners' Recovery Fund must be recalculated based on the amount of the permit and inspection fees after the refund.

The bill clarifies that any government entity with authority to enforce the Building Code may perform virtual inspections at the discretion of the government entity. However, a government entity may not perform a virtual inspection for structural inspections on threshold buildings.

The bill defines "virtual inspection" as an inspection that uses visual or electronic aids to allow a building official or inspector to perform an inspection without having to be physically present at the job site during the inspection.

The bill may have an indeterminate fiscal impact on state and local government. *See* Fiscal Comments.

The bill provides for an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

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

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

Part IV of ch. 553, 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, the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every three years.[5]

Building Code Administrators, Inspectors, and Plans Examiners

Building officials, inspectors, and plans examiners are regulated by the Building Code Administrators and Inspectors Board (BCAIB) within DBPR. The BCAIB consists of nine members appointed by the Governor and subjected to confirmation by the Senate. The BCAIB meets to approve or deny applications for licensure, review disciplinary cases, and conduct informal hearings relating to discipline.[6]

A building code administrator, otherwise known as a building official, is a local government employee or a person contracted by a local government who supervises building code activities, including plans review, enforcement, and inspection.[7]

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[1] The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs,* p. 4, http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Feb. 15, 2021).
[2] *Id.*; DBPR, *Building Code Information System*, https://floridabuilding.org/c/default.aspx# (last visited on Feb. 15, 2021).
[3] Florida Building Commission Homepage, https://floridabuilding.org/c/default.aspx (last visited Mar. 14, 2019).
[4] *See* S. 553.72(1), F.S.
[5] Ss. 553.73, & 553.74, F.S.
[6] Ss. 468.605, 468.606, and 468.621, F.S.
[7] S. 468.603(2), F.S.

A building code inspector (inspector) is a local government employee or a person contracted by a local government who inspects construction that requires permits to determine compliance with building codes and state accessibility laws. Inspectors are divided into several different categories. An inspector's ability to practice is limited to the category or categories the inspector has been licensed. The inspector categories are:[8]

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

A plans examiner reviews plans submitted for building permits to determine design compliance with the building code. The term includes a residential plans examiner who is qualified to determine that plans submitted for building permits comply with the applicable residential building, plumbing, mechanical, electrical, gas, energy, accessibility, and other applicable construction codes. A plan's examiners ability to practice is limited to the category or categories the plans examiner has been licensed. The plans examiner categories are:[9]

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

Enforcement of the Florida Building Code

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare.[10]

Every local government must enforce the Building Code and issue building permits.[11] A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.[12]

Current law also provides that state agencies may enforce the Building Code if current law specifically authorizes them to do so, unless they have delegated responsibility to another public entity.[13] Current law provides that:[14]

- The Department of Corrections and the Department of Juvenile Justice, and the Department of Management Services (DMS) enforces the construction regulations relating to correctional facilities under their jurisdiction.
- The DMS enforces the construction regulations for the Governor's Mansion and its grounds, the Capitol, and the Capitol complex.

[8] Ss. 468.603(4) and (5), F.S.
[9] S. 468.603(8), F.S.
[10] S. 553.72, F.S.
[11] Ss. 125.01(1)(bb), 125.56(1), & 553.80(1), F.S.
[12] S. 468.603(2), F.S; S. 202 of the Seventh edition of the Florida Building Code (Building).
[13] Ss. 255.31(1), and 553.80(1), F.S.
[14] *Id.*

- The DBPR enforces the construction regulations relating to elevator equipment under their jurisdiction.
- The Turnpike Enterprise, which is part of the Department of Transportation, enforces the construction regulations for toll collection facilities under its jurisdiction.
- The Department of Children and Families (DCF) in conjunction with the Agency for Health Care Administration (ACHA) enforces construction regulations relating to secure mental health treatment facilities under DCF's jurisdiction.
- The AHCA also reviews plans and surveys construction of hospitals, nursing homes, ambulatory surgical centers, and Intermediate Care Facilities for the Developmentally Disabled.

Current law also requires State universities, Florida College System institutions, and public school districts to enforce the Building Code for their building projects, including conducting plan review and inspections. State universities, Florida College System institutions, and public school districts must use or contract with licensed building officials, inspectors, and plan examiners, and may elect to use a local government's building department to review plans and perform inspections.[15]

It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government 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.[16]

To obtain a permit, an applicant must complete an application for the proposed work on the form furnished by the government entity.[17] A local enforcement agency that issues building permits must post each type of building permit application on its website. A local enforcement agency must allow applicants to submit permit applications electronically to the local enforcement agency, which must provide accepted methods of electronic submission. Accepted methods of electronic submission include, but are not limited to:[18]

- E-mail submission of applications in PDF;
- Submission of applications through an electronic fill-in form available on the building department's website; or
- Through a third-party submission management software.

A local enforcement agency is an agency of local government, a local school board, a community college board of trustees, or a university board of trustees in the State University System with jurisdiction to make inspections of buildings and to enforce the Building Code.[19]

Payments, attachments, or drawings required as part of the permit application may be submitted in person in a nonelectronic format, at the discretion of the building official.[20]

If a building official or plans reviewer denies a permit application or revokes a building permit, the building official or plans reviewer must give the permit applicant a reason for denying or revoking the permit. The reason must be based on compliance with the Building Code or a local ordinance. Failing to provide a reason for denying or revoking a building permit, which is based on compliance with the Building Code or a local ordinance, is grounds for discipline against the building official or plans reviewer's license.[21]

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[15] S. 553.80(6), F.S.
[16] *See* Ss. 125.56(4)(a) & 553.79(1), F.S.
[17] Ss. 713.135(5) and (6), F.S.
[18] Ss. 125.56(4)(b) & 553.79(1)(b), F.S.
[19] 553.71(5), F.S.
[20] Ss. 125.56(4)(b) & 553.79(1)(b), F.S.
[21] *Id.*

Building Inspections

Any construction work that requires a building permit also requires plans and inspections to ensure the work complies with the Building Code. The Building Code requires certain building, electrical, plumbing, mechanical, and gas inspections.[22] Construction work may not be done beyond a certain point until it passes an inspection. Generally speaking, a permit that passes the required inspections is considered completed or closed.[23]

The Building Code requires the following inspections depending on the scope of the construction work:[24]

- Building, including;
  - Foundation.
  - Framing.
  - Sheathing.
  - Exterior wall coverings.
  - Roofing.
  - Swimming pool.
  - Demolition.
  - Manufactured building;
  - Impact-resistant coverings.
  - Final inspection.
- Electrical;
- Plumbing;
- Mechanical;
- Gas;
- Lath, gypsum board and gypsum panel product;
- Weather-exposed balcony and walking surface waterproofing;
- Fire- and smoke-resistant penetrations;
- Energy efficiency;
- Termites;
- Shoring; and
- Threshold.

In addition to the inspections required by the Building Code, a building official may require other inspections of any construction work to ascertain compliance with the provisions of the Building Code and other laws that are enforced by the government entity.[25]

Local Government Fees & Permits

Each government entity may provide a schedule of reasonable fees in order to defer the costs of inspection and enforcement of the Building Code. The basis for a local government's fee structure must relate to the level of service provided by the local government. Fees charged must be consistently applied. Each local government must post its permit and inspection fee schedule on its website.[26]

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[22] S 110 Seventh edition of the Florida Building Code (Building).
[23] Doug Wise, *Closing Inactive & Excluded Building Permits*, Palm Beach County Planning, Zoning & Building Department, Building Division, http://discover.pbcgov.org/pzb/building/BuildingCodes/PBO-126%20%E2%80%93%20Closing%20Inactive%20and%20Excluded%20Building%20Permits.pdf (last visited Mar. 15, 2019).
[24] S. 110, Seventh Edition of the Florida Building Code (Building).
[25] S. 110.3.10, Seventh Edition of the Florida Building Code (Building).
[26] Ss. 125.56(2), 166.222, 553.79(1), and 553.80(7), F.S.

A local government's permit and inspection fees must be used solely for carrying out that local government entity's responsibilities in enforcing the Building Code. This includes:[27]

- the direct costs and reasonable indirect costs associated with review of building plans, building inspections, reinspections, and building permit processing;
- building code enforcement;
- fire inspections associated with new construction; and
- training costs associated with the enforcement of the Building Code and enforcement action pertaining to unlicensed contractor activity to the extent not funded by other user fees.

DBPR Surcharges

Current law requires that all local governments assess and collect a 1.0% 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 Florida Building Commission, DBPR's Building Code Compliance and Mitigation Program, and the Florida Fire Prevention Code informal interpretations.[28]

Current law also requires that all local governments 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 BCAIB and the Florida Homeowners' Construction Recovery Fund.[29]

Local government building departments are permitted to retain 10% of the amount of the surcharges they collect to fund participation of their agencies in the national and state building code adoption processes and to provide education related to enforcement of the Florida Building Code.[30]

Electronic Request for Inspections

Current law requires all local enforcement agencies to allow contractors to apply for permits electronically. However, there is no provision requiring local enforcement agencies to allow contractors to request inspections electronically.

Multiple building departments in Florida already allow permit holders to electronically request inspections,[31] while others do not. Instead, they require permit holders to call the building department during its business hours, which limits the time when a permit holder can request an inspection, or use an interactive voice response.[32]

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[27] S. 553.80(7), F.S.

[28] S. 553.721, F.S.

[29] 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.

[30] Ss. 468.631, and 553.721, F.S.

[31] Orange County Government Florida, *Division of Building Safety*, https://www.orangecountyfl.net/PermitsLicenses/DivisionOfBuildingSafety.aspx#inspections (last visited Feb. 12, 2021); Brevard County, *Brevard County Building Inspection Request*, https://www.brevardfl.gov/PlanningDev/BuildingPermits/InspectionRequest (last visited Feb. 12, 2021); Town of Davie Florida, *Online Self Service*, https://www.davie-fl.gov/213/Online-Self-Service (last visited Feb. 12, 2021).

[32] Fort Myers Community Development, *Building, Permitting & Inspections (BPI)*, https://cityftmyers.com/1293/Building-Permitting-Inspections (last visited Feb. 12, 2021); Monroe County, Building and Permitting Quick Links, https://www.monroecounty-fl.gov/149/Building-and-Permitting (last visited Feb. 12, 2021)

Proponents argue that allowing permit holders to electronically request inspections can provide inspectors a real-time schedule, including cancellation, location, and contact information for their scheduled inspections. Building departments note that there is an initial cost for the transition to electronic requests.[33]

Virtual Building Inspections

As a result of COVID-19, many building departments in Florida began performing virtual inspections in order to prevent a shut down and to protect building department staff, contractors, and property owners. Virtual inspections allow a building official or inspector to perform an inspection without having to be physically present at the jobsite. They also allow building departments to continue operating during the COVID-19 epidemic, which allows contractors to keep working.[34]

Virtual inspections can range from roofing inspections, windows and doors inspections, to A/C change outs depending on the jurisdiction. Virtual inspections can be more efficient than in-person inspections by reducing jobsite travel time, by allowing contractors to immediately request an inspection once they finish work, and by allowing the contractor to remain on the jobsite.[35]

Virtual inspections are usually done by having the contractor or owner at the jobsite with a mobile phone or tablet with a camera. The building official or inspector calls the contractor or owner via video chat, and the building official or inspector directs the contractor or owner to allow him or her to view specific work.[36]

Some building departments have indicated that they plan to continue using virtual inspections once the COVID-19 emergency is over.[37]

Current law does not specifically prohibit building departments from performing virtual inspections, but it also does not specifically allow building departments to perform virtual inspections.

Reasons for Failing an Inspection

Current law requires a building official or plans reviewer, who denies or revokes a building permit, to provide the permit applicant or permit holder a reason for denying or revoking the permit. The reason must be based on compliance with the Building Code or a local ordinance. If a building official or plans reviewer fails to provide a reason for denying or revoking a building permit based on compliance with the Building Code or a local ordinance, the building official or plans reviewer's license may be disciplined.[38]

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[33] National Institute of Building Sciences, Washington, D.C., *Electronic Permitting Systems and How to Implement Them*, (April 2002) https://www.huduser.gov/publications/pdf/permitting_all_4_12_02.pdf (last visited Feb. 23, 2021).

[34] Monica Casey, *Tallahassee creates virtual building inspections to save jobs and keep social distancing*, WCTV.tv (Apr. 8, 2020) https://www.wctv.tv/content/news/Tallahassee-creates-virtual-building-inspections-to-save-jobs-and-keep-social-distancing-569485561.html (last visited Feb. 23, 2021); Orange County, *Orange County Division of Building Safety Launches Remote Inspections*, (Jul. 22, 2020) https://newsroom.ocfl.net/2020/07/orange-county-division-of-building-safety-launches-remote-inspections/ (last visited Feb. 23, 2021) Marsha Lidskin, *Palm Coast building inspections for occupied homes go virtual for COVID-19 safety*, PalmCoastObserver.com (Aug. 27, 2020) https://www.palmcoastobserver.com/article/palm-coast-building-inspections-for-occupied-homes-go-virtual-for-covid-19-safety (last visited Feb. 23, 2021).

[35] Miami Beach, *Modified Procedures for Building Code Inspections During COVID-19 Emergency Period*, https://www.miamibeachfl.gov/wp-content/uploads/2020/05/Virtual-inspections-procedures-2.pdf (last visited Feb. 23, 2021); Boca Raton, *Virtual Inspections*, https://myboca.us/1846/Virtual-Inspections (last visited Feb. 23, 2021); Orange County, *supra* at note 32.

[36] *Id.*

[37] Kim Slowey, *Building officials turn to video inspections to mitigate COVID-19 risk*, Construction Dive (Apr. 15, 2020) https://www.constructiondive.com/news/covid-19-forces-building-officials-to-explore-remote-video-inspections/576072/ (last visited Feb. 23, 2021).

[38] S. 553.79(1)(a), F.S.

The Building Code requires an inspector who to notify the permit holder or his or her agent if there are any violations that need to be corrected in order to comply with the Building Code.[39] However, current law does not require a building official or inspector to provide the permit holder a specific reason for failing the inspection.

According to industry members, some local government inspectors do not provide a reason for failing an inspection that is based on compliance with the Building Code or a local ordinance. This results in a permit holder having to guess why the work did not pass the inspection, and causes delays until the permit holder can speak with the inspector.[40]

Effect of the Bill

The bill requires local enforcement agencies to allow requests for inspections to be submitted electronically. Accepted methods of electronic submission include, but are not limited to:

- E-mail;
- An electronic fill-in form available on the building department's website;
- A third-party submission management software; or
- An application that can be downloaded on a mobile device.

The bill provides that requests for inspections may be submitted in person, in a non-electronic format, at the discretion of the building official.

The bill clarifies that any government entity with authority to enforce the Building Code and inspections may perform virtual inspections at the discretion of the government entity.

The bill defines "virtual inspection" as a form of visual inspection that uses visual or electronic aids to allow a building official, inspector, or team of inspectors to perform an inspection without having to be physically present at the job site during the inspection.

The bill prohibits a government entity from performing a virtual inspection for structural inspections on threshold buildings.[41]

The bill requires a local enforcement agency to refund 10 percent of permit and inspection fees to a permit holder if:

- The inspector or building official determines that the work, which requires the permit, fails an inspection; and
- The inspector or building official fails to provide a reason, which is based on compliance with the Building Code, the Florida Fire Prevention Code, or local ordinance, for why the work failed the inspection within 3 days after the inspection.

If any permit and inspection fees are refunded because a building official or inspector fails to provide a reason for failing an inspection, the DBPR surcharges for funding the Building Commission, the BCAIB,

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[39] S. 110.3, Seventh Edition of the Florida Building Code (Building).

[40] Email from Brian Hastings, President of 4 Seasons Air Conditioning & Heating, Florida building inspectors, code section reference for failed inspections (Feb. 23, 2021); Email from Rick Sims, President of Johnson's Air Conditioning, HVAC; Requiring Code Citation References (Feb. 22, 2021); Email from David Shepard, Director of Service Operations of Cortez Heating & Air Conditioning, Inspectors Citing Specific Codes (Feb. 23, 2021).

[41] A threshold building is a building that is greater than three stories or 50 feet in height, exceeds 5,000 square feet, has an occupancy of greater than 500 persons, and is for the gathering of persons for purposes such as civic, social or religious functions, recreation, food or drink consumption, or awaiting transportation. A special inspector, who is licensed as an architect or engineer, must perform structural inspections on threshold buildings. S. 553.71(12), F.S.

and the Florida Homeowners' Recovery Fund must be recalculated based on the amount of the permit and inspection fees after the refund.

B. SECTION DIRECTORY:

Section 1. Amends s. 125.56, F.S., requiring counties to allow electronic requests for inspections.

Section 2. Amends s. 553.79, F.S., requiring local enforcement agencies to allow electronic inspections, allowing virtual inspections, and requiring local enforcement agencies to reduce certain fees.

Section 3. Amends s. 440.103, F.S., conforming a cross-reference.

Section 4. Amends s. 553.80, F.S., conforming a cross-reference.

Section 5. Providing an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   Indeterminate. Local governments that do not currently allow electronic submission of inspections may have to expend funds to meet the requirements in the bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive impact by allowing permit holders to electronically request inspections and clarifying that government entities may perform virtual inspections at their discretion, which may reduce the time to complete a construction project.

The bill may also have a positive impact by requiring inspectors to provide a reason for failing an inspection, which may decrease the time to complete a construction project.

D. FISCAL COMMENTS:

The amount of permit and inspection fees that are refunded by local governments for failing to provide a reason for failing an inspection is indeterminate. However, any amount will likely be minimal. It is unclear if refunding a percentage of permit fees will have an impact on the surcharges received by DBPR. However, any impact will likely be insignificant.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill requires local governments to allow permit holders to request inspections electronically. This may result in additional expenditures to comply with the statute. However, an exemption may apply because the fiscal impact is likely to be insignificant since local governments currently are required to allow building permit applicants to electronically submit building permit applications.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides that requests for inspections may still be submitted in person at the discretion of the building official. This does not appear to include telephonic requests for inspections. The sponsor may want to clarify that requests for inspections may still be made telephonically at the discretion of the building official.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to building inspections; amending s. 125.56, F.S.; requiring that certain counties allow requests for inspections to be submitted electronically; providing acceptable methods of electronic submission; amending s. 553.79, F.S.; requiring that local enforcement agencies allow requests for inspections to be submitted electronically; providing acceptable methods of electronic submission; authorizing enforcement agencies to perform virtual inspections; providing an exception; providing a definition; requiring a refund of certain fees in certain circumstances; requiring certain surcharges be recalculated under certain conditions; amending ss. 440.103 and 553.80, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Paragraph (f) is added to subsection (4) of section 125.56, Florida Statutes, to read:

125.56 Enforcement and amendment of the Florida Building Code and the Florida Fire Prevention Code; inspection fees; inspectors; etc.—

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

(4)

(f) A county that issues building permits must allow requests for inspections to be submitted electronically to the county building department. Acceptable methods of electronic submission include, but are not limited to, e-mail or fill-in form available on the website of the building department or through a third-party submission management software or application that can be downloaded on a mobile device. Requests for inspections may be submitted in person, in a nonelectronic format, at the discretion of the building official.

Section 2. Subsections (6) through (22) of section 553.79, Florida Statutes, are renumbered as subsections (8) through (24), respectively, subsection (2) of that section is amended, paragraph (d) is added to subsection (1) and subsections (6) and (7) are added to that section, to read:

553.79 Permits; applications; issuance; inspections.—

(1)

(d) A local enforcement agency must allow requests for inspections to be submitted electronically to the local enforcement agency's appropriate building department. Acceptable methods of electronic submission include, but are not limited to, e-mail or fill-in form available on the website of the building department or through a third-party submission management software or application that can be downloaded on a mobile device. Requests for inspections may be submitted in

person in a nonelectronic format, at the discretion of the building official.

(2) Except as provided in subsection (8) ~~subsection (6)~~, an enforcing agency may not issue any permit for construction, erection, alteration, modification, repair, or demolition of any building or structure until the local building code administrator or inspector has reviewed the plans and specifications required by the Florida Building Code, or local amendment thereto, for such proposal and found the plans to be in compliance with the Florida Building Code. If the local building code administrator or inspector finds that the plans are not in compliance with the Florida Building Code, the local building code administrator or inspector shall identify the specific plan features that do not comply with the applicable codes, identify the specific code chapters and sections upon which the finding is based, and provide this information to the local enforcing agency. The local enforcing agency shall provide this information to the permit applicant. In addition, an enforcing agency may not issue any permit for construction, erection, alteration, modification, repair, or demolition of any building until the appropriate firesafety inspector certified pursuant to s. 633.216 has reviewed the plans and specifications required by the Florida Building Code, or local amendment thereto, for such proposal and found that the plans comply with the Florida Fire Prevention Code and the Life Safety Code. Any

building or structure which is not subject to a firesafety code shall not be required to have its plans reviewed by the firesafety inspector. Any building or structure that is exempt from the local building permit process may not be required to have its plans reviewed by the local building code administrator. Industrial construction on sites where design, construction, and firesafety are supervised by appropriate design and inspection professionals and which contain adequate in-house fire departments and rescue squads is exempt, subject to local government option, from review of plans and inspections, providing owners certify that applicable codes and standards have been met and supply appropriate approved drawings to local building and firesafety inspectors. The enforcing agency shall issue a permit to construct, erect, alter, modify, repair, or demolish any building or structure when the plans and specifications for such proposal comply with the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code as determined by the local authority in accordance with this chapter and chapter 633.

(6) A state or local enforcement agency may perform virtual inspections at the discretion of the enforcement agency. However, a state or local enforcement agency may not perform virtual inspections for structural inspections on a threshold building. For purposes of this subsection, the term "virtual inspection" means a form of visual inspection which uses visual

or electronic aids to allow a building code administrator or an inspector, or team of inspectors, to perform an inspection without having to be physically present at the job site during the inspection.

(7)(a) A local enforcement agency must refund 10 percent of the permit and inspection fees to a permit holder if:

1. The inspector or building code administrator determines that the work, which requires the permit, fails an inspection.

2. The inspector or building code administrator fails to provide, within 3 days after the inspection, the permit holder or his or her agent with a reason, based on compliance with the Florida Building Code, Florida Fire Prevention Code, or local ordinance, for why the work failed the inspection.

(b) If any permit and inspection fees are refunded under paragraph (a), the surcharges provided in s. 553.721 or s. 468.31 must be recalculated based on the amount of the permit and inspection fees after the refund.

Section 3. Section 440.103, Florida Statutes, is amended to read:

440.103 Building permits; identification of minimum premium policy.—Every employer shall, as a condition to applying for and receiving a building permit, show proof and certify to the permit issuer that it has secured compensation for its employees under this chapter as provided in ss. 440.10 and 440.38. Such proof of compensation must be evidenced by a

certificate of coverage issued by the carrier, a valid exemption certificate approved by the department, or a copy of the employer's authority to self-insure and shall be presented, electronically or physically, each time the employer applies for a building permit. As provided in s. 553.79(23) ~~s. 553.79(21)~~, for the purpose of inspection and record retention, site plans or building permits may be maintained at the worksite in the original form or in the form of an electronic copy. These plans and permits must be open to inspection by the building official or a duly authorized representative, as required by the Florida Building Code. As provided in s. 627.413(5), each certificate of coverage must show, on its face, whether or not coverage is secured under the minimum premium provisions of rules adopted by rating organizations licensed pursuant to s. 627.221. The words "minimum premium policy" or equivalent language shall be typed, printed, stamped, or legibly handwritten.

Section 4. Subsection (1) of section 553.80, Florida Statutes, is amended to read:

553.80 Enforcement.—

(1) Except as provided in paragraphs (a)-(g), each local government and each legally constituted enforcement district with statutory authority shall regulate building construction and, where authorized in the state agency's enabling legislation, each state agency shall enforce the Florida Building Code required by this part on all public or private

buildings, structures, and facilities, unless such responsibility has been delegated to another unit of government under s. 553.79(11) ~~pursuant to s. 553.79(9)~~.

(a) Construction regulations relating to correctional facilities under the jurisdiction of the Department of Corrections and the Department of Juvenile Justice are to be enforced exclusively by those departments.

(b) Construction regulations relating to elevator equipment under the jurisdiction of the Bureau of Elevators of the Department of Business and Professional Regulation shall be enforced exclusively by that department.

(c) In addition to the requirements of s. 553.79 and this section, facilities subject to the provisions of chapter 395 and parts II and VIII of chapter 400 shall have facility plans reviewed and construction surveyed by the state agency authorized to do so under the requirements of chapter 395 and parts II and VIII of chapter 400 and the certification requirements of the Federal Government. Facilities subject to the provisions of part IV of chapter 400 may have facility plans reviewed and shall have construction surveyed by the state agency authorized to do so under the requirements of part IV of chapter 400 and the certification requirements of the Federal Government.

(d) Building plans approved under s. 553.77(3) and state-approved manufactured buildings, including buildings

manufactured and assembled offsite and not intended for habitation, such as lawn storage buildings and storage sheds, are exempt from local code enforcing agency plan reviews except for provisions of the code relating to erection, assembly, or construction at the site. Erection, assembly, and construction at the site are subject to local permitting and inspections. Lawn storage buildings and storage sheds bearing the insignia of approval of the department are not subject to s. 553.842. Such buildings that do not exceed 400 square feet may be delivered and installed without need of a contractor's or specialty license.

(e) Construction regulations governing public schools, state universities, and Florida College System institutions shall be enforced as provided in subsection (6).

(f) The Florida Building Code as it pertains to toll collection facilities under the jurisdiction of the turnpike enterprise of the Department of Transportation shall be enforced exclusively by the turnpike enterprise.

(g) Construction regulations relating to secure mental health treatment facilities under the jurisdiction of the Department of Children and Families shall be enforced exclusively by the department in conjunction with the Agency for Health Care Administration's review authority under paragraph (c).

The governing bodies of local governments may provide a schedule of fees, as authorized by s. 125.56(2) or s. 166.222 and this section, for the enforcement of the provisions of this part. Such fees shall be used solely for carrying out the local government's responsibilities in enforcing the Florida Building Code. The authority of state enforcing agencies to set fees for enforcement shall be derived from authority existing on July 1, 1998. However, nothing contained in this subsection shall operate to limit such agencies from adjusting their fee schedule in conformance with existing authority.

Section 5. This act shall take effect July 1, 2021.

REGULATORY REFORM SUBCOMMITTEE

HB 667 by Rep. Mooney
Building Inspections

AMENDMENT SUMMARY
March 2, 2021

Amendment 1 by Rep. Mooney (strike-all):
The amendment:

- Clarifies that a person may still request building inspections telephonically; and
- Clarifies that a building inspector must provide a reason for failing an inspection within 3 business days of the inspection, instead of 3 days.

Amendment No. 1.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Regulatory Reform Subcommittee

Representative Mooney offered the following:

Amendment

Remove everything after the enacting clause and insert:

Section 1. Paragraph (f) is added to subsection (4) of section 125.56, Florida Statutes, to read:

125.56 Enforcement and amendment of the Florida Building Code and the Florida Fire Prevention Code; inspection fees; inspectors; etc.—

(4)

(f) A county that issues building permits must allow requests for inspections to be submitted electronically to the county building department. Acceptable methods of electronic submission include, but are not limited to, e-mail or fill-in

form available on the website of the building department or through a third-party submission management software or application that can be downloaded on a mobile device. Requests for inspections may be submitted in a nonelectronic format, at the discretion of the building official.

Section 2. Subsections (6) through (22) of section 553.79, Florida Statutes, are renumbered as subsections (8) through (24), respectively, subsection (2) of that section is amended, paragraph (d) is added to subsection (1) and subsections (6) and (7) are added to that section, to read:

553.79 Permits; applications; issuance; inspections.—

(1)

(d) A local enforcement agency must allow requests for inspections to be submitted electronically to the local enforcement agency's appropriate building department. Acceptable methods of electronic submission include, but are not limited to, e-mail or fill-in form available on the website of the building department or through a third-party submission management software or application that can be downloaded on a mobile device. Requests for inspections may be submitted in a nonelectronic format, at the discretion of the building official.

(2) Except as provided in subsection (8) ~~subsection (6)~~, an enforcing agency may not issue any permit for construction, erection, alteration, modification, repair, or demolition of any

building or structure until the local building code administrator or inspector has reviewed the plans and specifications required by the Florida Building Code, or local amendment thereto, for such proposal and found the plans to be in compliance with the Florida Building Code. If the local building code administrator or inspector finds that the plans are not in compliance with the Florida Building Code, the local building code administrator or inspector shall identify the specific plan features that do not comply with the applicable codes, identify the specific code chapters and sections upon which the finding is based, and provide this information to the local enforcing agency. The local enforcing agency shall provide this information to the permit applicant. In addition, an enforcing agency may not issue any permit for construction, erection, alteration, modification, repair, or demolition of any building until the appropriate firesafety inspector certified pursuant to s. 633.216 has reviewed the plans and specifications required by the Florida Building Code, or local amendment thereto, for such proposal and found that the plans comply with the Florida Fire Prevention Code and the Life Safety Code. Any building or structure which is not subject to a firesafety code shall not be required to have its plans reviewed by the firesafety inspector. Any building or structure that is exempt from the local building permit process may not be required to have its plans reviewed by the local building code

administrator. Industrial construction on sites where design, construction, and firesafety are supervised by appropriate design and inspection professionals and which contain adequate in-house fire departments and rescue squads is exempt, subject to local government option, from review of plans and inspections, providing owners certify that applicable codes and standards have been met and supply appropriate approved drawings to local building and firesafety inspectors. The enforcing agency shall issue a permit to construct, erect, alter, modify, repair, or demolish any building or structure when the plans and specifications for such proposal comply with the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code as determined by the local authority in accordance with this chapter and chapter 633.

(6) A state or local enforcement agency may perform virtual inspections at the discretion of the enforcement agency. However, a state or local enforcement agency may not perform virtual inspections for structural inspections on a threshold building. For purposes of this subsection, the term "virtual inspection" means a form of visual inspection which uses visual or electronic aids to allow a building code administrator or an inspector, or team of inspectors, to perform an inspection without having to be physically present at the job site during the inspection.

(7)(a) A local enforcement agency must refund 10 percent

of the permit and inspection fees to a permit holder if:

1. The inspector or building code administrator determines that the work, which requires the permit, fails an inspection.

2. The inspector or building code administrator fails to provide, within 3 business days after the inspection, the permit holder or his or her agent with a reason, based on compliance with the Florida Building Code, Florida Fire Prevention Code, or local ordinance, for why the work failed the inspection.

(b) If any permit and inspection fees are refunded under paragraph (a), the surcharges provided in s. 553.721 or s. 468.631 must be recalculated based on the amount of the permit and inspection fees after the refund.

Section 3. Section 440.103, Florida Statutes, is amended to read:

440.103 Building permits; identification of minimum premium policy.—Every employer shall, as a condition to applying for and receiving a building permit, show proof and certify to the permit issuer that it has secured compensation for its employees under this chapter as provided in ss. 440.10 and 440.38. Such proof of compensation must be evidenced by a certificate of coverage issued by the carrier, a valid exemption certificate approved by the department, or a copy of the employer's authority to self-insure and shall be presented, electronically or physically, each time the employer applies for a building permit. As provided in s. 553.79(23) ~~s. 553.79(21)~~,

for the purpose of inspection and record retention, site plans or building permits may be maintained at the worksite in the original form or in the form of an electronic copy. These plans and permits must be open to inspection by the building official or a duly authorized representative, as required by the Florida Building Code. As provided in s. 627.413(5), each certificate of coverage must show, on its face, whether or not coverage is secured under the minimum premium provisions of rules adopted by rating organizations licensed pursuant to s. 627.221. The words "minimum premium policy" or equivalent language shall be typed, printed, stamped, or legibly handwritten.

Section 4. Subsection (1) of section 553.80, Florida Statutes, is amended to read:

553.80 Enforcement.—

(1) Except as provided in paragraphs (a)-(g), each local government and each legally constituted enforcement district with statutory authority shall regulate building construction and, where authorized in the state agency's enabling legislation, each state agency shall enforce the Florida Building Code required by this part on all public or private buildings, structures, and facilities, unless such responsibility has been delegated to another unit of government under s. 553.79(11) ~~pursuant to s. 553.79(9)~~.

(a) Construction regulations relating to correctional facilities under the jurisdiction of the Department of

Corrections and the Department of Juvenile Justice are to be enforced exclusively by those departments.

(b) Construction regulations relating to elevator equipment under the jurisdiction of the Bureau of Elevators of the Department of Business and Professional Regulation shall be enforced exclusively by that department.

(c) In addition to the requirements of s. 553.79 and this section, facilities subject to the provisions of chapter 395 and parts II and VIII of chapter 400 shall have facility plans reviewed and construction surveyed by the state agency authorized to do so under the requirements of chapter 395 and parts II and VIII of chapter 400 and the certification requirements of the Federal Government. Facilities subject to the provisions of part IV of chapter 400 may have facility plans reviewed and shall have construction surveyed by the state agency authorized to do so under the requirements of part IV of chapter 400 and the certification requirements of the Federal Government.

(d) Building plans approved under s. 553.77(3) and state-approved manufactured buildings, including buildings manufactured and assembled offsite and not intended for habitation, such as lawn storage buildings and storage sheds, are exempt from local code enforcing agency plan reviews except for provisions of the code relating to erection, assembly, or construction at the site. Erection, assembly, and construction

at the site are subject to local permitting and inspections. Lawn storage buildings and storage sheds bearing the insignia of approval of the department are not subject to s. 553.842. Such buildings that do not exceed 400 square feet may be delivered and installed without need of a contractor's or specialty license.

(e) Construction regulations governing public schools, state universities, and Florida College System institutions shall be enforced as provided in subsection (6).

(f) The Florida Building Code as it pertains to toll collection facilities under the jurisdiction of the turnpike enterprise of the Department of Transportation shall be enforced exclusively by the turnpike enterprise.

(g) Construction regulations relating to secure mental health treatment facilities under the jurisdiction of the Department of Children and Families shall be enforced exclusively by the department in conjunction with the Agency for Health Care Administration's review authority under paragraph (c).

The governing bodies of local governments may provide a schedule of fees, as authorized by s. 125.56(2) or s. 166.222 and this section, for the enforcement of the provisions of this part. Such fees shall be used solely for carrying out the local government's responsibilities in enforcing the Florida Building

Code. The authority of state enforcing agencies to set fees for enforcement shall be derived from authority existing on July 1, 1998. However, nothing contained in this subsection shall operate to limit such agencies from adjusting their fee schedule in conformance with existing authority.

Section 5. This act shall take effect July 1, 2021.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 735 Preemption of Local Occupational Licensing
SPONSOR(S): Harding
TIED BILLS: **IDEN./SIM. BILLS:** SB 268

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

SUMMARY ANALYSIS

The Florida Constitution grants local governments broad home rule authority. Non-charter county governments may exercise those powers of self-government that are provided by general or special law. Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by vote of the electors. Likewise, municipalities have governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform functions, provide services, and exercise any power for municipal purposes, except as otherwise provided by law.

General law directs a number of state agencies and licensing boards to regulate many professions and occupations. General law can also authorize or preempt local regulation of professions and occupations, which is typically done specifically and individually by subject matter, business type, or occupation.

The bill expressly preempts the licensing of occupations to the state and supersedes any local government licensing of occupations. However, any licensing of occupations adopted prior to July 1, 2021, will continue to be effective until July 1, 2023, at which time it will expire. Any licensing of occupations authorized by general law is exempt from the preemption.

The bill specifically prohibits local governments from requiring a license for a person whose job scope does not substantially correspond to that of a contractor or journeyman licensed by the Construction Industry Licensing Board, and specifically precludes local governments from requiring a license for: painting, flooring, cabinetry, interior remodeling, handyman services, driveway or tennis court installation, decorative stone, tile, marble, granite, or terrazzo installation, plastering, stuccoing, caulking, canvas awning installation, and ornamental iron installation.

The bill also expressly authorizes counties and municipalities to issue journeyman licenses in the plumping, pipe fitting, mechanical and HVAC trades, as well as, the electrical and alarm system trades, which is the current practice by counties and municipalities.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Local Government Authority

The Florida Constitution grants local governments broad home rule authority. Non-charter county governments may exercise those powers of self-government that are provided by general or special law.[1] Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by vote of the electors.[2]

Likewise, municipalities[3] have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform functions, provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[4]

A "special district" is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary. Special districts are created by general law,[5] special act,[6] local ordinance,[7] or by rule of the Governor and Cabinet.[8] A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district's charter. Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.[9]

A "dependent special district" is a special district where the membership of the governing body is identical to the governing body of a single county or municipality, all members of the 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 the approval of the governing body of a single county or municipality.[10] An "independent special district" is any district that is not a dependent special district.[11]

Revenue Sources Authorized in the Florida Constitution[12]

The Florida Constitution limits the ability of local governments to raise revenue for their operations. The Florida Constitution provides:

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[1] Art. VIII, s. 1(f), Fla. Const.
[2] Art. VIII, s. 1(g), Fla. Const.
[3] A municipality is a local government entity created to perform functions and provide services for the particular benefit of the population within the municipality, in addition to those provided by the county. The term "municipality" may be used interchangeably with the terms "town," "city," and "village."
[4] Art. VIII, s. 2(b), Fla. Const. *See also* s. 166.021(1), F.S.
[5] Section 189.031(3), F.S.
[6] *Id.*
[7] S. 189.02(1), F.S.
[8] S. 190.005(1), F.S. *See*, generally, s. 189.012(6), F.S.
[9] *2018 – 2020 Local Gov't Formation Manual*, p. 62, https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3025&Session=2019&DocumentType=General%20Publications&FileName=2018-2020%20Local%20Government%20Formation%20Manual%20Final.pdf (last visited Dec 19, 2019).
[10] S. 189.012(2), F.S.
[11] S. 189.012(3), F.S.
[12] The Florida Legislature, Office of Economic and Demographic Research, 2019 Local Government Financial Information Handbook, p. 1, http://edr.state.fl.us/Content/local-government/reports/lgfih19.pdf.

> No tax shall be levied except in pursuance of law. No state ad valorem taxes[13] shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to the state except as provided by general law.[14]
>
> Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by this constitution.[15]

However, not all local government revenue sources are taxes requiring general law authorization. When a county or municipal revenue source is imposed by ordinance, the question is whether the charge is a valid assessment or fee. As long as the charge is not deemed a tax, the imposition of the assessment or fee by ordinance is within the constitutional and statutory home rule powers of county and municipal governments. If the charge is not a valid assessment or fee, it is deemed a revenue source requiring general law authorization.

Revenue Sources Based on Home Rule Authority

Pursuant to home rule authority, local governments may impose proprietary fees, regulatory fees, and special assessments to pay the cost of providing a facility or service or regulating an activity. A regulatory fee should not exceed the regulated activity's cost and is generally required to be applied solely to the regulated activity's cost for which the fee is imposed.[16]

Preemption

State preemption precludes a local government from exercising authority in a particular area, and requires consistency with the state constitution or state statute.[17] A local government enactment may be found inconsistent with state law if (1) the Legislature has preempted a particular subject area to the state or (2) the local regulation conflicts with a state statute.[18]

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.[19] Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.[20] When local ordinances have been enacted in the face of state preemption, the effect has been to find such ordinances null and void.[21]

Implied preemption is a legal doctrine created to address those situations in which the courts may have been concerned by the legislature's failure to expressly preempt areas which, for all intents and purposes, seemed dominated by the state. Findings of implied preemption are for a very narrow class of areas in which the state has legislated pervasively.[22]

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[13] "Ad valorem tax" means a tax based upon the assessed value of property." Section 192.001(1), F.S.
[14] Art. VII, s. 1(a), Fla. Const.
[15] Art. VII, s. 9(a), Fla. Const.
[16] EDR, *supra* note 12, at 9.
[17] James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemption and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009), available at https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/.
[18] *Id.*
[19] *See City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309 (Fla. 2008).
[20] *Mulligan*, 934 So. 2d at 1243.
[21] *See, e.g., Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami,* 812 So.2d 504 (Fla. 3d DCA 2002).
[22] Wolf and Bolinder, *supra* note 17.

Professions and Occupations

General law directs a number of state agencies and licensing boards to regulate certain professions and occupations. For example, the Department of Business and Professional Regulation (DBPR) currently regulates approximately 25 professions and occupations.[23]

General law determines whether local governments are able to regulate occupations and businesses, and to what degree.[24] If state law preempts regulation for an occupation, then, generally, local governments may not regulate that occupation.[25] For example, Florida law currently preempts local regulation with regard to the following:

- assessing local fees associated with providing proof of licensure as a contractor, , or providing, recording, or filing evidence of worker's compensation insurance coverage by a contractor;[26]
- assessing local fees and rules regarding low-voltage alarm system projects;[27]
- tobacco and nicotine products;[28]
- firearms, weapons, and ammunition;[29]
- employment benefits;[30]
- polystyrene products;[31]
- public lodging establishments and public food service establishments;[32] and
- disposable plastic bags.[33]

Conversely, Florida law also specifically grants local jurisdictions the right to regulate businesses, occupations and professions in certain circumstances.[34] For example, Florida law specifically authorizes regulations relating to:

- zoning and land use;
- the levy of "reasonable business, professional, and occupational regulatory fees, commensurate with the cost of the regulatory activity, including consumer protection, on such classes of businesses, professions, and occupations, the regulation of which has not been preempted by the state or a county pursuant to a county charter";[35]
- the levy of local business taxes;[36]
- building code inspection fees;[37]
- tattoo establishments;[38]
- massage practices;[39]
- child care facilities;[40]
- taxis and other vehicles for hire;[41] and
- waste and sewage collection.[42]

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[23] S. 20.165, F.S.
[24] Art. VIII, s. 1(f), Fla. Const.; Art. VII, s. 9(a), Fla. Const.; Art. VIII, s. 2(b), Fla. Const.; s. 166.021(1), F.S.
[25] *Id.*; Wolf and Bolinger, *supra* note 17.
[26] S. 553.80(7)(d), F.S.
[27] S. 489.503(14), F.S.
[28] Ch. 569, F.S., and s. 386.209, F.S.
[29] S. 790.33(1), F.S.
[30] S. 218.077, F.S.
[31] S. 500.90, F.S.
[32] S. 509.032, F.S.
[33] S. 403.7033, F.S.
[34] *Supra* note 25.
[35] S. 166.221, F.S.
[36] Ch. 205, F.S.
[37] S. 166.222, F.S.
[38] S. 381.00791, F.S.
[39] S. 480.052, F.S.
[40] S. 402.306, F.S
[41] S. 125.01(1)(n), F.S.
[42] S. 125.01(1)(k), F.S.

Construction Professional Licenses

Chapter 489, F.S., relates to "contracting," with part I addressing the licensure and regulation of construction contracting, and part II addressing the licensure and regulation of electrical and alarm system contracting.

Construction contractors are either certified or registered by the Construction Industry Licensing Board (CILB) housed within DBPR. The CILB consists of 18 members who are appointed by the Governor and confirmed by the Senate. The CILB meets to approve or deny applications for licensure, review disciplinary cases, and conduct informal hearings relating to discipline.[43]

"Certified contractors" are individuals who pass the state competency examination and obtain a certificate of competency issued by DBPR. Certified contractors are able to obtain a certificate of competency for a specific license category and are permitted to practice in that category in any jurisdiction in the state.[44]

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

"Registered contractors" are individuals that have taken and passed a local competency examination and can practice the specific category of contracting for which he or she is approved, only in the local jurisdiction for which the license is issued.[45]

[43] S. 489.107, F.S.
[44] S. 489.105, F.S.
[45] S. 489.103, F.S.

The CILB licenses the following types of contractors:[46]

Statutory Licenses	Specialty Licenses
• Air Conditioning- Classes A, B, and C • Building • General • Internal Pollutant Storage Tank Lining Applicator • Mechanical • Plumbing • Pollutant Storage Systems • Pool/Spa- Classes A, B, and C • Precision Tank Tester • Residential • Roofing • Sheet Metal • Solar • Underground Excavation	• Drywall • Demolition • Gas Line • Glass and Glazing • Industrial Facilities • Irrigation • Marine • Residential Pool/Spa Servicing • Solar Water Heating • Structure • Swimming Pool Decking • Swimming Pool Excavation • Swimming Pool Finishes • Swimming Pool Layout • Swimming Pool Piping • Swimming Pool Structural • Swimming Pool Trim • Tower

Current law provides that local jurisdictions may approve or deny applications for licensure as a registered contractor, review disciplinary cases, and conduct informal hearings relating to discipline of registered contractors licensed in their jurisdiction.[47] Local jurisdictions are not barred from issuing and requiring construction licenses that are outside the scope of practice for a certified contractor or certified specialty contractor, such as painting and fence erection licenses. Local governments may only collect licensing fees that cover the cost of regulation.[48]

Locally registered contractors that are required to hold a contracting license to practice their profession in accordance with state law must register with DBPR after obtaining a local license. However, persons holding a local construction license whose job scope does not substantially correspond to the job scope of a certified contractor or a certified specialty contractor are not required to register with DBPR.[49]

Electrical contractors, alarm system contractors, and electrical specialty contractors are certified or registered under the ECLB. Certified contractors can practice statewide and are licensed and regulated by ECLB. Registered contractors are licensed and regulated by a local jurisdiction and may only practice within that locality.[50]

Electrical contractors are contractors who have the ability to work on electrical wiring, fixtures, appliances, apparatus, raceways, and conduits which generate, transmit, transform, or utilize electrical energy in any form. The scope of an electrical contractor's license includes alarm system work.[51]

Alarm system contractors are contractors who are able to lay out, fabricate, install, maintain, alter, repair, monitor, inspect, replace, or service alarm systems. An "alarm system" is defined as "any

[46] S. 489.105(a)-(q), F.S.; Rr. 61G4-15.015-040, F.A.C.
[47] Ss. 489.117, 489.131 F.S.
[48] EDR, *supra* note 12, at 9.
[49] Ss. 489.105, & 489.117(4), F.S.
[50] *See generally* s. 489.505, F.S.
[51] Ss. 489.505(12), & 489.537(7), F.S.

electrical device, signaling device, or combination of electrical devices used to signal or detect a burglary, fire, robbery, or medical emergency."[52]

Electrical certified specialty contractors are contractors whose scope of work is limited to a particular phase of electrical contracting, such as electrical signs. The ECLB creates electrical certified specialty contractor licenses through rulemaking. Certified electrical specialty contractors can practice statewide. The ECLB has created the following certified specialty contractor licenses:

- Lighting maintenance specialty contractor;
- Sign specialty electrical contractor;
- Residential electrical contractor;
- Limited energy systems specialty contractor; and
- Utility line electrical contractor.[53]

Journeyman

A journeyman is a skilled worker in a building trade or craft. There is no state requirement for licensure as a journeyman, but the construction and electrical contractor practice acts account for the fact that counties and municipalities issue journeyman licenses. A person with a journeyman license must always work under the supervision of a licensed contractor, but the state does not regulate journeymen activities or issue journeymen licenses.[54]

However, ch. 489, F.S., allows tradesman to be licensed as a journeyman in one local jurisdiction and work in multiple jurisdictions without having to take another examination or pay an additional licensing fee to qualify to work in the other jurisdictions (county or municipality). Specifically, s. 489.1455(1) of part I, F.S., specifies:

- An individual who holds a valid, active journeyman license in the plumbing/pipe fitting, mechanical, or HVAC trades issued by any county or municipality in this state may work as a journeyman in the trade in which he or she is licensed in any county or municipality of this state without taking an additional examination or paying an additional license fee.

The statutory criteria for licensure reciprocity between local jurisdictions for journeymen include:[55]

- scoring at least 75 percent on an approved proctored examination for that construction trade;
- completing a registered apprenticeship program and demonstrating verifiable practical experience in the particular trade;
- completing coursework approved by the Florida Building Commission specific to the discipline; and
- not having a license suspended or revoked within the last 5 years.

Effect of the Bill

The bill defines the following terms:

- "Local government" means a county, municipality, special district, or political subdivision of the state.
- "Occupation" means a paid job, profession, work, line of work, trade, employment, position, post, career, field, vocation, or craft.
- "Licensing" means any training, education, test, certification, registration, or license that is required for a person to perform an occupation along with any associated fee.

[52] S. 489.505(1)-(2), F.S.
[53] S. 489.505(19), & 489.511(4), F.S; Rule 61G6-7.001, F.A.C.
[54] Ss. 489.103, 489.1455, 489.503, & 489.5335, F.S.
[55] S. 489.1455, F.S. A similar reciprocity option applies to journeyman in the electrical trades. S. 489.5335, F.S.

The bill expressly preempts occupational licensing to the state. This preemption supersedes any local government licensing requirement of occupations unless:

- the licensing of occupations by local governments is authorized by general law; or
- the local licensing scheme for an occupation was imposed before July 1, 2021. However, any such local licensing scheme expires on July 1, 2023.

The bill prohibits local governments that license an occupation that qualifies for the exemption until July 1, 2023, from imposing additional licensing requirements on that occupation and from modifying such licensing.

The bill provides that any local licensing of an occupation not authorized under the provisions of the bill or otherwise authorized by general law does not apply and may not be enforced.

The bill provides that the preemption applies to licensing that is outside the scope of state contractor licensing provisions. Specifically, it provides that a county or municipality may not require a license for a person whose job scope does not substantially correspond to a contractor category licensed by the CILB. The bill specifically precludes counties and municipalities from requiring a license for certain job scopes, including, but not limited to, painting, flooring, cabinetry, interior remodeling, handyman services, driveway or tennis court installation, decorative stone, tile, marble, granite, or terrazzo installation, plastering, stuccoing, caulking, canvas awning installation, and ornamental iron installation.

The bill also expressly authorizes counties and municipalities to issue journeyman licenses in the plumping, pipe fitting, mechanical and HVAC trades, as well as, the electrical and alarm system trades, which is the current practice by counties and municipalities. The licensing of those specific local journeyman is exempt from the preemption in the bill.

B. SECTION DIRECTORY:

Section 1	Creates s. 163.21, F.S., relating to licensing of occupations preempted to the state.
Section 2	Amends s. 489.117, F.S., relating to registration; specialty contractors.
Section 3	Amends s. 489.1455, F.S., relating to journeyman; reciprocity; standards.
Section 4	Amends s. 489.5335, F.S., relating to journeyman; reciprocity; standards.
Section 5	Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have an indeterminate positive impact on the private sector. Workers may have to pay less in licensing and examination fees in some local jurisdictions. There may be an increase in the number of people in the workforce practicing their chosen professions.

D. FISCAL COMMENTS:

The fiscal impact of the bill on local governments is indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to preemption of local occupational licensing; creating s. 163.211, F.S.; providing definitions; preempting licensing of occupations to the state; providing exceptions; prohibiting local governments from imposing additional licensing requirements or modifying licensing unless specified conditions are met; specifying that certain local licensing that does not meet specified criteria does not apply and may not be enforced; amending s. 489.117, F.S.; specifying that certain specialty contractors are not required to register with the Construction Industry Licensing Board; prohibiting local governments from requiring certain specialty contractors to obtain a license under specified circumstances; specifying job scopes for which a local government may not require a license; amending ss. 489.1455 and 489.5335, F.S.; authorizing counties and municipalities to issue certain journeyman licenses; providing an effective date.

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

Section 1. Section 163.211, Florida Statutes, is created to read:

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

163.211 Licensing of occupations preempted to state.—

(1) DEFINITIONS.-As used in this section:

(a) "Licensing" means any training, education, test, certification, registration, or license that is required for a person to perform an occupation in addition to any associated fee.

(b) "Local government" means a county, municipality, special district, or political subdivision of the state.

(c) "Occupation" means a paid job, profession, work, line of work, trade, employment, position, post, career, field, vocation, or craft.

(2) PREEMPTION OF OCCUPATIONAL LICENSING TO THE STATE.-The licensing of occupations is expressly preempted to the state and this section supersedes any local government licensing requirement of occupations with the exception of the following:

(a) Any local government that imposed licenses on occupations before January 1, 2021. However, any such local government licensing of occupations expires on July 1, 2023.

(b) Any local government licensing of occupations authorized by general law.

(3) EXISTING LICENSING LIMIT.-A local government that licenses occupations and retains such licensing as set forth in paragraph (2)(a) may not impose additional licensing requirements on that occupation or modify such licensing.

(4) LOCAL LICENSING NOT AUTHORIZED.—Local licensing of an

occupation that is not authorized under this section or otherwise authorized by general law does not apply and may not be enforced.

Section 2. Paragraph (a) of subsection (4) of section 489.117, Florida Statutes, is amended to read:

489.117 Registration; specialty contractors.—

(4)(a) A person ~~holding a local license~~ whose job scope does not substantially correspond to either the job scope of one of the contractor categories defined in s. 489.105(3)(a)-(o), or the job scope of one of the certified specialty contractor categories established by board rule, is not required to register with the board ~~to perform contracting activities within the scope of such specialty license~~. A local government, as defined in s. 163.211, may not require a person to obtain a license for a job scope which does not substantially correspond to the job scope of one of the contractor categories defined in s. 489.105(3)(a)-(o) and (q) or authorized in s. 489.1455(1). For purposes of this section, job scopes for which a local government may not require a license include, but are not limited to, painting; flooring; cabinetry; interior remodeling; driveway or tennis court installation; handyman services; decorative stone, tile, marble, granite, or terrazzo installation; plastering; stuccoing; caulking; and canvas awning and ornamental iron installation.

Section 3. Section 489.1455, Florida Statutes, is amended

to read:

489.1455 Journeyman; reciprocity; standards.—

(1) Counties and municipalities are authorized to issue journeyman licenses in the plumbing, pipe fitting, mechanical, or HVAC trades.

(2) ~~(1)~~ An individual who holds a valid, active journeyman license in the plumbing, pipe fitting ~~plumbing/pipe fitting~~, mechanical, or HVAC trades issued by any county or municipality in this state may work as a journeyman in the trade in which he or she is licensed in any county or municipality of this state without taking an additional examination or paying an additional license fee, if he or she:

(a) Has scored at least 70 percent, or after October 1, 1997, at least 75 percent, on a proctored journeyman Block and Associates examination or other proctored examination approved by the board for the trade in which he or she is licensed;

(b) Has completed an apprenticeship program registered with a registration agency defined in 29 C.F.R. s. 29.2 and demonstrates 4 years' verifiable practical experience in the trade for which he or she is licensed, or demonstrates 6 years' verifiable practical experience in the trade for which he or she is licensed;

(c) Has satisfactorily completed specialized and advanced module coursework approved by the Florida Building Commission, as part of the building code training program established in s.

553.841, specific to the discipline or, pursuant to authorization by the certifying authority, provides proof of completion of such coursework within 6 months after such certification; and

(d) Has not had a license suspended or revoked within the last 5 years.

(3) ~~(2)~~ A local government may charge a registration fee for reciprocity, not to exceed $25.

Section 4. Section 489.5335, Florida Statutes, is amended to read:

489.5335 Journeyman; reciprocity; standards.—

(1) Counties and municipalities are authorized to issue journeyman licenses in the electrical and alarm system trades.

(2) ~~(1)~~ An individual who holds a valid, active journeyman license in the electrical or alarm system trade issued by any county or municipality in this state may work as a journeyman in the trade in which he or she is licensed in any other county or municipality of this state without taking an additional examination or paying an additional license fee, if he or she:

(a) Has scored at least 70 percent, or after October 1, 1997, at least 75 percent, on a proctored journeyman Block and Associates examination or other proctored examination approved by the board for the ~~electrical~~ trade in which he or she is licensed;

(b) Has completed an apprenticeship program registered

with a registration agency defined in 29 C.F.R. s. 29.2 and demonstrates 4 years' verifiable practical experience in the ~~electrical~~ trade for which he or she is licensed, or demonstrates 6 years' verifiable practical experience in the ~~electrical~~ trade for which he or she is licensed;

(c) Has satisfactorily completed specialized and advanced module coursework approved by the Florida Building Commission, as part of the building code training program established in s. 553.841, specific to the discipline~~,~~ or, pursuant to authorization by the certifying authority, provides proof of completion of such curriculum or coursework within 6 months after such certification; and

(d) Has not had a license suspended or revoked within the last 5 years.

(3) ~~(2)~~ A local government may charge a registration fee for reciprocity, not to exceed $25.

Section 5. This act shall take effect July 1, 2021.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 737 Craft Distilleries
SPONSOR(S): DiCeglie
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 46

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

SUMMARY ANALYSIS

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

The bill creates a quota license exemption for craft distilleries located in a community redevelopment district, subject to certain requirements and limitations.

The bill amends the craft distillery requirements in s. 565.03, F.S., as follows:

- Increases the production limit to qualify as a craft distillery from 75,000 gallons per calendar year to 250,000 gallons per calendar year.
- Limits the amount of distilled spirits that may be transferred to the craft distillery's souvenir gift shop for sale to consumers to 75,000 gallons per calendar year.
- Effective July 1, 2026, requires that a minimum of 60% of the craft distillery's total branded products must be distilled in this state and contain one or more Florida agricultural products.
- Authorizes a maximum of 10 craft distillery licenses under common ownership, consisting of four with a production cap of 250,000 gallons and six with a production cap of 50,000 gallons. "Common ownership" is defined to mean "having a direct or indirect financial interest in two or more distilleries by the same person."
- Allows craft distilleries to sell distilled spirits manufactured on the premises to consumers by the drink or by package.
- Clarifies that craft distilleries may only sell directly to consumers in face-to-face transactions.
- Repeals the six bottle limit per branded product per consumer at a craft distillery's souvenir gift shop.
- Prohibits craft distilleries from shipping alcoholic beverages to consumers.

The bill also authorizes a craft distillery permit for tastings at Florida fairs, trade shows, farmers markets, expositions, and festivals.

The bill may have a positive fiscal impact for certain entities involved in the production or sale of distilled spirits.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Beverage Law and the Three-Tier System

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

"Alcoholic beverages" are defined in s. 561.01, F.S., as "distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume." "Malt beverages" are brewed alcoholic beverages containing malt.[3]

Since the repeal of Prohibition, regulation of alcohol in the United States has traditionally been based upon what is termed the "three-tier system." The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages, and the distributor obtains the beverages from the manufacturer to deliver to the vendor. The vendor makes the ultimate sale to the consumer.[4]

Generally, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail, and manufacturers, distributors, and exporters[5] are generally prohibited from holding a vendor's license.[6] Manufacturers, distributors, and vendors are generally prohibited from being licensed or having an interest in more than one tier. Limited exceptions, subject to certain conditions, include the ability for a craft brewery to hold a vendor's license (tap room), a restaurant to hold a manufacturer's license (brew pub), and a winery to hold up to three vendor's licenses.[7]

Exceptions

Exceptions to the three-tier regulatory system allow certain in-state wineries,[8] craft breweries,[9] and craft distilleries to sell directly to consumers.[10] Further, certain restaurants may be granted a vendor's license to manufacture a limited quantity of malt beverages which can be sold to consumers for consumption on premises.[11]

Wineries may receive up to 3 vendor's licenses on property contiguous to the manufacturing premises of the winery.[12] Section 599.004, F.S., establishes the Florida Farm Winery Program within the Department of Agriculture and Consumer Services. The requirements for certification include that a winery produce or sell less than 250,000 gallons of wine annually of which 60% is made from state agricultural products, maintain a minimum of 5 acres of owned or managed land in Florida which

[1] Section 561.01(6), F.S., provides that the "The Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.
[2] S. 561.02, F.S.
[3] S. 563.01, F.S.
[4] S. 561.14, F.S.
[5] S. 561.01(16), F.S. "Exporter" means any person that sells alcoholic beverages to persons for use outside the state.
[6] S. 561.22(1), F.S.; s. 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.
[7] *See* ss. 561.22, F.S.; 561.24, F.S.; 561.14(1), F.S.; and 563.022(14), F.S.
[8] *See* s. 561.221(1), F.S.
[9] *See* s. 561.221(2), F.S.
[10] *See* s. 565.03, F.S.
[11] *See* s. 561.221(3), F.S.
[12] See s. 561. 221(1), F.S.

produces commodities used in the production of wine, be open to the public for tours, tastings, and sales at least 30 hours each week, and pay an annual application and registration fee of $100.

Section 561.24, F.S., prohibits the licensing of a manufacturer as a distributor or exporter. Wineries that qualify as a certified Florida Farm Winery are the sole exception to this prohibition. Additionally, the Division may issue permits for a certified Florida Farm Winery to conduct tasting and sales of its wines at Florida fairs, trade shows, expositions, and festivals. The permit is limited to the length of the event. The certified Florida Farm Winery is required to pay all entry fees and must have a winery representative present during the event.

Quota Licenses

Section 561.20, F.S., limits, by county, the number of alcoholic beverage licenses that may be issued to permit the sale of liquor (distilled spirits) to one license per 7,500 residents within the county. These limited alcoholic beverage licenses are known as "quota" licenses. New quota licenses are created and issued when there is an increase in the population of a county. The licenses can also be issued when a county initially changes from a county which does not permit the sale of intoxicating liquor to one that does permit their sale. The quota license is the only alcoholic beverage license that is limited in number; all other types of alcoholic beverage licenses are available without limitation. A person, firm, or corporation may not have an interest, directly or indirectly, in more than 30 percent of the number of quota licenses in a county.[13]

Quota License Exemptions

Current law permits certain types of businesses or persons to be licensed to sell beer, wine, and liquor without any limitation on the number of such licenses which may be issued in a county, i.e., such licenses are not subject to the quota in s. 561.20, F.S. Exemptions from the quota license system are known as "special licenses."

Section 561.20(2), F.S., provides several exemptions to the number of licenses that permit the sale of beer, wine, and distilled spirits. The exemptions include restaurants, caterers, hotels and motels, specialty centers built on government-owned land, bowling establishments, and airports.

The Beverage Law provides a limited exemption to the quota license limitation to permit the division to issue an alcoholic beverage license (for the sale of beer, wine, and liquor) to:

- An operator of railroads or sleeping cars and a vendor in railroad transit stations.[14]
- Operators of steamships and steamship lines, buses and bus lines, or airplanes and airlines engaged in interstate or foreign commerce or flying between fixed terminals and upon fixed schedules in this state.[15]
- Persons associated together as a chartered or incorporated club, if not organized for the purpose of evading license taxes and meeting certain conditions, including any golf club operated by or on behalf of any incorporated municipality in this state, and any veterans' or fraternal organization of national scope.[16]
- A caterer at a horse or dog racetrack or jai alai fronton.[17]
- A vendor who operates places of business where consumption on the premises is permitted, which premises are located within a theme park complex and meeting specified conditions.[18]
- A marine exhibition park complex meeting specified conditions.[19]

[13] S. 561.20(6), F.S.
[14] Section 565.02(2), F.S.
[15] Section 565.02(3), F.S.
[16] Section 565.02(4), F.S.
[17] Section 565.02(5), F.S.
[18] Section 565.02(6), F.S.
[19] Section 565.02(7), F.S.

- A state-chartered legal entity not for profit organized principally for the purpose of supporting or managing the affairs of a symphony orchestra.[20]
- The operator of a passenger vessel engaged exclusively in foreign commerce.[21]
- A state-chartered legal entity not for profit organized principally for the purpose of operating a theater with live performances and not fewer than 100 seats.[22]
- The John and Mable Ringling Museum of Art direct-support organization.[23]

Alcoholic Beverage Deliveries

Vendors, but not manufacturers or distributors, are allowed to make deliveries away from their place of business for sales actually made at their licensed place of business. Telephone, electronic, and mail orders received at a vendor's licensed place of business are construed as a sale actually made at the vendor's licensed place of business. Deliveries may be made in vehicles that are owned or leased by the vendor, or in a third-party vehicle pursuant to a contract with a third party with whom the vendor has contracted to make deliveries, including, but not limited to, common carriers.[24]

A craft brewery which also holds a vendor's license is specifically prohibited from making deliveries under this law.[25]

Distilleries and Craft Distilleries

Section 565.01, F.S., defines the terms "liquor," "distilled spirits," "spirituous liquors," "spirituous beverages," or "distilled spirituous liquors" to mean "that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced."

A "distillery" is a manufacturer of distilled spirits, and a "craft distillery" is a licensed distillery that produces 75,000 or fewer gallons of distilled spirits per calendar year on its premises. A craft distillery must notify the Division in writing of its decision to qualify as a craft distillery.[26]

A distillery engaged solely in the business of manufacturing distilled spirits, or a person engaged in the business of blending and rectifying distilled spirits must pay a state license tax of $4,000 for each plant or branch operating in Florida. The license tax for a craft distillery is $1,000. Persons who engage in the business of distilling spirits may also rectify and blend spirituous liquors without paying an additional license tax.[27]

According to the Division, 61 of the 64 licensed distilleries operating in Florida produce less than 75,000 gallons of distilled spirits.[28]

A craft distillery is allowed to sell to consumers branded products,[29] distilled on the licensed premises, in factory-sealed containers that are filled at the distillery and sold for off-premises consumption only. The sales must occur at the distillery's souvenir gift shop located on private property contiguous to the licensed distillery premises, and included on the sketch submitted with the license application. Sales must be in face-to-face transactions with consumers who are making a purchase of no more than six

[20] Section 565.02(8), F.S.
[21] Section 565.02(9), F.S.
[22] Section 565.02(10), F.S.
[23] Section 565.02(11), F.S.
[24] S. 561.57(1) & (2), F.S.
[25] Ss. 561.221 (2)(d), and 565.57(1), F.S.
[26] Ss. 565.03(1)(b) & (c), F.S.
[27] S. 565.03(2)(b), F.S.
[28] Department of Business and Professional Regulation, Agency Analysis of 2020 HB 583, p. 5-6 (Dec. 6, 2019).
[29] Section 565.03(1)(a), F.S., defines "branded product" to mean "any distilled spirits product manufactured on site, which requires a federal certificate and label approval by the Federal Alcohol Administration Act or federal regulations."

individual containers of each branded product.[30] The craft distillery is not required to obtain a vendor's license to sell to consumers from their souvenir gift shop.

The Division must approve any subsequent revisions to a craft distillery's sketch to verify that the souvenir gift shop location operated by the craft distillery is "owned or leased by the craft distillery and on property contiguous to the craft distillery's production building."[31]

Section 565.03, F.S., imposes the following requirements and prohibitions for craft distilleries:

- A craft distillery may not ship, arrange to ship, or deliver distilled spirits to consumers, but may ship, arrange to ship, or deliver distilled spirits to manufacturers of distilled spirits, wholesale distributors of distilled spirits, state or federal bonded warehouses, and exporters.
- A craft distillery may not transfer its license or any ownership interest to any individual or entity with a direct or indirect interest in another distillery licensed in any other state, territory, or country. However, a craft distillery may be affiliated with another distillery that produces 75,000 or fewer gallons per calendar year of distilled spirits on its premises or in any other state, territory, or country.
- A craft distillery must report to the Division within 5 business days after it has reached the 75,000-gallon production limit and cease making sales to consumers on the day after it reaches the production limit.
- A craft distillery must submit beverage excise taxes on distilled spirits sold to consumers in its monthly report to the Division.
- Containers must comply with the container limits in s. 565.10, F.S., which prohibits the sale and distribution of distilled spirits in any size container in excess of 1.75 liters or 59.18 ounces.

Declaratory Statement

On January 19, 2018, the division issued a declaratory statement interpreting s. 565.03(2)(c), F.S., to permit a craft distillery to sell to consumers, at its souvenir gift shop, a product comprised of a blend of liquors distilled on the premises of the craft distillery and liquors distilled by other manufacturers away from the premises. The craft distillery may then, at the craft distillery, fill individual containers with the final, blended liquor product for sale at its souvenir gift shop.[32] However, a craft distillery may not sell to consumers a product comprised of a blend of only liquors distilled by other manufacturers away from the craft distillery's licensed premises.[33]

Beverage Tastings

Section 565.17, F.S., permits licensed distributors of spirituous beverages and vendors to conduct spirituous beverage tastings at any licensed premises authorized to sell spirituous beverages by package or for consumption on premises without violating s. 561.42, F.S., provided that the conduct of the spirituous beverage tasting is limited to and directed toward the general public of the age of legal consumption.

Community Redevelopment Areas

The Community Redevelopment Act of 1969 authorizes a county or municipality to create a community redevelopment agency (CRA) as a means of redeveloping slums and blighted areas.[34] The act defines a "blighted area" as an area in which there are a substantial number of deteriorated structures causing

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[30] S. 565.03(1)(c), F.S.
[31] *Id.*
[32] Final Order on Petition for Declaratory Statement, *In Re: Petition for Declaratory Statement Before the Division Of Alcoholic Beverages and Tobacco, On behalf of Drum Circle Distilling, LLC*, DS 2017-071 (DABT Case No. 2017-052675), January 19, 2018, (on file with Senate Committee on Regulated Industries).
[33] *Id.*
[34] Ch. 163, F.S., part III.

economic distress or endangerment to life or property and in which two or more of the factors listed in s. 163.340(8), F.S., are present. However, an area may also be classified as blighted if one of the aforementioned factors is present and all taxing authorities with jurisdiction over the area agree that the area is blighted by interlocal agreement or by passage of a resolution by the governing bodies.[35]

Either a county or a municipal government may create a CRA. A county or municipality may create a CRA upon the adoption of a finding of necessity and a finding that a CRA is necessary for carrying out the community redevelopment goals embodied by the act.[36] A CRA created by a county may only operate within the boundaries of a municipality when the municipality has concurred by resolution with the community redevelopment plan adopted by the county. A CRA created by a municipality may not include more than 80 percent of the municipality if it was created after July 1, 2006.[37]

The act allows the local governing body creating a CRA to choose between two structures for the agency governing board. One option is to appoint a board of commissioners consisting of five to nine members serving four-year terms.[38] The second option is for the local governing body to appoint itself as the agency board of commissioners.[39] A community redevelopment plan must be in place before a CRA can engage in operations.[40]

There are currently 222 active community redevelopment agencies in Florida.[41]

Effect of the Bill

Quota license exemption

The bill creates s. 565.02(12), F.S., providing a quota license exemption for certain craft distilleries to allow such distilleries to qualify for a vendor's license for the sale of beer, wine, and liquor. The bill authorizes craft distilleries to sell alcoholic beverages for consumption on premises, including alcoholic beverages which are produced by another manufacturer and purchased from a distributor, if the craft distillery is located on a property within a destination entertainment venue and is in operation and open for tours during normal businesses hours at least 5 days a week.

The bill defines a destination entertainment venue (DEV) as:

- a venue located in a designated community redevelopment area (CRA),
- owned by any person licensed as a craft distillery located within the venue, and
- served by multimodal transportation options.
- DEVs must also be located within a contiguous area of at least 15 acres;
- contain indoor and outdoor event venues with capacities of 150 and 1,000 people, respectively;
- the outdoor venue must have regularly occurring live entertainment on a stage that is at least 12 feet deep and 16 feet wide; and
- must contain one or more licensed craft distilleries with identical ownerships.

Craft distilleries licensed as a vendor in a CRA must be located within the same DEV, share identical ownership, and distill, blend, or rectify at least 50,000 gallons of blended product per calendar year. No more than three craft distilleries may be licensed as a vendor in a CRA.

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[35] S. 163.340(8), F.S.
[36] S. 163.356(1), F.S.
[37] S. 163.340(10), F.S.
[38] S. 163.356(2), F.S.
[39] S. 163.357(1)(a), F.S.
[40] S. 163.360(1), F.S.
[41] Department of Economic Opportunity, *Special District Accountability Program, Official List of Special Districts Online*, http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx (last visited Feb. 23, 2021).

Craft distilleries licensed as a vendor are prohibited from making package sales for off-premises consumption or making deliveries or shipments of alcoholic beverages, except as authorized in s. 565.03, F.S. Alcoholic beverages not manufactured at the craft distillery must be purchased from a licensed distributor.

Craft distilleries

The bill also amends the craft distillery requirements in s. 565.03, F.S., as follows:

- Increases the production limit to qualify as a craft distillery from 75,000 gallons per calendar year to 250,000 gallons per calendar year.
- Limits the amount of distilled spirits that may be transferred to the craft distillery's souvenir gift shop for sale to consumers to 75,000 gallons per calendar year.
- Effective July 1, 2026, requires that a minimum of 60% of the craft distillery's total branded products must be distilled in this state and contain one or more Florida agricultural products.
- Authorizes a maximum of 10 craft distillery licenses under common ownership, consisting of four with a production cap of 250,000 gallons and six with a production cap of 50,000 gallons. "Common ownership" is defined to mean "having a direct or indirect financial interest in two or more distilleries by the same person."
- Allows craft distilleries to sell distilled spirits manufactured on the premises to consumers by the drink or by package.
- Clarifies that craft distilleries may only sell directly to consumers in face-to-face transactions.
- Repeals the six bottle limit per branded product per consumer at a craft distillery's souvenir gift shop.
- Prohibits craft distilleries from shipping alcoholic beverages to consumers.

The bill also amends s. 565.17, F.S., to authorize a craft distillery permit for tastings at Florida fairs, trade shows, farmers markets, expositions, and festivals.

B. SECTION DIRECTORY:

Section 1 Amends s. 565.02, F.S.; defining the term "destination entertainment venue"; authorizing craft distilleries to be licensed as specified vendors under certain circumstances; providing requirements for such licenses; etc.

Section 2 Amends s. 565.03, F.S.; redefining the terms "branded product" and "craft distillery"; prohibiting a distillery from operating as a craft distillery until certain requirements are met; authorizing persons to have common ownership in craft distilleries under certain circumstances; etc.

Section 3 Amends s. 565.17, F.S.; authorizing craft distilleries to conduct spirituous beverage tastings under certain circumstances; requiring the division to issue permits to craft distilleries to conduct tastings and sales at certain locations; specifying requirements for distilleries for such permits.

Section 4 Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive economic impact for many craft distilleries due to the removal of many current regulatory constraints.

The bill may also provide a positive economic impact for those craft distilleries located in a CRA that qualify for a vendor's license. It is not known how many craft distilleries are currently located in a CRA.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to craft distilleries; amending s. 565.02, F.S.; defining the term "destination entertainment venue"; authorizing craft distilleries to be licensed as specified vendors under certain circumstances; providing requirements for such licenses; providing requirements for craft distilleries for such licenses; prohibiting a licensee from taking certain actions; requiring certain alcoholic beverages to be obtained through a licensed distributor; amending s. 565.03, F.S.; redefining the terms "branded product" and "craft distillery"; prohibiting a distillery from operating as a craft distillery until certain requirements are met; authorizing persons to have common ownership in craft distilleries under certain circumstances; defining the term "common ownership"; requiring a minimum percentage of a craft distillery's total finished branded products to be distilled in this state and contain one or more Florida agricultural products after a specified date; revising the requirements and prohibitions on the sale of branded products to consumers by a licensed craft distillery; revising the circumstances for which a craft distillery must report certain information about the production of distilled

spirits to the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation; revising prohibitions on the shipment of certain products by a craft distillery; revising prohibitions on the transfer of a craft distillery license or ownership interest in such license; revising prohibitions relating to affiliated ownership of craft distilleries; authorizing a craft distillery to transfer specified distilled spirits from certain locations to its souvenir gift shop and tasting room; making technical changes; amending s. 565.17, F.S.; authorizing craft distilleries to conduct spirituous beverage tastings under certain circumstances; requiring the division to issue permits to craft distilleries to conduct tastings and sales at certain locations; specifying requirements for distilleries for such permits; providing an effective date.

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

Section 1. Present subsection (12) of section 565.02, Florida Statutes, is redesignated as subsection (13), and a new subsection (12) is added to that section, to read:

565.02 License fees; vendors; clubs; caterers; and others.—

(12)(a) As used in this subsection, the term "destination entertainment venue" means a venue that:

1. Is located in a designated community redevelopment area authorized under an adopted community redevelopment plan to support urban redevelopment and economic development;

2. Is owned by any person licensed as a craft distillery located within the destination entertainment venue;

3. Is adjacent to and served by multimodal transportation options, including, at a minimum, bicycle and pedestrian trails included on an adopted city or county trails map and mass transit routes established by a city, county, or regional transportation authority; and

4. Is located within a contiguous area of at least 15 acres, including associated parking and stormwater requirements as required by local law, regulation, or ordinance, and that contains:

a. At least one indoor event venue with a minimum capacity of 150 people which is fully serviced by a connected onsite kitchen;

b. At least one outdoor event venue with a minimum capacity of 1,000 people which has regularly occurring live entertainment on a stage that is at least 12 feet deep and 16 feet wide; and

c. One or more licensed craft distilleries sharing identical ownership.

(b) Notwithstanding any other provisions of the Beverage Law, upon the payment of the appropriate fees, a craft distillery licensed in this state may be licensed as a vendor only for consumption on the premises of alcoholic beverages manufactured by other manufacturers and acquired through a distributor. The issuance of a license under this paragraph is not subject to any quota or limitation, except that the craft distillery must be:

1. Located on property within a destination entertainment venue; and

2. In operation and open for tours during normal business hours at least 5 days a week.

(c) The vendor license may be issued only for the premises included on the licensed premises sketch on file with the division under s. 565.03 for the craft distillery, including its souvenir gift shop or tasting room.

(d) No more than three craft distilleries may be licensed as a vendor in a community redevelopment area under this subsection. Craft distilleries licensed as a vendor under this subsection must be located within the same destination entertainment venue and must share identical ownership, and each craft distillery must distill, blend, or rectify at least 50,000 gallons of branded products per calendar year.

(e) Except as otherwise provided in this paragraph, a craft distillery licensed as a vendor under this subsection

shall be treated as a vendor and is subject to all provisions relating to such vendors licensed to sell alcoholic beverages for consumption on premises. A craft distillery licensed as a vendor may not make package sales for off-premises consumption or make any delivery or shipment of alcoholic beverages away from the destination entertainment venue or the craft distillery, unless such shipment or delivery is authorized for a craft distillery under s. 565.03.

(f) Alcoholic beverages manufactured by another licensed manufacturer, including branded products manufactured at another craft distillery location sharing identical ownership, must be obtained through a licensed distributor.

Section 2. Paragraphs (a) and (b) of subsection (1) and subsections (2) and (5) of section 565.03, Florida Statutes, are amended to read:

565.03 License fees; manufacturers, distributors, brokers, sales agents, and importers of alcoholic beverages; vendor licenses and fees; distilleries and craft distilleries.—

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

(a) "Branded product" means any distilled spirits product that:

1. Is owned by a craft distillery;

2. Contains distilled spirits that are manufactured by distilling, rectifying, or blending by the craft distillery on its licensed premises; and

3. Has ~~manufactured on site, which requires~~ a federal certificate and label approval by the Federal Government ~~Alcohol Administration Act or federal regulations~~.

(b) "Craft distillery" means a licensed distillery in this state which distills, rectifies, or blends 250,000 ~~that produces 75,000 or fewer~~ gallons or less of distilled spirits per calendar year ~~of distilled spirits~~ on its premises ~~and has notified the division in writing of its decision to qualify as a craft distillery~~.

(2)(a) A distillery may not operate as a craft distillery until the distillery has provided to the division written notification that it meets the criteria specified in paragraph (1)(b). Upon the division's receipt of the notification and its verification that the distillery meets all such criteria, the division shall add the designation of craft distiller on the distillery's license.

(b) A person may not share common ownership in more than 10 craft distilleries, provided that no more than:

1. Four of the distilleries each distill, rectify, or blend 250,000 gallons or less of distilled spirits per calendar year; and

2. Six of the distilleries each distill, rectify, or blend 50,000 gallons or less of distilled spirits per calendar year.

As used in this paragraph, the term "common ownership" means

having a direct or indirect financial interest in two or more distilleries by the same person.

(c) Effective July 1, 2026, a minimum of 60 percent of a craft distillery's total finished branded products must be distilled in this state and contain one or more Florida agricultural products.

(d) A distillery or a craft distillery authorized to do business under the Beverage Law shall pay an annual state license tax for each plant or branch operating in the state, as follows:

1. A distillery engaged in the business of manufacturing distilled spirits: $4,000.

2. A craft distillery engaged in the business of manufacturing distilled spirits: $1,000.

3. A person engaged in the business of rectifying and blending spirituous liquors and nothing else: $4,000.

(e) ~~(b)~~ A licensed distillery or licensed craft distillery may ~~Persons licensed under this section who are in the business of distilling spirituous liquors may also~~ engage in the business of rectifying or ~~and~~ blending spirituous liquors without the payment of an additional license tax.

(f) ~~(c)~~ A craft distillery ~~licensed under this section~~ may sell directly to consumers up to 75,000 gallons per calendar year of~~, at its souvenir gift shop,~~ branded products that are manufactured by the craft distillery ~~distilled~~ on its premises.

A craft distillery may sell branded products directly to consumers by the drink for consumption on the premises or by the package in factory-sealed containers for consumption off the premises ~~in this state in factory-sealed containers that are filled at the distillery for off-premises consumption~~. Such sales are authorized only in the craft distillery's souvenir gift shop or tasting room located on private property contiguous to the licensed ~~distillery~~ premises. Branded products sold to consumers must have been distilled, rectified, or blended on the distillery premises that is located contiguous to the craft distillery's souvenir gift shop or tasting room. The souvenir gift shop or tasting room must be in this state and included on the sketch or diagram defining the licensed premises submitted with the distillery's license application. All sketch or diagram revisions by the distillery shall require the division's approval verifying that the locations of the souvenir gift shops and tasting rooms ~~shop location~~ operated by the licensed distillery are ~~is~~ owned or leased by the distillery and on property contiguous to the distillery's production building in this state.

1. Except as authorized under s. 565.17(2), a craft distillery may not sell any factory-sealed individual containers of spirits to consumers except in face-to-face sales transactions with such consumers at the craft distillery's licensed premises. Such branded products must be in compliance

with the container limits under s. 565.10 and be intended for personal consumption rather than for resale ~~who are making a purchase of no more than six individual containers of each branded product~~.

~~2. Each container sold in face-to-face transactions with consumers must comply with the container limits in s. 565.10, per calendar year for the consumer's personal use and not for resale and who are present at the distillery's licensed premises in this state.~~

~~3.~~ A craft distillery must report to the division within 5 days after it exceeds ~~reaches~~ the production limits or is no longer operating under the requirements or limitations provided in paragraph (1)(b). Any retail sales of branded products by the drink or by the package to consumers at the craft distillery's licensed premises are prohibited beginning the day after it exceeds ~~reaches~~ the production limitation.

3.~~4.~~ A craft distillery may not ship or arrange to ship any of its branded products or any other alcoholic beverages ~~distilled spirits~~ to consumers and may sell and deliver only to consumers within the state in a face-to-face transaction at the distillery property. However, a craft distillery ~~distiller~~ licensed under this section may ship, arrange to ship, or deliver such spirits to any manufacturers of distilled spirits, wholesale distributors of distilled spirits, state or federal bonded warehouses, or ~~and~~ exporters.

4.~~5.~~ Except as provided in subparagraph 5. ~~subparagraph 6.~~, it is unlawful to transfer a craft distillery license ~~for a distillery that produces 75,000 or fewer gallons per calendar year of distilled spirits on its premises~~ or any ownership interest in such license to an individual or entity that has a direct or indirect ownership interest in any distillery that distills, rectifies, or blends 250,000 gallons or more per calendar year of distilled spirits under any license issued ~~licensed~~ in this state; in another state, territory, or country; or by the United States Government to distill ~~manufacture~~, blend, or rectify distilled spirits for beverage purposes.

5.~~6.~~ Except as provided in paragraph (b), a craft distillery may ~~shall~~ not have its ownership affiliated with another distillery, unless such distillery is owned by an individual or entity that distills, rectifies, or blends 250,000 gallons or less per calendar year of distilled spirits ~~produces 75,000 or fewer gallons per calendar year of distilled spirits~~ on each of its premises in this state or in another state, territory, or country.

6. A craft distillery may transfer up to 75,000 gallons per calendar year of its branded products that it distills, rectifies, or blends from its federal bonded space, nonbonded space at its licensed premises, or storage areas to its souvenir gift shop and tasting room.

(5) A craft distillery making sales under paragraph (2)(f)

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

~~paragraph (2)(c)~~ is responsible for submitting any excise taxes due to the state on distilled spirits ~~on beverages~~ under the Beverage Law with ~~in~~ its monthly report to the division ~~with any tax payments due to the state~~.

Section 3. Section 565.17, Florida Statutes, is amended to read:

565.17 Beverage tastings by distributors, craft distilleries, and vendors.—

(1) A licensed distributor of spirituous beverages, a craft distillery as defined in s. 565.03, or any vendor~~,~~ is authorized to conduct spirituous beverage tastings upon any licensed premises authorized to sell spirituous beverages by package or for consumption on premises without being in violation of s. 561.42, provided that the conduct of the spirituous beverage tasting shall be limited to and directed toward the general public of the age of legal consumption.

(2) Craft distilleries may conduct tastings and sales of distilled spirits produced by the craft distilleries at Florida fairs, trade shows, farmers markets, expositions, and festivals. The division shall issue permits to craft distilleries for such tastings and sales. A craft distillery must pay all entry fees and must have a distillery representative present during the event. The permit is limited to the duration and physical location of the event.

Section 4. This act shall take effect July 1, 2021.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 821 Licensure Requirements for Land Surveyors and Mappers
SPONSOR(S): Mariano
TIED BILLS: **IDEN./SIM. BILLS:** SB 1342

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

SUMMARY ANALYSIS

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

Applicants with a bachelor's degree in surveying and mapping must have **four** or more years of responsible work experience under a professional surveyor in order to take the licensure examination.

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

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

The bill revises education and experience prerequisites that must be met **in order to be eligible to take the licensure examination** to practice as a professional surveyor and mapper as follows:

- Allows exiled foreign-trained professionals who have lawfully practiced the profession for three years to substitute their experience for the education requirements.
- Reduces the work experience requirements for applicants with a bachelor's degree in surveying and mapping, and for applicants who receive a bachelor's degree in a course other than surveying and mapping.
- Allows applicants with a two-year associate of arts degree or an equivalent 60 credit hours, and four years of responsible work experience to be eligible to take the licensure examination.
- Allows applicants with a high school diploma or equivalent, and six or more years of responsible work experience to be eligible to take the licensure examination.
- Allows applicants who provide proof of verifiable responsible work experience in the active practice of surveying and mapping to be eligible to take the licensure examination.

The bill may have an indeterminate fiscal impact on state government and a positive fiscal impact on the private sector.

The effective date of the bill is July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Land Surveying and Mapping

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

These regulations include, but are not limited to:

- Examination;
- Licensure, including certificates of authorization;
- Continuing education;
- Seals;
- Standards of practice;
- Prohibitions and penalties;
- Disciplinary guidelines;
- Investigative procedures;
- Power to administer oaths, take depositions, and issue subpoenas;
- Unlicensed activities; and
- Elevation certificates.[2]

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

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

According to DACS, there are 2,634 Surveyors and Mappers currently licensed in Florida.[6]

Licensing Examinations

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

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

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[1] S. 472.007, F.S.
[2] *See* ch. 472, F.S.
[3] Florida Department of Agriculture and Consumer Services, Consumer Services, *Surveyors and Mappers*, https://www.fdacs.gov/Business-Services/Surveyors-and-Mappers (last visited Feb. 25, 2021).
[4] S. 472.008, F.S.
[5] Ch. 2009-66, Laws of Fla.
[6] Email from Emily Buckley, Legislative Affairs Director, Department of Agriculture and Consumer Services, Re: Surveyors and Mappers, (Feb. 26, 2021).
[7] S. 472.013, F.S.

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

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

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

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

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

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

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

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

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

Licensure by Endorsement

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

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

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

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

Recent Trends

According to the Bureau of Labor Statistics, in 2020 there were 45,000 working surveyors in the U.S. and 15,000 were 34 years of age or younger.[15] This indicates that approximately 33 percent of surveyors and mappers are under the age of 34. Employment of surveyors is projected to grow 2 percent from 2019 to 2029, slower than the average for other occupations.[16]

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[10] S. 472.001(1), F.S.
[11] R. 5J-17.210, F.A.C.
[12] S. 472.0101, F.S.
[13] S. 472.015, F.S.
[14] *Id.*
[15] U.S. Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey*, https://www.bls.gov/cps/cpsaat11b.pdf (last visited Feb. 25, 2021).
[16] U.S. Bureau of Labor Statistics, Occupational Outlook Handbook, https://www.bls.gov/ooh/architecture-and-engineering/surveyors.htm#tab-6 (last visited Feb. 25, 2021).

There are many contributing factors to help explain the land surveyor shortage. One of those reasons is the advancement of technology. The use of drones and other technologies has increased worker productivity and is expected to limit employment growth.[17]

Another contributing influence is the extensive education expectations and cost. Many state boards require a four-year degree before beginning work in the surveying field. These requirements might hinder those from pursuing a surveying path.[18]

Additionally, there may be a general lack of awareness in the public about who land surveyors are and what they do. This also has worked its way into other skilled trades throughout the construction and manufacturing industries.[19]

According to DACS, there are 2,634 surveyors and mappers currently licensed in Florida.[20]

Other States

Each state and territory in the U.S. requires those who perform the tasks defined as the practice of surveying to hold a professional surveying license. Most states require professional surveyors to meet a combination of requirements in education and exams.[21]

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

- An education requirement - Sometimes a high school diploma but some states also require a four-year degree from an accredited surveying program.
- Successful completion of a Fundamentals of Surveying (FS) written examination - testing an applicant's breadth of understanding of basic surveying principles.
- Successful completion of a written Principles and Practice of Surveying (PS) examination - testing an applicant's knowledge and competency of surveying skills.
- A requisite amount of surveying experience - which for most states is four years and is usually under the supervision of a professional surveyor.[22]

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

- Most states require at least a four-year degree and four years of professional experience.
- Typically, the extent of the degree is relative to the amount of professional experience required.
- Fourteen states provide an option that requires only a high school diploma or do not have any educational requirements along with a certain amount of professional experience.
- Six states provide an option that does not require the completion of a degree, but requires the completion of a certain amount of survey and mapping coursework and professional experience.
- The degrees that are required are typically in a surveying and mapping curriculum, a curriculum related to surveying and mapping, or an unrelated curriculum but with a certain amount of coursework in a surveying related curriculum.

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[17] U.S.B.L.S Occupational, *Supra* note 10.
[18] Nearterm Blog, *Is There a Shortage of Land Surveyors?* (Nov. 2, 2020), https://nearterm.com/is-there-a-shortage-of-land-surveyors/ (last visited Feb. 25, 2021).
[19] Nearterm, *Supra* note 16.
[20] Email from Emily Buckley, Legislative Affairs Director, Department of Agriculture and Consumer Services, Re: Surveyors and Mappers, (Feb. 26, 2021).
[21] The National Council of Examiners for Engineering and Surveying (NCEES), *Surveying Licensure*, https://ncees.org/surveying/surveying-licensure/ (last visited Feb. 26, 2021).
[22] The National Council of Examiners for Engineering and Surveying (NCEES), *NCEES Member Licensing Boards*, https://ncees.org/member-licensing-boards/ (last visited Feb. 25, 2021).

- States that allow postgraduate coursework in a surveying curriculum allow the coursework to be substituted for professional experience.
- Twenty-eight states do not provide an education-less alternative method of licensure.[23]

Effect of the Bill

The bill revises education and experience prerequisites that must be met by exiled foreign-trained professionals and others, in order to be eligible to take the licensure examination to practice as a professional surveyor and mapper.

Specifically, the bill:

- Allows exiled foreign-trained professionals who have practiced the profession for three years to substitute their experience for the education requirement. The three-year experience requirement is currently one of seven licensure examination prerequisites for these individuals.
- Reduces the work experience requirement for applicants who receive a bachelor's degree in surveying and mapping from four or more years, to two or more years, to be eligible to take the licensure examination.
- Reduces the work experience requirement for applicants who receive a bachelor's degree in a course other than surveying and mapping, from six or more years, to two or more years, and reduces the amount of time in responsible charge that experience must be from five years, to two years, to be eligible to take the licensure examination.
- Allows applicants with a two-year associate of arts degree or an equivalent 60 credit hours, and four years of work experience in responsible charge under a professional surveyor and mapper, to be eligible to take the licensure examination. Work experience acquired as a part of the education requirement may not be construed as experience in responsible charge.
- Allows applicants with a high school diploma or equivalent, and six or more years of work experience in responsible charge under a professional surveyor and mapper, to be eligible to take the licensure examination. Work experience acquired as a part of the education requirement may not be construed as experience in responsible charge.
- Allows applicants who provide proof of verifiable work experience in the active practice of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed.

B. SECTION DIRECTORY:

Section 1: Amends s. 472.0101, F.S., relating to foreign-trained professionals, special examination and license provisions.

Section 2: Amends s. 472.013, F.S., relating to examinations, prerequisites.

Section 3: Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. The bill may have a positive impact on examination and licensing revenue, to the extent that additional individuals will take the licensure examination and become licensed. All funds

[23] NCEES, *supra* note 19.

collected are deposited into the DACS General Inspection Trust Fund. DACS is unable to estimate a fiscal impact.[24]

2. Expenditures:

Indeterminate. The bill may cause additional individuals to take the examination and become licensed. According to DACS, the department "may require additional resources to process applications."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

According to DACS, "the rules would have to be amended to change current education and work experience requirements."[25]

Current law appears to provide sufficient rulemaking authority for DACS to implement the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments

The bill revises s. 472.0101(1)(f), F.S., relating to the licensure of foreign-trained professionals. Based on the date included in this provision in current law, if a person satisfied this requirement prior to 1980 at the age of 18, the person would be 58 years old today. As a result, it isn't likely this provision would

[24] Department of Agriculture and Consumer Services, Agency Analysis of 2020 HB 821, p. 2 (Feb. 25, 2021).
[25] Department of Agriculture, *supra* note 21, at 3.

apply to many applicants. Removing this outdated provision may make this provision more inclusive to foreign-trained applicants.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

A bill to be entitled

An act relating to licensure requirements for land surveyors and mappers; amending s. 472.0101, F.S.; authorizing an exiled professional to substitute specified lawful practice of the profession for the education requirement for examination; amending s. 472.013, F.S.; revising education requirements for licensure; providing that specified work experience may be substituted for education requirements for licensure as a land surveyor or mapper; providing an effective date.

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

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

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

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

(d) Demonstrates to the department, through submission of documentation verified by the applicant's respective

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

professional association in exile, that the applicant was graduated with an appropriate professional or occupational degree from a college or university. However, the department may not require receipt of any documentation from the Republic of Cuba as a condition of eligibility under this section;

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

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

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

472.013 Examinations, prerequisites.—

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

(a) The applicant has received a bachelor's degree, its equivalent, or higher in surveying and mapping or a similarly titled program, including, but not limited to, geomatics, geomatics engineering, and land surveying, from a college or university recognized by the board and has a specific experience record of 2 ~~4~~ or more years as a subordinate to a professional surveyor and mapper in the active practice of surveying and

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

mapping, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed. Work experience acquired as a part of the education requirement may not be construed as experience in responsible charge.

(b) The applicant has received a bachelor's degree, its equivalent, or higher in a course of study, other than in surveying and mapping, at an accredited college or university and has a specific experience record of 2 ~~6~~ or more years as a subordinate to a registered surveyor and mapper in the active practice of surveying and mapping, which experience is ~~5 years of which shall be~~ of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed. The applicant must have completed a minimum of 25 semester hours from a college or university approved by the board in surveying and mapping subjects or in any combination of courses in civil engineering, surveying, mapping, mathematics, photogrammetry, forestry, or land law and the physical sciences. Any of the required 25 semester hours of study completed not as a part of the bachelor's degree, its equivalent, or higher may be approved at the discretion of the board. Work experience acquired as a part of the education requirement may not be construed as experience in responsible charge.

(c) The applicant has received a 2-year associate of arts

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degree, or an equivalent 60 credit hours, and has a specified experience record of 4 or more years as a subordinate to a professional surveyor and mapper in the active practice of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed. Work experience acquired as a part of the education requirement may not be construed as experience in responsible charge.

(d) The applicant has received a high school diploma, or the equivalent, and has a specified experience record of 6 or more years as a subordinate to a professional surveyor and mapper in the active practice of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed. Work experience acquired as a part of the education requirement may not be construed as experience in responsible charge.

(e) The applicant has proof of verifiable work experience in the active practice of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed.

Section 3. This act shall take effect July 1, 2021.

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

REGULATORY REFORM SUBCOMMITTEE

HB 821 by Rep. Mariano
Licensure Requirements for Surveyors and Mappers

AMENDMENT SUMMARY
March 2, 2021

Amendment 1 by Rep. Mariano (lines 75-98):
The amendment:

- Specifies that an applicant is eligible to take the licensure examination if the applicant is licensed and has at least two years of responsible work experience in another state, jurisdiction or territory in the active practice of surveying and mapping.
- Revises the two year associate of arts degree path to take the licensure examination to allow any type of associates degree rather than specifying an associate of arts degree.
- Allows an applicant who has received a registered apprenticeship certificate in surveying and mapping and two years of experience to be eligible to take the licensure examination.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Regulatory Reform Subcommittee

Representative Mariano offered the following:

Amendment (with title amendment)

Remove lines 75-98 and insert:

(c) The applicant has received a 2-year associate degree, and has a specified experience record of 4 or more years as a subordinate to a professional surveyor and mapper in the active practice of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed. Work experience acquired as a part of the education requirement may not be construed as experience in responsible charge.

(d) The applicant has received a high school diploma, or the equivalent, and has a specified experience record of 6 or more years as a subordinate to a professional surveyor and mapper in the active practice of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed. Work experience acquired as a part of the education requirement may not be construed as experience in responsible charge.

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

(f) The applicant has received a registered apprenticeship certificate in surveying and mapping after completing a Registered Apprenticeship Program approved by the Department of Education and has a specified experience record of 2 or more years as a subordinate to a professional surveyor and mapper in the active practice of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed. Work experience acquired as a part of

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

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

Remove line 10 and insert:
licensure as a land surveyor or mapper; providing that licenses from other states, jurisdictions, and territories and certain experience may be used for licensure as a land surveyor or mapper; providing that specified apprenticeship may be substituted for education requirements for licensure as a land surveyor or mapper; providing an

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 911 Medical Treatment of Animals
SPONSOR(S): Buchanan
TIED BILLS: **IDEN./SIM. BILLS:** SB 1370

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

SUMMARY ANALYSIS

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

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

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

The bill allows veterinarians to establish a VCPR and prescribe drugs remotely, and to remotely supervise rabies vaccinations of impounded animals by an animal control authority. Specifically, the bill:

- Allows the VCPR to be established in person, by telephone, or by other means consistent with the individual veterinarian's professional judgment.
- Specifies that a physical examination is not required for the veterinarian to assume responsibility for making medical judgments or providing treatment.
- Removes the requirement that a veterinarian be personally acquainted and have made timely visits with the animal in order to prescribe it drugs.
- Allows an employee, agent, or contractor of an animal control authority acting under the indirect supervision of a veterinarian to administer rabies vaccinations to certain impounded animals.
- Defines "indirect supervision" to mean the supervising veterinarian is available for consultation by telecommunications but is not required to be on the premises during such consultation.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Practice of Veterinary Medicine

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

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

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

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

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

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

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

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[1] S. 474.201, F.S.
[2] S. 474.202(11), F.S.
[3] Ss. 474.213 & 474.214, F.S.
[4] *See* s. 474.202(9), F.S. Also included is the determination of the health, fitness, or soundness of an animal, and the performance of any manual procedure for the diagnosis or treatment of pregnancy or fertility or infertility of animals.
[5] *See* s. 474.202(13), F.S. Section 474.202(1), F.S., defines "animal" as "any mammal other than a human being or any bird, amphibian, fish, or reptile, wild or domestic, living or dead."
[6] The Society for Theriogenology, established in 1954, is composed of veterinarians dedicated to standards of excellence in animal reproduction. *See* https://www.therio.org/page/HistoryTheriogenolog (last visited Feb. 26, 2021).
[7] A preceptor is a skilled practitioner or faculty member who directs, teaches, supervises, and evaluates students in a clinical setting to allow practical experience with patients. *See also* https://www.merriam-webster.com/dictionary/preceptor#medicalDictionary (last visited Feb. 26, 2021).
[8] The term "responsible supervision" is defined in s. 474.202(10), F.S., as the "control, direction, and regulation by a licensed doctor of veterinary medicine of the duties involving veterinary services" delegated to unlicensed personnel.

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

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

By virtue of accepting a license to practice veterinary medicine in Florida, a veterinarian consents to render handwriting samples and waive confidentiality pertaining to and authorize certain mental and physical examinations, related to certain investigations or complaints.[14]

For Fiscal Year 2019-2020, there were 11,433 actively licensed veterinarians in Florida, and DBPR received 362 complaints and took 34 disciplinary actions.[15]

Veterinarian/Client/Patient Relationship

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

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

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

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[9] Ss. 474.203(1) and (2), F.S., provide that accreditation of a school or college must be granted by the American Veterinary Medical Association (AVMA) Council on Education, or the AVMA Commission for Foreign Veterinary Graduates.
[10] *See* s. 474.203(6), F.S., which states that the exemption applies to "[s]tate agencies, accredited schools, institutions, foundations, business corporations or associations, physicians licensed to practice medicine and surgery in all its branches, graduate doctors of veterinary medicine, or persons under the direct supervision thereof . . . ."
[11] *See* s. 474.203, F.S.
[12] S. 474.215(1), F.S.
[13] S. 474.216, F.S.
[14] S. 474.2185, F.S.
[15] Department of Business and Professional Regulation, Division of Professions Annual Report Fiscal Year 2019-2020, http://www.myfloridalicense.com/DBPR/os/documents/DivisionAnnualReport_FY1920.pdf (last visited Feb. 26, 2021).
[16] S. 474.202(8), F.S.
[17] S. 474.202(12), F.S.
[18] As defined in s. 465.003(8), F.S.
[19] As defined in s. 893.02(4), F.S.

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

Veterinary Telemedicine

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

Florida Telehealth

In 2019, the Legislature passed and the Governor approved CS/CS/HB 23, which created s. 456.47, F.S. The bill became effective on July 1, 2019.[22] It authorized Florida-licensed health care providers[23] to use "telehealth" to deliver health care services within their respective scopes of practice.[24] The bill also authorized out-of-state health care providers to use telehealth to deliver health care services to Florida patients if they register with the DOH or the applicable board[25] and meet certain eligibility requirements.[26] A registered out-of-state telehealth provider may use telehealth, within the relevant scope of practice established by Florida law and rule, to provide health care services to Florida patients but is prohibited from opening an office in Florida and from providing in-person health care services to patients located in Florida.

On March 16, 2020, Surgeon General Scott Rivkees executed DOH Emergency Order 20-002 authorizing certain out-of-state physicians, osteopathic physicians, physician assistants, and advanced practice registered nurses to provide telehealth in Florida without the need to register as a telehealth provider under s. 456.47(4), F.S.[27] This emergency order was extended[28] and will remain in effect until the expiration of the Governor's Executive Order No. 20-52 and extensions thereof.[29]

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[20] S. 474.214(1)(y)., F.S.
[21] R. 64B8-9.0141, F.A.C. Currently, medical doctors may practice telemedicine in Florida in a patient relationship with a patient evaluation, under certain circumstances.
[22] Chapter 2019-137, s. 6, Laws of Fla.
[23] S. 456.47(1)(b), F.S.
[24] *See also* s. 394.453(3), F.S. The Florida Mental Health Act (popularly known as "The Baker Act," s. 394.451, F.S.), contains a legislative finding that "the use of telemedicine for patient evaluation, case management, and ongoing care will improve management of patient care and reduce costs of transportation."
[25] Under s. 456.001(1), F.S., the term "board" is defined as any board, commission, or other statutorily created entity, to the extent such entity is authorized to exercise regulatory or rulemaking functions within the DOH or, in some cases, within the DOH's Division of Medical Quality Assurance.
[26] Section 456.47(4), F.S.
[27] Department of Health, State of Florida, *Emergency Order DOH No. 20-002* (Mar. 16, 2020) http://floridahealthcovid19.gov/wp-content/uploads/2020/03/filed-eo-doh-no.-20-002-medical-professionals-03.16.2020.pdf (last visited Feb. 26, 2021).
[28] Department of Health, State of Florida, *Emergency Order DOH No. 20-011* (June 30, 2020) https://floridahealthcovid19.gov/wp-content/uploads/2020/06/DOH-Emergency-Order-DOH-No.-20-011.pdf (last visited Feb. 26, 2021).
[29] Under s. 252.36(2), F.S., no state of emergency declared pursuant to the Florida Emergency Management Act, may continue for more than 60 days unless renewed by the Governor. The state of emergency declared in Executive Order 20-52, was extended by Executive Orders 20-114, 20- 166, 20-192, 20-213, 20-276, and 20-316. Executive Order 20-316 will remain in effect until Feb. 27, 2020. Office of the Governor, State of Florida, *Executive Order 20-316* (Dec. 29, 2020) https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-316.pdf (last visited Feb. 26, 2021).

Five days later, the Surgeon General executed DOH Emergency Order 20-003[30] to also authorize certain out-of-state clinical social workers, marriage and family therapists, mental health counselors, and psychologists to provide telehealth in Florida without the need to register as a telehealth provider under s. 456.47(4), F.S. This emergency order was also extended[31] and will remain in effect until the expiration of Executive Order No. 20-52 and extensions thereof.

Florida Controlled Substance Law

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

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

Florida Prescription Drug Law

Section 456.44, F.S., as amended during the 2018 legislative session, CS/CS/HB 21,[32] authorizes prescribers to prescribe a three-day supply of a Schedule II opioid[33] or up to a seven-day supply if medically necessary. The prescribing limits on Schedule II opioids do not apply to prescriptions for acute pains related to: cancer, a terminal condition, pain treated with palliative care, or a traumatic injury with an Injury Severity Score of 9 or higher.[34]

That section also requires a prescriber and dispenser to report to and review the Prescription Drug Monitoring Program database to review a patient's controlled substance dispensing history prior to prescribing or dispensing a Schedule II-IV controlled substance for patients 16 years older.[35] These limitations and requirements apply to practitioners providing services in-person and through telehealth.

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[30] Department of Health, State of Florida, *Emergency Order DOH No. 20-003* (Mar. 21, 2020) https://s33330.pcdn.co/wp-content/uploads/2020/03/DOH-EO-20-003-3.21.2020.pdf (last visited Feb. 14, 2021).
[31] Department of Health, State of Florida, *Emergency Order DOH No. 20-005* (Apr. 21, 2020) https://s33330.pcdn.co/wp-content/uploads/2020/04/DOH-Emergency-Order-20-005-extending-20-003.pdf (last visited Feb. 14, 2021).
[32] Ch. 2018-13, Laws of Fla.
[33] All opioids are controlled substances. Opioids range in classification between Schedule I and Schedule V.
[34] S. 456.44(1)(a), F.S.
[35] S. 893.055, F.S.

Section 456.47(2)(c), F.S., as created by 2019 CS/CS/HB 23[36], prohibits telehealth providers from prescribing any controlled substance unless the controlled substance is prescribed for:

- The treatment of a psychiatric disorder;
- Inpatient treatment at a licensed hospital;
- The treatment of a patient receiving hospice services; or
- The treatment of a resident of a nursing home facility.

According to a study published by the University of Florida College of Pharmacy,[37] the "2018 Florida law restricting opioid prescriptions for acute pain has led to a drop in opioid use." Specifically, the study "found the number of new opioid users per month dropped 16 percent immediately after the law was implemented, and the number of new users continues to decrease each month. Additionally, the average days' supply fell from 5.4 days prior to the law to three days. The law was also associated with an immediate decrease in the use of hydrocodone, the most commonly used Schedule II opioid."[38]

In order to purchase, prescribe, administer or dispense controlled substances in Florida, veterinarians must obtain a license from the U.S. Drug Enforcement Agency (DEA). Florida does not require any additional licensure for veterinarians to purchase and prescribe controlled drugs.[39]

The DEA is a division within the US Department of Justice and reports to the US Attorney General. In consultation with the Secretary of Health and Human Services and others, the Attorney General oversees the listing of substances on five schedules (Classes I, II, III, IV or V) of controlled agents as described in Title 21 United States Code (USC) of the Controlled Substances Act. The central mission of the DEA is to enforce controlled substances laws and regulations. With respect to veterinarians and other health professionals, the major focus of the DEA is to prevent illegal diversion of controlled prescription drugs for the purpose of illicit or non-medical uses. In order to legally purchase, dispense or prescribe controlled prescription drugs, a veterinarian must be licensed by the DEA. Prescription drugs that are regulated or controlled by the DEA include many important drugs that are used routinely by veterinarians. DEA-controlled drugs are tightly controlled at all aspects of manufacturing, distribution, ordering, storage, use and disposition.[40]

While veterinarians are allowed to write prescriptions for controlled drugs, they cannot order controlled drugs from their local pharmacy for "in-house" use nor for secondary re-sale. Like any other prescription, controlled drug prescriptions must be written for a specific patient and cannot be for general use. As a licensed DEA registrant, veterinarians are expected to create and maintain a system that provides strong safeguards against theft or diversion of controlled drugs in their practice.[41]

Two opioids are approved and marketed for use in animals, butorphanol and buprenorphine. Due to the limited number of approved and marketed veterinary opioids, veterinarians who need to use opioids to control pain in their patients generally use products approved for use in people.[42]

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[36] Ch. 2019-137, Laws of Fla.
[37] Juan M. Hincapie-Castillo, *Changes in Opioid Use After Florida's Restriction Law for Acute Pain Prescriptions* (Feb. 28, 2020), https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2762015?utm_source=For_The_Media&utm_medium=referral&utm_campaign=ftm_links&utm_term=022820 (last visited Feb. 27, 2021).
[38] Matthew Splett, *UF College of Pharmacy, Department of Pharmaceutical Outcomes and Policy* (Feb. 27, 2020), https://ufhealth.org/news/2020/new-florida-law-leads-decline-opioid-use-according-uf-study (last visited Feb. 27, 2021).
[39] Thomas Vickory, PhD, DEA REGULATION OF CONTROLLED DRUGS, https://www.vetfolio.com/learn/article/florida-drug-laws-update-2013 (last visited Feb. 27, 2021).
[40] Thomas, *supra* note 39.
[41] Thomas, *supra* note 39.
[42] U.S. FDA, *The Opioid Epidemic: What Veterinarians Need to Know*, https://www.fda.gov/animal-veterinary/resources-you/opioid-epidemic-what-veterinarians-need-know (last visited Feb. 27, 2021).

Florida DOH Emergency Order No. 20-002

The HHS Secretary also authorized qualified prescribers to prescribe Schedule II-V controlled substances, and Surgeon General Rivkees issued DOH Emergency Order No. 20-002[43], which suspended s. 456.47(2)(c), F.S., and authorized specified Florida-licensed prescribers[44] to issue a renewal prescription for a Schedule II-IV controlled substance only for an existing patient for the purpose of treating chronic nonmalignant pain without conducting another physical examination of the patient. This emergency order was extended[45] and will remain in effect until the expiration of Executive Order No. 20-52 and extensions thereof.[46]

Federal Controlled Substance Law[47]

The Ryan Haight Online Pharmacy Consumer Protection Act of 2008[48] amended the federal Controlled Substances Act, to prohibit a practitioner from issuing a "valid prescription" for a controlled substance through the Internet without having first conducted at least one in-person medical evaluation, except in certain circumstances. Thereafter, the prescriber may prescribe controlled substances to that patient via Internet or a phone call. The Act offers seven exceptions to the in-person exam. One such exception occurs when the Secretary of the federal Department of Health and Human Services (HHS) has declared a public health emergency.

Federal Prescription Guidance During the COVID-19 Public Health Emergency

On January 31, 2020, the Secretary of HHS issued a public health emergency.[49] On March 16, 2020, the federal Drug Enforcement Agency (DEA) published a COVID-19 Information page on the Diversion Control Division website, authorizing DEA-registered practitioners, authorized designated DEA-registered practitioners to issue prescriptions for all Schedule II-V controlled substances to patients without first conducting an in-person medical evaluation, provided all of the following conditions are met:

- The prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of his/her professional practice.
- The evaluation is conducted using an audio-visual, real-time, two-way interactive communication system.
- The practitioner is acting in accordance with applicable federal and state law.[50]

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[43] Department of Health, State of Florida, *Emergency Order DOH No. 20-002* (Mar. 16, 2020) http://floridahealthcovid19.gov/wp-content/uploads/2020/03/filed-eo-doh-no.-20-002-medical-professionals-03.16.2020.pdf (last visited Feb. 14, 2021).

[44] Physicians, osteopathic physicians, physician assistants, or advanced practice registered nurses that have designated themselves as a controlled substance prescribing practitioner on their practitioner profiles pursuant to s. 456.44, F.S.

[45] Department of Health, State of Florida, *Emergency Order DOH No. 20-011* (June 30, 2020) https://floridahealthcovid19.gov/wp-content/uploads/2020/06/DOH-Emergency-Order-DOH-No.-20-011.pdf (last visited Feb. 14, 2021).

[46] Under s. 252.36(2), F.S., no state of emergency declared pursuant to the Florida Emergency Management Act, may continue for more than 60 days unless renewed by the Governor. The state of emergency declared in Executive Order 20-52, was extended by Executive Orders 20-114, 20- 166, 20-192, 20-213, 20-276, and 20-316. Executive Order 20-316 will remain in effect until Feb. 27, 2020. Office of the Governor, State of Florida, *Executive Order 20-316* (Dec. 29, 2020) https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-316.pdf (last visited Feb. 9, 2021).

[47] 21 U.S.C. s. 829.

[48] Public Law No. 110-435 (2008).

[49] Determination that a Public Health Emergency Exists, Alex M. Azar II, Secretary of U.S. Department of Health and Human Services (January 31, 2020) *available at* https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx (last visited Feb. 9, 2021).

[50] Diversion Control Division, U.S. Department of Justice Drug Enforcement Administration, *COVID-19 Information Page*, *available at* https://www.deadiversion.usdoj.gov/coronavirus.html (last visited Feb. 9, 2021). Letter from Thomas Prevoznik, Deputy Assistant Administrator, Diversion Control Division, U.S. Department of Justice Drug Enforcement Administration, to DEA Qualifying Practitioners and Other Practitioners, (Mar. 31, 2020) *available at* https://www.deadiversion.usdoj.gov/GDP/(DEA-DC-022)(DEA068)%20DEA%20SAMHSA%20buprenorphine%20telemedicine%20%20(Final)%20+Esign.pdf (last visited Feb. 9, 2021).

Veterinary Telemedicine During the Pandemic

On March 24, 2020, the U.S. Food and Drug Administration (FDA) announced that it would temporarily suspend enforcement of certain requirements in order to allow veterinarians to better utilize telemedicine to address animal health needs during the COVID-19 pandemic. Specifically, the FDA has provided guidance related to suspending the enforcement of the animal examination and premises visit VCPR requirements relevant to FDA regulations governing Extralabel Drug Use in Animals[51] and Veterinary Feed Directive Drugs.[52] This allows veterinarians to prescribe or authorize the use of drugs without direct examination or making visits to patients, which will limit human-to-human interaction and potential spread of COVID-19 in the community.[53]

On March 27, 2020, DBPR issued emergency order EO 2020-04, which suspends any restriction of ch. 474, F.S., or ch. 61G-18, F.A.C., which would prohibit an active Florida-licensed veterinarian from practicing telemedicine on a patient. The order specifies that attending veterinarians must be comfortable assessing the patient remotely and feel able to exercise good clinical judgment to assist the patient. The emergency order will expire with the expiration of Executive Order 20-52, including any extension.[54]

Rabies Vaccinations

All dogs, cats, and ferrets four months of age or older must be vaccinated **by a licensed veterinarian** against rabies with a vaccine that is licensed by the U.S. Department of Agriculture for use in those species. The owner must have the animal revaccinated 12 months after the initial vaccination, and subsequent vaccinations must conform to the vaccine manufacturer's directions. The cost of vaccination must be borne by the animal's owner. Evidence of circulating rabies virus neutralizing antibodies may not be used as a substitute for current vaccination in managing rabies exposure or determining the need for booster vaccinations. Violations of this requirement are a civil infraction, punishable as provided in s. 828.27(2), F.S.[55]

Currently, Florida law does not appear to allow anyone other than the veterinarian to administer the rabies vaccine. The law allows certain vaccines, anesthesia and tranquilization to be administered by a veterinary aide, nurse, laboratory technician, intern, or other employee of a licensed veterinarian while under the "immediate supervision" of a licensed veterinarian.[56] In addition, the following tasks may performed without the licensed veterinarian on the premises:

- The administration of medication and treatment, **excluding vaccinations**, as directed by the licensed veterinarian; and
- The obtaining of samples and the performance of those diagnostic tests, including radiographs, directed by the licensed veterinarian.[57]

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

- Brucellosis.
- Tuberculosis.

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[51] 21 C.F.R. part 530.
[52] 21 C.F.R. § 558.6.
[53] U.S. Food and Drug Administration, *Coronavirus (COVID-19) Update: FDA Helps Facilitate Veterinary Telemedicine During Pandemic*, https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-helps-facilitate-veterinary-telemedicine-during-pandemic (last visited Feb. 26, 2021).
[54] Department of Business and Professional Regulation, *Emergency Order EO 2020-04*, Mar. 27, 2020, http://www.myfloridalicense.com/dbpr/os/documents/EO_2020-04.pdf (last visited Feb. 26, 2021).
[55] S. 828.30(1), F.S.
[56] S. 474.202(5), F.S., defines "immediate supervision" or words of similar purport to mean a licensed doctor of veterinary medicine is on the premises whenever veterinary services are being provided.
[57] R. 61G18-17.005, F.A.C.

- Rabies.
- Equine Encephalomyelitis.[58]

Effect of the Bill

The bill allows licensed veterinarians to establish a VCPR remotely and practice veterinary telemedicine as follows:

- Allows the "veterinarian/client/patient relationship" (VCPR) to be established in person, by telephone, or by other means consistent with the individual veterinarian's professional judgment.
- Specifies that a physical examination is not required for the veterinarian to assume responsibility for making medical judgments or providing treatment.
- Removes the requirement that a veterinarian be personally acquainted and have made timely visits with the animal in order to prescribe it drugs.
- Allows an employee, agent, or contractor of an animal control authority acting under the indirect supervision of a veterinarian to administer rabies vaccinations to impounded animals that will be transferred, rescued, fostered, adopted, or reclaimed by the owner.
- Defines "indirect supervision," to mean the supervising veterinarian is available for consultation by telecommunications but is not required to be on the premises during such consultation.
    - The supervising veterinarian assumes responsibility for the veterinary care given to the animal by any person working under or at his or her direction and supervision.
- Authorizes veterinarians who supervise an employee, agent, or contractor of an animal control authority administering the rabies vaccination to an animal to affix his or her signature stamp in lieu of an actual signature.

B. SECTION DIRECTORY:

Section 1: Amends s. 474.202, F.S., relating to the definition of "veterinarian/client/patient relationship."

Section 2: Amends s. 474.203, F.S., conforming a cross reference.

Section 3: Amends s. 474.214, F.S., relating to disciplinary proceedings.

Section 4: Amends s. 828.30, F.S., relating to rabies vaccination of dogs, cats, and ferrets.

Section 5: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

[58] R. 61G18-17.006, F.A.C.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Licensed veterinarians will be permitted to establish a VCPR remotely, and practice veterinary telemedicine, thus giving them more flexibility in their practice. This allows veterinarians to use their professional judgement and determine when an animal needs to be physically seen, and will place them on equal footing with licensed health care providers in the state who are already allowed to practice telehealth.

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Current law governing telehealth for humans excludes audio-only telephone calls, and limits the prescription of controlled substances.[59] The bill does not do this.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

[59] S. 456.47(2)(c), F.S.

A bill to be entitled

An act relating to the medical treatment of animals; amending s. 474.202, F.S.; revising the definition of the term "veterinarian/client/patient relationship"; amending s. 474.203, F.S.; providing an exception to who may immunize or treat an animal for certain diseases; amending s. 474.214, F.S.; revising grounds for disciplinary action against a veterinarian; amending s. 828.30, F.S.; authorizing employees, agents, or contractors of animal control authorities to administer rabies vaccinations under certain circumstances; providing that a supervising veterinarian assumes responsibility for any person working at his or her discretion or under his or her supervision; defining the term "indirect supervision"; providing requirements; authorizing a veterinarian who indirectly supervises the administration of the rabies vaccination to affix his or her signature stamp on a rabies vaccination certificate; providing an effective date.

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

Section 1. Subsection (12) of section 474.202, Florida Statutes, is amended to read:

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

474.202 Definitions.—As used in this chapter:

(12) "Veterinarian/client/patient relationship" means a relationship where the veterinarian has assumed the responsibility for making medical judgments regarding the health of the animal and its need for medical treatment. Such relationship may be established in person, by telephone, or by other means consistent with the individual veterinarian's professional judgment. A physical examination is not required for the veterinarian to assume responsibility for making medical judgments or providing treatment.

Section 2. Paragraph (a) of subsection (5) of section 474.203, Florida Statutes, is amended to read:

474.203 Exemptions.—This chapter does not apply to:

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

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

Section 3. Paragraph (y) of subsection (1) of section 474.214, Florida Statutes, is amended to read:

474.214 Disciplinary proceedings.—

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

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

1. Have sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the medical condition of the animal, which means that the veterinarian is ~~personally~~ acquainted with the keeping and caring of the animal ~~and has recently seen the animal or has made medically appropriate and timely visits to the premises where the animal is kept~~.

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

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

Section 4. Subsections (1) and (3) of section 828.30, Florida Statutes, are amended to read:

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

(1)(a) Except as provided in paragraph (b), all dogs, cats, and ferrets 4 months of age or older must be vaccinated by a licensed veterinarian against rabies with a vaccine that is licensed by the United States Department of Agriculture for use in those species.

(b) An employee, agent, or contractor of an animal control authority acting under the indirect supervision of a veterinarian may vaccinate impounded animals that will be transferred, rescued, fostered, adopted, or reclaimed by the owner. As used in this subsection, the term "indirect supervision," means that the supervising veterinarian is available for consultation by telecommunications but is not required to be on the premises during such consultation. The supervising veterinarian assumes responsibility for the veterinary care given to the animal by any person working under or at his or her direction and supervision.

(c) The owner of every dog, cat, and ferret shall have the animal revaccinated 12 months after the initial vaccination. Thereafter, the interval between vaccinations shall conform to

the vaccine manufacturer's directions. The cost of vaccination must be borne by the animal's owner. Evidence of circulating rabies virus neutralizing antibodies may ~~shall~~ not be used as a substitute for current vaccination in managing rabies exposure or determining the need for booster vaccinations.

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

Section 5. This act shall take effect July 1, 2021.

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

REGULATORY REFORM SUBCOMMITTEE

HB 911 by Rep. Buchanan
Medical Treatment of Animals

AMENDMENT SUMMARY
March 2, 2021

Amendment 1 by Rep. Buchanan (line 35):
The amendment:

- Defines "veterinary telemedicine" as "the practice of veterinary medicine in a remote setting, including through the use of telephone or audio-visual technology or by other means consistent with the veterinarian's professional judgment."
- Authorizes veterinarians to establish a veterinarian/client/patient relationship in person, or by means of veterinary telemedicine.
- Specifies that a physical examination is not required for the veterinarian to assume responsibility for making medical decisions or providing treatment.
- Prohibits veterinarians from prescribing controlled substances if the veterinarian/client/patient relationship has been established remotely and a physical examination has not previously occurred, unless the controlled substance is prescribed for the following:
    - Inpatient treatment at an animal clinic or hospital; or
    - The treatment of a patient receiving hospice services.
- Requires veterinarians to hold a current license to practice veterinary medicine in the State of Florida in order to practice veterinary telemedicine in Florida.
- Grants the Florida Board of Veterinary Medicine jurisdiction over a veterinarian practicing veterinary telemedicine in Florida, regardless of where the veterinarian's physical offices are located.
- Specifies that the practice of veterinary is not a violation of the standard of care, and a veterinarian may not be disciplined for practicing veterinary telemedicine.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Regulatory Reform Subcommittee

Representative Buchanan offered the following:

Amendment (with directory and title amendments)

Remove lines 31-35 and insert:

relationship may be established in person, or by means of veterinary telemedicine if audio-visual technology is used to establish such relationship. A physical examination is not required for the veterinarian to assume responsibility for making medical judgments or providing treatment.

(14) "Veterinary telemedicine" means the practice of veterinary medicine in a remote setting, including through the use of telephone or audio-visual technology or by other means consistent with the veterinarian's professional judgment, as

long as the veterinarian/client/patient relationship is established either in person or by audio-visual technology.

Section 2. Section 474.2031, Florida Statutes, is created to read:

474.2021 Veterinary Telemedicine.—

(1) A veterinarian may practice veterinary telemedicine.

(2) A veterinarian may not prescribe controlled substances if the veterinarian/client/patient relationship has been established remotely under this section and a physical examination has not previously occurred, unless the controlled substance is prescribed for the following:

(a) Inpatient treatment at an animal clinic or hospital; or

(b) The treatment of a patient receiving hospice services.

(3) A veterinarian must hold a current license to practice veterinary medicine in the State of Florida in order to practice veterinary telemedicine in Florida.

(4) The Board has jurisdiction over a veterinarian practicing veterinary telemedicine in Florida, regardless of where the veterinarian's physical offices are located. However, the practice of veterinary telemedicine in conformance with this chapter is not a violation of the standard of care, and a veterinarian may not be disciplined solely for practicing veterinary telemedicine.

D I R E C T O R Y A M E N D M E N T

Remove lines 24-25 and insert:

Section 1. Section 474.202, Florida Statutes, is amended to read:

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

Remove line 7 and insert:

diseases; defining "veterinary telemedicine"; creating s. 474.2031, F.S.; authorizing veterinarians to establish veterinarian/client/patient relationship remotely; prohibiting veterinarians from prescribing controlled substances under certain circumstances; authorizing the Florida Board of Veterinary Medicine jurisdiction; specifying standard of care and discipline; amending s. 474.214, F.S.; revising grounds

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1059 Building Permits
SPONSOR(S): Regulatory Reform Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

The Florida Building Codes Act provides a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Florida Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.

Current law requires local governments to enforce the Building Code and issue building permits. Current law also requires state agencies, state universities, Florida College System institutions, and public school districts to enforce the Building Code in certain situations. Each local government entity may provide a schedule of reasonable fees in order to defer the costs of inspection and enforcement of the Building Code. It is unlawful to construct, erect, alter, repair, secure, or demolish any building without first obtaining a building permit.

A development permit is any official action of a local government that has the effect of permitting the development of land including, but not limited to, building permits, zoning permits, subdivision approval, rezoning, certifications, special exceptions, and variances. A development order is issued by a local government and grants, denies, or grants with conditions an application for a development permit.

The bill:

- Requires local governments to review additional information for an application for a development permit or development order within a certain time-period.
- Clarifies and requires local enforcement agencies to:
  - post each building permit application, **including** a list of any required attachments, such as drawings or plans, on their websites;
  - allow applicants to submit completed building permit applications electronically **including** any required payments and attachments, such as plans;
  - post the current status of every received building permit application on their website; and
  - post their procedures for reviewing, processing, and approving building permit applications on their websites.
- Requires government entities, which enforce the Building Code, that fail to meet current established deadlines for reviewing building permit applications to reduce the fee for such permits for every business day that they miss the deadline, unless the applicant agrees to a longer period.
- Requires government entities that deny a building permit application for a single-family residential dwelling to allow the applicant 10 business days to correct the application.
- Prohibits government entities from requiring a copy of a contractor's contract with owners, subcontractors, or suppliers in order to obtain a building permit for projects on commercial property.
  - This does not apply to projects for improvements owned or leased by a government entity.

The bill may have an indeterminate fiscal impact on state and local government. *See* Fiscal Comments.

The bill provides for an effective date of October 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Community Planning Act

Adopted in 1985, the Local Government Comprehensive Planning and Land Development Regulation Act,[1] also known as Florida's Growth Management Act, was significantly revised in 2011, becoming the Community Planning Act.[2] The Community Planning Act governs how local governments create and adopt their local comprehensive plans.

Local comprehensive plans must include principles, guidelines, standards, and strategies for the orderly and balanced future land development of the area and reflect community commitments to implement the plan. The intent of the Act is that local governments manage growth through comprehensive land use plans that facilitate adequate and efficient provision of transportation, water, sewage, schools, parks, recreational facilities, housing, and other requirements and services.[3] A housing element is required as part of every comprehensive plan in the state. Among other things, the housing element must address "the creation or preservation of affordable housing to minimize the need for additional local services and avoid the concentration of affordable housing units only in specific areas of the jurisdiction."[4]

Municipalities established after the effective date of the Community Planning Act must adopt a comprehensive plan within three years after the date of incorporation.[5] The county comprehensive plan controls until a municipal comprehensive plan is adopted.[6]

The comprehensive plan is implemented via land development regulations. Each county and municipality must adopt and enforce land development regulations, such as zoning or other housing-related ordinances, that are consistent with and implement their adopted comprehensive plan.[7]

Issuing Development Orders and Permits – Current Situation

Under the Community Planning Act, a development permit is any official action of a local government that has the effect of permitting the development of land including, but not limited to, building permits, zoning permits, subdivision approval, rezoning, certifications, special exceptions, and variances.[8] A development order is issued by a local government and grants, denies, or grants with conditions an application for a development permit.[9]

When reviewing an application for a development permit or development order, not including building permit applications, a county or municipality may not request additional information from the applicant more than three times, unless the applicant waives the limitation in writing.[10]

Before a third request for information, the applicant must be offered a meeting to attempt to resolve outstanding issues.[11] If the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the applicant can request the county or municipality

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[1] *See* ch. 85-55, s. 1, Laws of Fla.
[2] *See* ch. 2011-139, s. 17, Laws of Fla.
[3] S. 163.3161(4), F.S.
[4] S. 163.3177(6)(f)1.g., F.S.
[5] S. 163.3167(3), F.S.
[6] *Id.*
[7] S. 163.3202, F.S.
[8] S. 163.3164(16), F.S.
[9] *See* ss. 125.022, 163.3164(15), and 166.033, F.S.
[10] Ss. 125.022(1) and 166.033(1), F.S.
[11] *Id.*

proceed to process the application for approval or denial.[12] If denied, the county or municipality is required to give written notice to the applicant and must provide reference to the applicable legal authority for the denial of the permit.[13]

Prior to 2019, there was no specified timeframes provided in current statute for reviewing an application for a development permit, development order, or additional information requested by a county or municipality.[14]

In 2019, the Legislature imposed requirements and time limits for a county or municipality to review an application for a development permit or development order, not including building permit applications, and provided procedures for addressing deficiencies in an application.[15]

Within 30 days of receiving an application for a development permit or development order, a county or municipality must review the application and issue a letter to the applicant indicating that the application is complete or specify the deficiencies within 30 days after receiving the application.[16] If the county or municipality identifies deficiencies, the applicant has 30 days to submit the required additional information.[17]

Once an application is deemed complete, a county or municipality must approve, approve with conditions, or deny the application within 120 days or 180 days for applications that require final action through a quasi-judicial hearing or a public hearing.[18]

Current law specifies how long an applicant has to submit additional information to a local government. However, current law does not specify how long a local government has to review the additional information and determine if the application is complete or still deficient.

Issuing Development Orders and Permits – Effect of the Bill

The bill provides that if a county or municipality makes a request for additional information from the applicant and the applicant provides the information within 30 days of receiving the request, the county or municipality must:

- Review the additional information and issue a letter to the applicant indicating that the application is complete or specify the remaining deficiencies within **30 days** of receiving the information, if the request is the county or municipality's **first request**.
- Review the additional information and issue a letter to the applicant indicating that the application is complete or specify the remaining deficiencies within **10 days** of receiving the information, if the request is the county or municipality's **second request**.
- Deem the application complete within **10 days** of receiving the information or proceed to process the application for approval or denial unless the applicant waived the county or municipality's time limitations in writing, if the request is the county or municipality's **third request**.

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

[12] *Id.*
[13] Ss. 125.022(2) and 166.033(2), F.S.
[14] Ss. 125.022(1) and 166.033(1), F.S. (2018).
[15] *See* House Analysis of 2019 House Bill 7103 (Jul. 1, 2019).
[16] Ss. 125.022(1) and (2), and 166.033 (1) and (2), F.S.
[17] *Id.*
[18] *Id.*

new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.[19]

In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. The Governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Building Code), and that first edition replaced all local codes on March 1, 2002.[20] The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.[21]

Part IV of ch. 553, 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. [22]

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,[23] 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.[24]

Enforcement of the Florida Building Code

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare.[25] Every local government must enforce the Florida Building Code and issue building permits.[26]

State universities, Florida College System institutions, and public school districts enforce the Building Code for their building projects, including conducting plan review and inspections. State universities, Florida College System institutions, and public school districts must use or contract with licensed building officials, inspectors, and plan examiners, and may elect to use a local government's building department to review plans and perform inspections.[27]

Current law also provides that state agencies may enforce the Building Code if current law specifically authorizes them to do so, unless they have delegated responsibility to another public entity.[28] Current law provides that:[29]

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[19] 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 Feb. 15, 2021).
[20] *Id.*; DBPR, *Building Code Information System*, https://floridabuilding.org/c/default.aspx# (last visited on Feb. 15, 2021).
[21] Florida Building Commission Homepage, https://floridabuilding.org/c/default.aspx (last visited Mar. 14, 2019).
[22] *See* S. 553.72(1), F.S.
[23] The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to "construct safe, sustainable, affordable and resilient structures." International Code Council, *About the ICC*, https://www.iccsafe.org/about/who-we-are/ (last visited Feb. 21, 2021).
[24] Ss. 553.73, & 553.74, F.S.
[25] S. 553.72, F.S.
[26] Ss. 125.01(1)(bb), 125.56(1), & 553.80(1), F.S.
[27] S. 553.80(6), F.S.
[28] Ss. 255.31(1), and 553.80(1), F.S.
[29] *Id.*

- The Department of Corrections and the Department of Juvenile Justice, and the Department of Management Services (DMS) enforces the construction regulations relating to correctional facilities under their jurisdiction.
- The DMS enforces the construction regulations for the Governor's Mansion and its grounds, the Capitol, and the Capitol complex.
- The DBPR enforces the construction regulations relating to elevator equipment under their jurisdiction.
- The Turnpike Enterprise, which is part of the Department of Transportation, enforces the construction regulations for toll collection facilities under its jurisdiction.
- The Department of Children and Families (DCF) in conjunction with the Agency for Health Care Administration (ACHA) enforces construction regulations relating to secure mental health treatment facilities under DCF's jurisdiction.
- The AHCA also reviews plans and surveys construction of hospitals, nursing homes, ambulatory surgical centers, and Intermediate Care Facilities for the Developmentally Disabled.

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

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.[32] A building official is a local government employee or a person contracted by a government entity who supervises building code activities, including plans review, enforcement, and inspection.[33] Any construction work that requires a building permit also requires plans and inspections by the building official to ensure the work complies with the Building Code.[34]

Each government entity may provide a schedule of reasonable fees in order to defer the costs of inspection and enforcement of the Building Code. The basis for a local government's fee structure must relate to the level of service provided by the local government. Fees charged must be consistently applied. Each local government must post its permit and inspection fee schedule and a utilization report[35] on its website.[36]

A local government's permit and inspection fees must be used solely for carrying out that local government's responsibilities in enforcing the Building Code. This includes:[37]

- the direct costs and reasonable indirect costs associated with review of building plans, building inspections, reinspections, and building permit processing;
- building code enforcement;
- fire inspections associated with new construction; and
- training costs associated with the enforcement of the Building Code and enforcement action pertaining to unlicensed contractor activity to the extent not funded by other user fees.

[30] *See* Ss. 125.56(4)(a) & 553.79(1), F.S.
[31] S. 109.1 of the Seventh edition of the Florida Building Code (Building).
[32] S. 468.603(2), F.S; S. 202 of the Seventh edition of the Florida Building Code (Building).
[33] S. 468.603(2), F.S.; S. 202 of the Seventh edition of the Florida Building Code (Building).
[34] Ss. 107, 110.1, and 110.3 of the Seventh edition of the Florida Building (Building).
[35] The utilization report must include the local government's direct and indirect costs for enforcing the Building. S. 553.80(7), F.S.
[36] Ss. 125.56(2) and (4), 166.222, and 553.80(7), F.S.
[37] S. 553.80(7), F.S.

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 Florida Building Commission, DBPR's Building Code Compliance and Mitigation Program, and the Florida Fire Prevention Code informal interpretations.[38]

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 BCAIB and the Florida Homeowners' Construction Recovery Fund.[39]

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 Florida Building Code.[40]

Building Permit Delays

Any delays in obtaining a building permit can delay the completion of a construction. Delays in the completion of a construction project may:[41]

- 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:[42]

- 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 by creating local construction jobs and other indirect jobs; and

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[38] S. 553.721, F.S.

[39] 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.

[40] Ss. 468.631, and 553.721, F.S.

[41] 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 Feb. 22, 2021); PricewaterhouseCoopers, *The Economic Impact of Accelerating Permit Processes on Local Development and Government Revenues*, (Dec. 7, 2005).

[42] *Id.*; Institute for Market Transformation, *Streamlining Compliance Processes*, (Winter 2012) https://www.imt.org/wp-content/uploads/2018/02/CaseStudy5.pdf (last visited Feb. 24, 2021).

- Encourage economic development by having an efficient permit system.

List of Required Items for Applications and Electronic Submission of Applications – Current Situation

A local enforcement agency is an agency of local government, a local school board, a community college board of trustees, or a university board of trustees in the State University System with jurisdiction to make inspections of buildings and to enforce the Building Code.[43]

Current law requires local enforcement agencies to post each type of building permit on their website.[44] Current law also requires local enforcement agencies to allow applicants to submit applications electronically, except owners who are acting as contractor under the owner-builder exemption.[45] Accepted methods of electronic submission include, but are not limited to:[46]

- E-mail submission of applications in PDF format;
- Submission of applications through an electronic fill-in form available on the building department's website; or
- Through a third-party submission management software.

However, it is not clear if current law requires local enforcement agencies to:

- post a list or identify other items required as part of the application for each type of building permit on their websites;
- allow applicants to electronically submit items required as part of a building permit application including payments, attachments, or drawings; or
- post the status of building permit applications on their websites.

Some local governments list the items required as part of an application, allow applicants to electronically submit items required as part of an application, and post the status of building permit applications on their websites, while others do not.[47]

Proponents argue that posting a list containing all the required information for each type of building permit and the status of every received application saves time by reducing phone calls and emails to building department staff. It also reduces the number of applications that are denied due to misunderstanding about what materials and information must be provided.[48]

Proponents argue that allowing applicants to submit applications electronically, including all required items, saves time and money for builders and developers by shortening the turn-around time for

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[43] S. 553.71(5), F.S.

[44] Ss. 125.56(4)(b) & 553.79(1)(b), F.S.

[45] Current law requires property owners who are acting as a contractor under the owner-builder exemption to personally appear at a local enforcement agency to sign the building permit. Ss. 489.103(7), & 489.503(7), F.S.

[46] Ss. 125.56(4)(b) & 553.79(1)(b), F.S.

[47] City of Miramar, *Building, Permits & Inspections*, https://www.miramarfl.gov/150/Building-Permits-Inspections (last visited Feb. 25, 2021); City of Orlando, *Permits & Inspections*, https://www.orlando.gov/Building-Development/Permits-Inspections (last visited Feb. 24, 2021); Union County, *Building Department*, https://unioncounty-fl.gov/building-department/ (last visited Feb. 25, 2021); City of Crestview, *Building Permits & Inspections*, http://www.cityofcrestview.org/161/Building-Permits-Inspections (last visited Feb. 25, 2021).

[48] Ryan Meres, Seven Keys to Alleviating Permitting Pain, Builder (Jul. 23, 2015) https://www.builderonline.com/building/regulation-policy/seven-keys-to-alleviating-permitting-pain_o (last visited Feb. 24, 2021); E-Gov Link, *How to Streamline your Local Government Permitting Process*, (Aug. 28, 2019) https://www2.egovlink.com/how-to-streamline-your-local-government-permitting-process/ (last visited Feb. 24, 2021)

processing most building permits, and by preventing them from having to travel to and from a building department during business hours to drop off the required items.[49]

They also argue that it helps building departments by reducing the cost of printing documents, eliminating archiving costs, easing the burden of managing paper documents, and consolidates the plan review process by having documents stored on a network server that is available to multiple departments and employees.[50]

Building Departments note that the cost to post the list of required items and the status of received building permit applications, and the cost to transition from paper documents to electronic documents is expensive and it is not easy or quick.[51] Additionally a building department may have to devote limited resources to updating the list of required items and the status of received building permit applications.[52]

List of Items Required for Applications and Electronic Submission of Applications – Effect of the Bill

The bill clarifies that local enforcement agencies must:

- post each type of building permit application on their website, **including** a list of all required attachments, drawings, and any other requirements that are required for each type of application.
- post the status of received building permit applications online, and update the status.
    - A local enforcement agency does not have to post the status of a received building permit application if it has issued a permit for the application.
- allow building permit applicants to electronically submit applications, **including** all attachments, payments, drawings, and any other requirements that are required as part of the application.
    - Applications, including attachments, payments, drawings, and any other requirements or parts that are required as part of the application, may also be submitted in person at the discretion of the building official.

Process for Reviewing Building Permits – Current Situation

Current law requires local enforcement agencies to enforce the Building Code and issue building permits. However, current law does not specify how local enforcement agencies must review and process building applications. Instead, current law leaves it up to local enforcement agencies to determine how they want to process, receive, and approve building permit applications.

According to testimony offered during the regular meeting of the Florida House of Representatives Regulatory Reform Subcommittee, there are generally two different models for how building departments are setup. One model is the separated review process, which is a process where an application goes to different departments for review such as the zoning department and the building department. The second model is a combined review process, which operates as a one-stop shop for all development review approval.[53] However, local enforcement agencies operate differently from each

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[49] Building Officials Association of Florida, Florida Engineering Society, AIA Florida, *Building Department Guide to Creating and Processing Electronic Construction Documents*, http://www.aiafla.org/upload_documents/BuildingDepartmentGuidetoCreatingandProcessingElectronicDocuments.pdf (last visited Feb. 25, 2021); *See* The Florida Channel, 1/27/ 2021 House Regulatory Reform Subcommittee, https://thefloridachannel.org/videos/1-27-21-house-regulatory-reform-subcommittee/ (last visited Feb. 19, 2021).

[50] *Id.*

[51] *Id.*; The Community Development Director for the City of Auburndale testified that the cost for them to purchase the software necessary for the switch to electronic documents cost $90,000. *See* The Florida Channel, *supra* note 49.

[52] The Massachusetts Association of Regional Planning Agencies, *A Best Practices for Streamlined Local Permitting*, (Nov. 30, 2007), http://www.pvpc.org/sites/default/files/BEST%20PRACTICES%20GUIDE_0.pdf (last visited Feb. 24, 2021).

[53] *See* The Florida Channel, *supra* note 49.

other, and there is no uniform system for processing, receiving, or approving building permit applications.[54]

Proponents argue that requiring building departments to list their procedures for receiving, processing, and approving building permit applications on their website helps developers and residents by letting them know the permitting process from the beginning. It also reduces conflicts and delays in application review due to misunderstanding about a building department's procedures. It also helps new staff by letting them know what their responsibilities are in the process.[55]

Building departments note that, a building department may have to devote limited resources to creating the list of its procedures for receiving, processing, and approving building permit applications on its website. Additional resources may also be needed to update the list to ensure the listed procedures are current and up to date.[56]

Process for Reviewing Building Permits – Effect of the Bill

The bill requires local enforcement agencies to post their procedures for processing, reviewing, and approving submitted building permit applications on their websites.

Time-Period to Review Building Permit Applications – Current Situation

Current law requires local governments to review certain building permit applications within a specific time-period of receiving the applications. Current law has established time-periods for local governments to review applications for the following building permits:[57]

- accessory structure;
- alarm permit;
- nonresidential buildings less than 25,000 square feet;
- electric;
- irrigation permit;
- landscaping;
- mechanical;
- plumbing;
- residential units other than a single family unit;
- multifamily residential not exceeding 50 units;
- roofing;
- signs;
- site-plan approvals and subdivision plats not requiring public hearings or public notice;
- lot grading and site alteration associated with the permit application set forth in this subsection;
- master building permits; and
- single-family residential buildings.

When a local government receives an application for one of the above building permits, except master building permits and single-family residential buildings, it must:[58]

- Inform the applicant within 10 days of receiving the application, what information, if any, is needed to complete the application.

[54] *Id.*
[55] The Massachusetts Association of Regional Planning Agencies *supra* note 52.
[56] *Id.*
[57] S. 553.792(2), F.S.
[58] S. 553.792(1), F.S.

    - If the local government fails to provide written notice to the applicant within the 10-day window, the application is deemed to be properly completed.
- Notify the applicant within 45 days of the application being deemed complete, if additional information is necessary to determine the sufficiency of the application;
    - If additional information is needed the local government must specify what additional information is necessary.
    - The applicant may submit the additional information to the local government or request that the local government act on the application without the additional information.
- Approve, approve with conditions, or deny the application within 120 days following receipt of the completed application.
    - This period is tolled during the time an applicant is responding to a request for additional information and may be extended by mutual consent of the parties.

These time-periods do not apply when a law, agency rule, or local ordinance specify different timeframes for review of local building permit applications, for permits for wireless communication facilities, or when both parties agree to an extension.[59]

If a local government receives a complete master building permit application, it must approve or deny the application within 120 days of receiving the completed application, unless the applicant agrees to a longer period.[60]

If any government entity with authority to enforce the Building Code receives an application for a building permit for single-family residential dwelling, it must issue the permit within 30 business days of receiving the application, unless the application fails to satisfy the Building Code or the enforcing agency's laws or ordinances, or unusual circumstances require a longer time-period for processing the application.[61]

Current law provides time-periods for when government entities must review certain building permit applications. However, current law does not provide any penalty if a government entity fails to comply with the deadlines established by current law.

Time-Period to Review Building Permit Applications – Effect of the Bill

The bill requires local governments to reduce a permit fee for building permit applications by 10 percent of the original permit fee for each business day that a local government fails to meet the current statutory time-period for reviewing a building permit application or a time-period established by the local government.

- A local government does not have reduce the permit fee if the local government and applicant agree to an extension of time, or if the application is for a master building permit and the applicant agrees to an extension.

The bill provides that if a government entity with authority to enforce the Building Code fails to approve an application for a single-family residential dwelling building permit within 30 business days of receiving the application, it must reduce the building permit fee by 10 percent of the original permit fee for each business day that the enforcing agency fails to meet the deadline.

A government entity does not have to reduce the fee for a single-family residential dwelling building permit, if:

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[59] *Id.*

[60] S. 553.794(5)(c), F.S. A master building permit is intended for builders who expect to construct identical single- or two- family dwellings or townhomes. Once a builder obtains a master building permit, he or she is not required to obtain a new permit for single-two-family dwelling or townhome as long as the dwelling or townhome is built to the specifications in the master building permit. *See* 553.794, F.S.

[61] S. 553.79(14), F.S.

- it provides written notice to the applicant, by email or USPS mail within 30 business days of receiving the application; and
- The written notice specifically states how the application fails to satisfy the Building Code, or the government entity's laws or ordinances.

An applicant has 10 business days to address the reasons specified in the government entity's notice. If the applicant submits revisions to the government entity within 10 business days of receiving the notice, the government entity must approve or deny the permit within 10 business days of receiving the applicant's revisions.

If a government entity fails to approve or deny the permit within 10 business days of receiving the applicant's revisions, it must:

- reduce the permit fee by 20 percent of the original permit fee for the first day that it fails to meet the deadline; and
- an additional 10 percent of the original permit fee for each business day that it fails to meet the deadline, for up to five business days.

A government entity does not have to reduce the permit fee if the applicant agrees to a longer period in writing.

If any permit fees are refunded because a local government fails to meet an established deadline for reviewing a building permit application, the DBPR surcharges for funding the Building Commission, the BCAIB, and the Florida Homeowners' Recovery Fund must be recalculated based on the amount of the permit fees after the refund.

Required Information in Building Permit Application – Current Situation

To obtain a permit, an applicant must complete an application for the proposed work on a form furnished by the government entity. The form must include the following information:[62]

- The name and address of the owner of the property;
- The name and address of the contractor;
- A description sufficient to identify the property to be improved, including the property's address and legal description; and
- The name and address of the bonding company, if any;
- The name and address of the architect/engineer, if any;
- The name and address of the mortgage company, if any; and
- The number or identifying symbol assigned to the building permit by the issuing authority.

In addition to the information that must be in the application, a government entity may require any additional information be included in the application.[63]

According to testimony offered during the Regular meeting of the Florida House of Representatives Regulatory Reform Subcommittee, many local governments use the cost of construction as a factor[64]

[62] Ss. 713.135(5) and (6), F.S.
[63] *Id.*
[64] The International Code Council has created two equations to help jurisdictions determine their permit fee schedules. Two factors of the factors in the equations are the valuation of the construction cost of the project, and the value of all the construction in the jurisdiction in the previous year. *See* International Code Council, *Building Valuation Data – February 2020*, https://www.iccsafe.org/wp-content/uploads/BVD-BSJ-FEB20.pdf (last visited Feb. 21, 2021).

for determining the amount of a fee for a building permit.[65] Some local governments are requiring contractors to include their contracts with private owners in order to obtain building permits so that the local government can determine the contract's construction cost and construction value.[66] Although these contracts may contain private proprietary information, when local governments request them they may become public documents.[67]

Required Information in Building Permit Application -- Effect of the Bill

The bill prohibits a government entity from requiring a contract between an owner and a contractor or a contract between a contractor and a subcontractor or material supplier as a condition to apply for or obtain a building permit for construction work on a commercial property.

However, this does not apply to any construction projects for improvements that are owned or leased by a government entity.

B. SECTION DIRECTORY:

Section 1: Amends s. 125.022, F.S., relating to development permits and orders issued by counties.

Section 2: Amends s. 125.56, F.S., requiring counties to allow submission of certain documents and list certain things on their websites.

Section 3: Amends s. 166.033, F.S., relating to development permits and orders issued by municipalities.

Section 4: Amends s. 553.79, F.S., requiring local governments to allow submission of certain documents, list certain things on their websites, and reduce certain building permit fees.

Section 5: Amends s. 553.792, F.S., requiring local governments to reduce certain building permit fees.

Section 6: Amends s. 553.794, F.S., requiring local governments to reduce certain building permit fees.

Section 7. Amends s. 713.135, F.S., prohibiting local governments from requiring contracts in certain applications for building permits.

Section 8. Providing an effective date of October 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

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[65] City of Miami, *City of Miami Building Permit Fee Schedule*, https://www.miamigov.com/Services/Building-Permitting/City-of-Miami-Building-Permit-Fee-Schedule (last visited Feb. 21, 2021); St. Lucie County, *Building Permit Fees*, https://www.stlucieco.gov/Home/ShowDocument?id=1330 (last visited Feb. 21, 2021); City of Seminole, *City of Seminole Permit Fee Schedule*, https://www.myseminole.com/Building/Docs/Permit_Fees.pdf (last visited Feb. 21, 2021).

[66] *See* The Florida Channel, *1/27/ 2021 House Regulatory Reform Subcommittee*, https://thefloridachannel.org/videos/1-27-21-house-regulatory-reform-subcommittee/ (last visited Feb. 19, 2021).

[67] Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record made or received in connection with official business of any public body, including counties, municipalities, and districts. Current law does not contain an exemption from Florida's public records laws for proprietary business information included in a building permit application. *See generally*, ch. 119. F.S.

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive impact by decreasing the time it takes to obtain a building permit, which may decrease the cost and time to complete projects.

D. FISCAL COMMENTS:

The amount of permit fees that are refunded by local governments for failing to review a permit application within a certain time-period is indeterminate. However, any amount will likely be minimal. It is unclear if refunding a percentage of permit fees will have an impact on the surcharges received by DBPR. However, any impact will likely be insignificant.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill requires local governments to take actions that require expenditures of money by requiring local governments to allow electronic submission of certain building permit application documents, and requiring them to post the current status of received building permit applications, to list the required documents to be included with a permit application, and to list their procedures for processing applications on their website. This may result in additional expenditures to comply with the statute. However, local building departments are permitted by state law to collect building fees that cover the cost of their expenses. An exemption may apply because the fiscal impact is likely to be insignificant.

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 construction permits; amending 125.022, F.S.; amending the requirements for when counties request certain information; amending 125.56, F.S.; amending the requirements that counties post building permit applications and its procedures for reviewing applications online and allow applicants to submit applications electronically; amending 166.033, F.S.; amending the requirements for when municipalities request certain information; amending 553.79, F.S.; amending the requirements that local governments post building permit applications and its procedures for reviewing applications online and allow applicants to submit applications; providing for a reduction of fees in certain circumstances; requiring certain surcharges be recalculated under certain conditions; amending 553.792, F.S.; providing for a reduction of fees in certain circumstances; requiring certain surcharges be recalculated under certain conditions; amending s. 553.794, F.S.; providing for a reduction of fees in certain circumstances; requiring certain surcharges be recalculated under certain conditions; amending 713.135, F.S.; providing that building permit authorities may not require applicants to provide certain contracts for certain types of

building permits; providing an effective date.

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

Section 1. Subsection (2) of section 125.022, Florida Statutes, is amended to read:

125.022 Development permits and orders.—

(2)(a) When reviewing an application for a development permit or development order that is certified by a professional listed in s. 403.0877, a county may not request additional information from the applicant more than three times, unless the applicant waives the limitation in writing.

(b) If a county makes a request for additional information and the applicant submits the required additional information within 30 days of receiving the request, the county must review the application for completeness and issue a letter indicating that all required information has been submitted or specify with particularity any areas that are deficient within 30 days of receiving the additional information.

(c) If a county makes a second request for additional information and the applicant submits the required additional information within 30 days of receiving the request, the county must review the application for completeness and issue a letter indicating that all required information has been submitted or specify with particularity any areas that are deficient within

10 days of receiving the additional information.

(d) Before a third request for additional information, the applicant must be offered a meeting to attempt to resolve outstanding issues. If a county makes a third request for additional information and the applicant submits the required additional information within 30 days of receiving the request, it must deem the application complete within 10 days or proceed to process the application for approval or denial unless the applicant waived the county's limitation in writing described in paragraph (a).

(e) Except as provided in subsection (5), if the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the county, at the applicant's request, shall proceed to process the application for approval or denial.

Section 2. Paragraph (b) of subsection (4) of section 125.56, Florida Statutes, is amended, and a new paragraph (f) is added to that subsection to read:

125.56 Enforcement and amendment of the Florida Building Code and the Florida Fire Prevention Code; inspection fees; inspectors; etc.—

(4)

(b) A county that issues building permits shall post each type of building permit application, including a list of all required attachments, drawings, or other requirements for each

type of application, on its website. A county must post and update the status of every received application on its website until the issuance of the building permit. Completed applications, including payments, attachments, drawings, or other requirements or parts of the completed permit application, must be able to be submitted electronically to the county building department. Accepted methods of electronic submission include, but are not limited to, e-mail submission of applications in Portable Document Format or submission of applications through an electronic fill-in form available on the building department's website or through a third-party submission management software. Completed applications, including payments, attachments, ~~or~~ drawings, or other requirements or parts ~~required as part~~ of the completed permit application, may also be submitted in person in a nonelectronic format, at the discretion of the building official.

(f) A county that issues building permits must post its procedures for processing, reviewing, and approving submitted building permit applications on its website.

Section 3. Subsection (2) of section 166.033, Florida Statutes, is amended to read:

166.033 Development permits and orders.—

(2)(a) When reviewing an application for a development permit or development order that is certified by a professional listed in s. 403.0877, a municipality may not request additional

information from the applicant more than three times, unless the applicant waives the limitation in writing.

(b) If a municipality makes a request for additional information and the applicant submits the required additional information within 30 days of receiving the request, the municipality must review the application for completeness and issue a letter indicating that all required information was submitted or specify with particularity any areas that are deficient within 30 days of receiving the additional information.

(c) If a municipality makes a second request for additional information and the applicant submits the required additional information within 30 days of receiving the request, the municipality must review the application for completeness and issue a letter indicating that all required information was submitted or specify with particularity any areas that are deficient within 10 days of receiving the additional information.

(d) Before a third request for additional information, the applicant must be offered a meeting to attempt to resolve outstanding issues. If a municipality makes a third request for additional information and the applicant submits the required additional information within 30 days of receiving the request, it must deem the application complete within 10 days or proceed to process the application for approval or denial unless the

applicant waived the municipality's limitation in writing described in paragraph (a).

(e) Except as provided in subsection (5), if the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the municipality, at the applicant's request, shall proceed to process the application for approval or denial.

Section 4. Paragraph (b) of subsection (1) and subsection (14) are amended, new paragraph (d) is added to that subsection (1), to read:

553.79 Permits; applications; issuance; inspections.—

(1)

(b) A local enforcement agency shall post each type of building permit application, including a list of all required attachments, drawings, or any other requirement for each type of application, on its website. A local enforcement agency must post the current status of every received application on its website until the issuance of the building permit. Completed applications, including payments, attachments, drawings, or any other requirements or parts of the completed permit application, must be able to be submitted electronically to the appropriate building department. Accepted methods of electronic submission include, but are not limited to, e-mail submission of applications in Portable Document Format or submission of applications through an electronic fill-in form available on the

building department's website or through a third-party submission management software. Completed applications, including payments, attachments, ~~or~~ drawings, or any other requirements or parts ~~required as part~~ of the completed permit application, may also be submitted in person in a nonelectronic format, at the discretion of the building official.

(d) A local enforcement agency must post its procedures for processing, reviewing, and approving submitted building permit applications on its website.

(14) A building permit for a single-family residential dwelling must be issued within 30 business ~~working~~ days of receiving the application ~~therefor~~ unless ~~unusual circumstances require a longer time for processing the application or unless~~ the permit application fails to satisfy the Florida Building Code or the enforcing agency's laws or ordinances.

(a) If a local enforcing agency fails to issue a building permit for a single-family residential dwelling within 30 business days of receiving the application, it must reduce the building permit fee by 10 percent for each business day that the enforcing agency fails to meet the deadline. Each 10 percent reduction shall be based on the original amount of the building permit fee.

(b) A local enforcing agency does not have to reduce such fee, if the enforcing agency provides written notice to the applicant, by e-mail or United States Postal Service, within 30

business days of receiving the application, that specifically states why the application fails to satisfy the Florida Building Code, or the enforcing agency's laws or ordinances.

(c) The applicant has 10 business days to address the reasons specified by the local enforcing agency and submit revisions to correct the application. If the permit applicant submits revisions within 10 business days of receiving the notice, the local enforcing agency has 10 business days to approve or deny the permit unless the applicant agrees to a longer period in writing. If the local enforcing agency fails to issue or deny the building permit within 10 business days of receiving the revisions, it must reduce the permit fee by 20 percent for the first day that the enforcing agency fails to meet the deadline unless the applicant agrees to a longer period in writing. For each additional business day after the first day that the enforcing agency fails to meet the deadline, the permit fee must be reduced by an additional 10 percent for each business day that the enforcing agency fails to meet the deadline, for up to 5 business days. Each reduction shall be based on the original amount of the building permit fee.

(d) If any permit fees are refunded under this subsection, the surcharges provided for in s. 553.721 or s. 468.631 must be recalculated based on the amount of the permit fees after the refund.

Section 5. Section 553.792, Florida Statutes, is amended

to read:

553.792 Building permit application to local government.—

(1)(a) Within 10 days of an applicant submitting an application to the local government, the local government shall advise the applicant what information, if any, is needed to deem the application properly completed in compliance with the filing requirements published by the local government. If the local government does not provide written notice that the applicant has not submitted the properly completed application, the application shall be automatically deemed properly completed and accepted. Within 45 days after receiving a completed application, a local government must notify an applicant if additional information is required for the local government to determine the sufficiency of the application, and shall specify the additional information that is required. The applicant must submit the additional information to the local government or request that the local government act without the additional information. While the applicant responds to the request for additional information, the 120-day period described in this subsection is tolled. Both parties may agree to a reasonable request for an extension of time, particularly in the event of a force majeure ~~major~~ or other extraordinary circumstance. The local government must approve, approve with conditions, or deny the application within 120 days following receipt of a completed application.

(b) If a local government does not meet a deadline provided for in paragraph (a), it must reduce the building permit fee by 10 percent for each business day that the enforcing agency fails to meet the deadline. Each 10 percent reduction shall be based on the original amount of the building permit fee, unless the parties agree to an extension of time.

(2)(a) The procedures set forth in subsection (1) apply to the following building permit applications: accessory structure; alarm permit; nonresidential buildings less than 25,000 square feet; electric; irrigation permit; landscaping; mechanical; plumbing; residential units other than a single family unit; multifamily residential not exceeding 50 units; roofing; signs; site-plan approvals and subdivision plats not requiring public hearings or public notice; and lot grading and site alteration associated with the permit application set forth in this subsection. The procedures set forth in subsection (1) do not apply to permits for any wireless communications facilities or when a law, agency rule, or local ordinance specify different timeframes for review of local building permit applications.

(b) If a local government has different timeframes than the procedures set forth in subsection (1) for reviewing building permit applications described in paragraph (a), the local government must meet the deadlines established by local ordinance. If a local government does not meet an established deadline to approve, approve with conditions, or deny an

application, it must reduce the building permit fee by 10 percent for each business day the enforcing agency fails to meet the deadline. Each 10 percent reduction shall be based on the original amount of the building permit fee, unless the parties agree to an extension of time. This paragraph does not apply to permits for any wireless communications facilities.

(3) If any permit fees are refunded under this section, the surcharges provided for in s. 553.721 or s. 468.631 must be recalculated based on the amount of the permit fees after the refund.

Section 6. Paragraph (c) of subsection (5) of section 553.794, Florida Statutes, is amended to read:

553.794 Local government residential master building permit program.—

(5) MASTER BUILDING PERMIT APPLICATION APPROVAL PROCESS.—

(c) The local building department must approve or deny a master building permit application within 120 days after the local building department receives a completed application, unless the applicant agrees to a longer period. If a local building department fails to approve or deny a master building permit application within 120 days of receiving the completed application, it must reduce the building permit fee by 10 percent for each business day the enforcing agency fails to meet the deadline, unless the applicant agrees to a longer time period. Each 10 percent reduction shall be based on the original

amount of the building permit fee. If any permit fees are refunded, the surcharges provided for in s. 553.721 or s. 468.631 must be recalculated based on the amount of the permit fees after the refund.

Section 7. Present subsections (6) through (7) of section 713.135, Florida Statutes, are redesignated as subsections (7) through (8), respectively, new subsection (6) is added to that section, to read:

713.135 Notice of commencement and applicability of lien.—

(6) An authority that issues building permits may not require an applicant to provide a direct contract or a contract between a contractor and any other lienor as a condition of the application for, or processing or issuance of, a building permit for the construction of improvements or for the alteration or repair of improvements on or to commercial property. This subsection does not apply to the construction of improvements or the alteration or repair of improvements owned or leased by the federal government, the state or any county, city, or political subdivision thereof, or other public authority.

Section 8. This act shall take effect October 1, 2021.